
Fair treatment and easier switching for broadband and mobile customers

Proposals to implement the new European Electronic
Communications Code

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[Fair treatment and easier switching for broadband and mobile customers](#) – Welsh overview

CONSULTATION:

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1. Overview

Fairness for customers is a priority for Ofcom and we have a significant work plan to help achieve this. We want people to shop around with confidence, make informed choices, switch easily and get a fair deal.

As part of this work, we are proposing a new package of measures to protect broadband, mobile, pay TV and landline phone customers and help ensure they get a fair deal.

Our proposals respond to changes to the European regulatory framework. The Government consulted earlier this year on how to reflect these changes in UK law.

What we are proposing

Making broadband switching easier and more reliable. Customers need to be able to switch providers easily to take advantage of the deals available. Ensuring customers can switch easily is a long-standing priority for Ofcom; and we have already taken a number of steps to help achieve this. We plan to require a customer's new broadband provider to lead the switch, and offer a seamless switching experience, regardless of whether they are moving across different fixed networks (for example, between Virgin Media and a provider using the Openreach network) or between providers of full-fibre broadband services on the same fixed network. There are currently no regulated processes in place for these types of switches. Any loss of service that might occur during a switch should not exceed one working day and providers should compensate customers if things go wrong. We are also proposing to ban notice period charges beyond the switch date for residential customers switching their fixed services. There are existing rules on this for mobile customers.

Banning mobile providers from selling "locked" devices. Some providers sell locked devices so they cannot be used on another network. If customers want to keep using the same device after they switch, this practice creates additional hassle and can put someone off from switching altogether. We are proposing to ban the sale of locked mobile devices to remove this hurdle for customers.

Better contract information and stronger rights to exit. Customers should be given the information they need in writing, before they sign a contract – including a summary of key contract terms. We also propose giving customers the right to exit their contract if there are any changes to their contract that they have not been previously told about and that are not exclusively to their benefit. This right to exit would also apply to other services or equipment bought as part of a bundle with a communications service.

Ensuring customers with disabilities have equivalent access to, and choice of, communications services. Ensuring all consumers can easily access the communications services they need is at the heart of what Ofcom does. We are proposing that all phone and broadband providers enable British Sign Language (BSL) users to contact the emergency services using video relay services. Our proposal will help BSL users to communicate easily with the emergency services. We are also proposing that all written communications to all customers who need alternative formats because of their disabilities, should be provided in an accessible format (such as large print) on request. This could be any information about their service, such as price rises or missed payments.

- 1.1 This document follows on from the UK Government’s consultation in July 2019, which set out the changes it is proposing to make to the law to implement the European Electronic Communications Code (EECC). The EECC is a new EU Directive that updates the regulatory framework for communications services, which the UK is required to implement by December 2020.
- 1.2 We set out here some of the main changes we are proposing to make to our rules.¹ Alongside this document, we are publishing a consultation on proposed changes to our accreditation scheme for price comparison websites, including changes to implement EECC rules regarding independent comparison tools.
- 1.3 There remains some uncertainty over the UK’s future relationship with the European Union. Ofcom takes no view on the means or merits of Brexit. However, we need to consult now on our proposals to introduce the new protections in the EECC. This will enable us to change our rules before the deadline for transposition of the EECC Directive of 21 December 2020 and still allow UK providers sufficient time to implement those changes by then, should the requirement to transpose Directives still apply to the UK at that time. If, however, the UK is no longer under an obligation to transpose the EECC, there may nonetheless be aspects of this consultation that we would still pursue.

New rules to make broadband switching easier and more reliable

- 1.4 We believe the existing regulated processes for switching within the Openreach and KCOM fixed copper networks, and the “text-to-switch” process for mobile customers,² are already in line with the EECC and our proposed new rules. Therefore, we are not proposing substantive changes to these processes at this stage.
- 1.5 There are currently no regulated processes in place for customers switching between providers on different fixed networks, or providers of full-fibre services. The Office of the Telecommunications Adjudicator (OTA) has been coordinating an industry working group to develop detailed process specifications for switching fixed services for residential customers in line with the new requirements. We will consider whether we need to make any changes to the existing regulated process in fixed copper networks in light of the OTA work with industry and responses to this consultation.

New rule banning mobile providers from selling “locked” devices

- 1.6 Currently, BT Mobile/EE, Tesco Mobile and Vodafone sell devices that are locked and cannot be used on other networks until they are unlocked. However, other providers –

¹ We have already implemented one aspect of the EECC, which requires providers to send end-of-contract notifications and best tariff advice to residential and business customers from February 2020. We have also separately consulted on a proposal to implement the 24-month limit on commitment periods to bundles of mobile services and terminal equipment in July 2019. We will conclude on this proposal as part of our overall statement to implement the EECC.

² We refer to this elsewhere in the consultation as the ‘Auto-Switch’ process.

including O2, Sky, Three and Virgin Mobile – choose to sell unlocked devices to their customers.

- 1.7 While many people manage to unlock their device without difficulty, our research has found that just under half experience some sort of problem. Some of the difficulties they may experience could include a long delay before getting the code they need to unlock their device; they might be given a code that does not work; or they could suffer a loss of service if they did not realise their device was locked before they tried to switch.
- 1.8 These potential difficulties can deter customers from switching and finding a better deal. Our evidence suggests that just over one third of customers who had considered switching, but decided not to, said device locking was one of the factors that put them off.
- 1.9 Our proposed new rule to ban providers from selling locked devices to residential customers would ensure that all providers sell unlocked devices with effect from 12 months of our decision statement.

Better contract information and stronger rights to exit

- 1.10 We are proposing that people are given detailed information about the contracts they are offered, in writing, before they sign up. At the same time, customers would be given a short, written summary of the key contract terms to help them compare offers and make an informed choice.
- 1.11 We are also proposing to strengthen customers' right to exit their contract if there are any changes mid-contract that they have not been told about. Currently, customers only have this right if a contractual change particularly disadvantages them. Under our proposals, any change would give customers the right to exit, unless it exclusively benefits the customer. This would mean, for example, that if a provider increases *any* of its prices mid-contract, and those price increases were not previously agreed to in the contract terms, the customer would automatically have the right to exit their contract, without penalty.
- 1.12 We are proposing guidance that protects customers when they buy a bundle of services and/or equipment that have different minimum commitment periods. We are concerned that some of these bundles can have the effect of 'locking-in' a customer to their provider by making it more difficult for them to switch.

New rules to help customers with disabilities have equivalent access to communications services

- 1.13 Being able to communicate with the emergency services when involved in, or witnessing, an emergency is a crucial communication need for everyone. While there are already some rules that help disabled people contact the emergency services, including the provision of text relay and emergency SMS, we are concerned that these alternatives may not be sufficient to ensure equivalent access for deaf British Sign Language (BSL) users. This is because of the difficulty BSL users can have when speaking and writing in the English language. We are therefore proposing that deaf BSL users should have access to a free

video relay service for contacting the emergency services, that will deliver benefits to deaf BSL users and the emergency services as calls would be faster and more accurate.

- 1.14 In addition, we are proposing changes to current rules that require providers to send blind or vision-impaired customers key written communications in accessible formats (such as braille or large print), free of charge. We believe it is important for *any* customer who due to their disability may need their communications in an accessible format, to be able to receive all information about their communications service in this way. Not being able to read these communications without assistance can lead to loss of independence and privacy.

Next steps

- 1.15 We invite responses to this consultation by **3 March 2020**. We aim to publish a decision statement in Q1 2020/21. We may also issue a further consultation on a more detailed process specification for residential customers switching fixed services in Q1 2020/21.

2. Background and introduction

- 2.1 We want customers of communications services to get a fair deal. Ensuring that providers put customers' interests at the heart of their businesses is a priority for us.
- 2.2 The EECC introduces a number of additional protections for customers. In this document, we set out our proposals to give full effect to these protections, which would also help to ensure customers get a fair deal as part of our Fairness for Customers work programme, and contribute to the Government's commitment to safeguard the interests of customers of communications services.
- 2.3 There remains some uncertainty over the UK's future relationship with the European Union. Ofcom takes no view on the means or merits of Brexit. However, we need to consult now on our proposals to introduce the new protections in the EECC. This will enable us to change our rules before the deadline for transposition of the EECC Directive of 21 December 2020 and still allow UK providers sufficient time to implement those changes by then, should the requirement to transpose Directives still apply to the UK at that time. If, however, the UK is no longer under an obligation to transpose the EECC, there may nonetheless be aspects of this consultation that we would still pursue.
- 2.4 The remainder of this section sets out the background to our proposals and the relevant legal framework.

Ofcom's Fairness for Customers work plan

- 2.5 A priority for Ofcom is to ensure fairness for customers. We want people to shop around with confidence, make informed choices and get a fair deal. We think this is important to ensure that customers continue to trust that communications providers will deliver for them.³
- 2.6 We have already taken action to protect consumers in communications markets, for example by:
- securing new Fairness for Customers commitments from the UK's major broadband, mobile, pay TV and home phone firms;⁴
 - publishing our draft Fairness Framework, which sets out our approach to fairness concerns;⁵
 - confirming new rules to require providers to make sure people receive information at the right time, through end-of-contract notifications and annual best tariff information, in order that they can get the best deal for them;⁶

³ We set out our commitment to this in our [Annual Plan 2019/20](#).

⁴ Ofcom, June 2019, [Britain's biggest broadband and phone firms to put fairness first](#).

⁵ Ofcom, June 2019, [Making communications markets work well for customers: A framework for assessing fairness in broadband, mobile, home phone and pay TV](#).

⁶ Ofcom, May 2019, [Statement on end-of-contract notifications and annual best tariff information](#).

- introducing new rules to make it quicker and easier for consumers to switch mobile provider since July 2019;⁷
- proposing new measures to increase fairness for customers on mobile handset contracts, and securing a range of discounts by providers for customers who are out of contract on bundled deals;⁸ and
- setting out a range of measures to help ensure out-of-contract broadband customers pay fairer prices, including securing commitments from the UK's largest broadband providers to cut prices for those who are out-of-contract.⁹

2.7 The proposals set out in this consultation form part of our work programme to ensure Fairness for Customers. They also align with a number of the Government's strategic priorities for customers of communications services designated in October 2019, including that Ofcom should continue to improve industry processes for broadband switching, including across platforms; and that Ofcom take all opportunities to improve the customer experience in the communications sector, particularly for vulnerable customers, including those with disabilities.¹⁰

The European Electronic Communications Code includes a number of protections for customers

2.8 The EECC is a new EU Directive which updates and replaces the four Directives that made up the EU regulatory framework for electronic communications.^{11,12} It entered into force on 20 December 2018 and EU member states have until 21 December 2020 to transpose it into national law.

2.9 This consultation is focused on the "End User Rights" chapter of the Directive set out at Title III of Part III of the EECC,¹³ which contains a package of measures to protect end-users ("end-user provisions"), building on the protections currently contained in the Universal Service Directive. It specifies a range of requirements, including in relation to:

- a) provision of information in contracts;
- b) transparency, comparison of offers and publication of information;

⁷ Ofcom, December 2017, [Consumer switching: decision on reforming the switching of mobile communications services](#).

⁸ Ofcom, July 2019, [Helping consumers to get better deals in communications markets: mobile handsets: statement and consultation](#).

⁹ Ofcom, September 2019, [Helping consumers get better deals: A review of pricing practices in fixed broadband – initial conclusions](#).

¹⁰ As required by section 2B (2) of the Communications Act 2003, we have had regard to the UK Government's Statement of Strategic Priorities (SSP) for telecoms, management of radio spectrum and postal services. DCMS, October 2019, [Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services](#), section 2: furthering the interests of telecoms consumers.

¹¹ Framework Directive (2002/21/EC), Authorisation Directive (2002/20/EC), Access Directive (2002/19/EC) and Universal Service Directive (2002/22/EC), all as amended.

¹² [Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Recast\)](#)

¹³ EECC, Articles 98 – 116.

- c) quality of service;
- d) contract duration and termination;
- e) switching; and
- f) bundled offers.

- 2.10 The scope of the end-user rights provisions varies, with some only applying to residential customers, some also applying to certain legal entities such as microenterprises or not for profit organisations, and others applying to all end-users, including larger businesses. In addition, the EECC brings a number of additional services within the scope of electronic communications regulation.¹⁴
- 2.11 The end-user provisions are subject to full harmonisation.¹⁵ This means that, in the areas those provisions cover, Member States may not maintain or introduce end-user provisions in national law that diverge from those provisions of the EECC, including more or less stringent provisions, which would provide a different level of protection for end-users, except for where those provisions allow for such divergence.
- 2.12 In July 2019, DCMS published a consultation setting out its approach to implementing the EECC.¹⁶ Its consultation included proposals on the key legislative changes that will be required to implement the EECC in the UK, including the end-user rights provisions.
- 2.13 While noting that Ofcom's existing powers to set general conditions (GCs) are sufficient to enable it to implement a large part of the EECC's new provisions on end-user rights, the Government identified a small number of end-user articles that may require legislative or other changes, to ensure that they can be implemented in full. We have taken account of these proposals in the relevant sections of this document.
- 2.14 The DCMS consultation closed on 10 September 2019 and a response to the consultation will be published in due course. We are working closely with Government on implementing the EECC and will take account of its statement and relevant changes to the legal framework when publishing our statement in 2020.¹⁷
- 2.15 We have already consulted and issued a statement on implementing the part of the contract duration and termination provision on end-of-contract notifications and best tariff advice. These new requirements will come into effect in February 2020.¹⁸ We also consulted on a proposal to implement the 24-month limit on commitment periods to bundles of mobile services and terminal equipment in July 2019. We will conclude on this proposal as part of our overall statement to implement the EECC.

¹⁴ See section 3 for key definitions and scope.

¹⁵ EECC, Article 101.

¹⁶ DCMS, July 2019, [Consultation: Implementing the European Electronic Communications Code](#).

¹⁷ We note that changes to primary legislation, for example in relation to the definitions of regulated services, might require some consequential amendments to the proposals set out in this consultation.

¹⁸ Ofcom, May 2019, [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#).

- 2.16 The EECC also includes requirements for the provision of an affordable universal service.¹⁹ As part of its July consultation on implementing the EECC, the Government proposed its approach in relation to social tariffs. We will continue to review the affordability of broadband and explore the possibility of social tariffs. We will work with Government to consider how such a tariff might be implemented, including any appropriate legislative changes, in any event. These requirements will not therefore be considered further in this consultation.
- 2.17 In addition, the EECC requires Member States to carry out three-yearly reviews of any legacy universal services that they wish to retain. The first such review must be completed by 21 December 2021. The UK Government has indicated that it will require Ofcom to carry out these reviews. We will therefore commence a review of legacy Universal Service obligations, including public call boxes, itemised billing and printed directories, in order for a decision to be made before December 2021.

The purpose of this consultation

- 2.18 This document sets out the changes we propose to make to Ofcom's GCs – the regulatory rules that all communications providers must follow to operate in the UK - to give full effect to the end-user provisions of the EECC and to ensure that customers are treated fairly.
- 2.19 Many of the end-user provisions in the EECC leave no discretion to Member States as to their implementation. Where this is the case, we set out the amendments we propose to make and, where relevant, we briefly describe what we consider to be the most likely impacts.
- 2.20 In other cases, transposition of the relevant provisions involves exercising discretion by Ofcom as to whether and how to implement the EECC requirements. Where this is the case, our changes and reasoning are explained in more detail.
- 2.21 In this document, we do not specifically refer to provisions of the EECC where we do not propose to exercise our discretion to implement them at this time.
- 2.22 We invite stakeholder comments on any of the proposals set out in this document. The deadline for responding is **3 March 2020**.
- 2.23 Our proposals to implement the EECC provisions in relation to independent comparison tools are set out in a separate consultation on [Digital Comparison Tools for telephone, broadband and pay TV: proposed changes to Ofcom's voluntary accreditation scheme](#) which is published alongside this consultation. The deadline for responding to that consultation is **28 February 2020**.

¹⁹ EECC, Articles 84- 85.

Impact Assessments

- 2.24 Where appropriate, we have included analysis in this document which constitutes an impact assessment for the purposes of section 7 of the Communications Act 2003 (“the Act”). Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. As a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom’s approach to impact assessments, see the guidelines Better policy-making: Ofcom's approach to impact assessment, which are on Ofcom’s website.²⁰
- 2.25 Ofcom is also required to assess the potential impact of all its functions, policies, projects and practices on the equality of individuals to whom those policies will apply. An equality impact assessment (“EIA”) assists Ofcom in making sure that it is meeting its principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.26 We have given careful consideration to whether or not the proposals contained in this document will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage however, that our proposals would have a detrimental impact on any particular group of people. Moreover, we consider that our proposals to ensure equivalent access and choice for disabled customers will provide additional protection and have positive impacts for those customers.

UK Legal Framework

- 2.27 In this section, we outline our domestic powers and duties that are relevant to the proposals set out in this consultation document.

Our general duties

- 2.28 The Act places a number of duties on us that we must fulfil when exercising the regulatory powers and functions we have been given. Section 3(1) of the Act states that it shall be our principal duty, in carrying out our functions:
- a) to further the interests of citizens in relation to communication matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.²¹

²⁰ More information about Ofcom’s approach to impact assessments is available at: [Better Policy Making, Ofcom’s approach to Impact Assessment](#).

²¹ Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

- 2.29 In performing our duties under section 3(1) of the Act, we are required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to us to represent best regulatory practice (section 3(3) of the Act).²²
- 2.30 Section 3(4) provides that we must have regard, in performing our duties, to a number of matters, as they appear to us to be relevant in the circumstances, including the desirability of promoting competition in relevant markets; the desirability of encouraging investment and innovation in relevant markets; the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.
- 2.31 In addition, section 3(5) of the Act requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

Duties for the purpose of fulfilling EU obligations

- 2.32 As set out in section 4(2) of the Act, when exercising certain functions,²³ we must act in accordance with the six European Community requirements described there which will continue to apply during the transition period under the Withdrawal Agreement and domestic EU exit legislation. These include requirements:
- a) to promote competition in the provision of electronic communications services;
 - b) to secure that our activities contribute to the development of the European internal market; and
 - c) to promote the interests of all persons who are citizens of the European Union.²⁴

Powers and duties in relation to general conditions

- 2.33 The Act gives us powers which we can exercise in implementing the requirements in EU legislation. In particular, these include powers to set (and modify) regulatory conditions imposing obligations on communications providers in order to give effect to the relevant end-user provisions.
- 2.34 Section 45 of the Act says that we may set general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64. Under section 51(1)(a), we may set general conditions making such provisions as we consider appropriate

²² Our regulatory principles can be found at: [What is Ofcom?](#)

²³ Including those we propose to exercise in this document.

²⁴ We have also had regard to the objectives in Article 3(2) of the EEC.

for the purpose of protecting the interests of end-users of public electronic communications services.

- 2.35 Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that we may set in pursuance of this purpose. This includes section 51(2)(c) which gives Ofcom the power to impose GCs specifying requirements in relation to the provision of services to disabled people and accordingly, it may set requirements in relation to equivalence. Section 51(2)(c) provides: “(2) The power under subsection (1)(a) to set conditions for protecting the interests of the end-users of public electronic communications services includes power to set conditions for that purpose which –... (c) specify requirements in relation to the provision of services to disabled end-users.”
- 2.36 Section 47(2) governs the circumstances in which we can set or modify a general condition. It states that a condition can be set or modified where it is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates,²⁵ not such as to discriminate unduly against particular persons or against a particular description of persons, proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve.

This document

- 2.37 The rest of this document is set out as follows:
- Section 3 sets out our proposed changes to certain definitions in the GCs necessary to implement the EECC.
 - Section 4 sets out our proposed changes to the GCs to implement the requirement on the provision of information to customers about their services.
 - Section 5 sets out proposed changes to the GCs to implement the requirements for publication of information and provision of data to third parties.
 - Section 6 sets out our proposed changes to the GCs to implement the requirements on contract duration and termination.
 - Section 7 sets out our proposed changes to the GCs to implement the requirements on switching and porting and to introduce guidance on compensation.
 - Section 8 sets out our proposal to introduce measures on handset unlocking.
 - Section 9 sets out our proposal to introduce guidance on non-coterminous linked contracts.
 - Section 10 sets out our proposed changes to the GCs to mandate the provision of an emergency video relay service for deaf users of British Sign Language for emergency communications.
 - Section 11 sets out our proposed changes to the GCs to require correspondence relating to communications services to be provided in accessible formats for disabled customers.

²⁵ Section 47(3) states that the setting of a general condition is not subject to the test of being objectively justifiable, although we are likely to consider this in any event when assessing whether the condition is proportionate.

- Section 12 sets out our proposals to modify the existing rules on availability of networks and services and access to emergency services.

2.38 The Annexes are set out as follows:

- Annex 1: Responding to this consultation.
- Annex 2: Ofcom's consultation principles.
- Annex 3: Consultation response cover sheet.
- Annex 4: Consultation questions.
- Annex 5: Glossary and abbreviations.
- Annex 6: [Proposed new guidance on contract information and the contract summary.](#)
- Annex 7: [Proposed amendments to guidance on contract requirements: conditions and procedures for contract termination, automatically renewable contracts, contractual modifications and end-of-contract and annual best tariff notifications.](#)
- Annex 8: [Proposed new guidance on compensation related to switching and porting.](#)
- Annex 9: [Proposed new guidance on non-coterminous linked contracts.](#)
- Annex 10: [Draft Ofcom approval criteria for the provision of an emergency video relay service; and estimation of benefits of emergency video relay proposals.](#)
- Annex 11: [Table of proposed GC changes for sections 3, 4, and 5.](#)
- Annex 12: [Table of proposed GC changes for section 6.](#)
- Annex 13: [Table of proposed GC changes for section 7.](#)
- Annex 14: [Table of proposed GC changes for section 8, 10, 11, and 12.](#)
- Annex 15: [Notification of modifications to the GCs.](#)
- Annex 16: [Proposed revised GCs.](#)

3. Changes to the defined terms used in the General Conditions

- 3.1 This section sets out the main changes we propose to make to the definitions used in the GCs to align with the defined terms set out in the EECC.
- 3.2 Most of the definitions in our GCs will remain broadly the same or will be subject only to minor consequential changes to reflect the wording of the EECC. However, there are some important proposed changes which are explained in more detail below:
- The definition of “electronic communications service” (ECS) in the EECC has been broadened so that it includes different categories of services including a new category of services referred to as ‘number-independent interpersonal communications services’. This change in scope needs to be reflected in our GCs.
 - There are changes to some existing definitions in the GCs and also some new additions to reflect the different categories of customers covered by the provisions of the EECC, as certain of these provisions apply to microenterprises, small enterprises and not for profit organisations in addition to (residential) consumers.
 - We propose to add a new definition for “bundle” as certain EECC end-user rights provisions specifically apply to bundles of services or services and terminal equipment.
- 3.3 The GCs rely on various definitions set out in domestic legislation. To implement the EECC in the UK, it is likely the Government will need to make changes to some of the defined terms used in the Act to align with the definitions used in the EECC. We will need to take account of those changes when we finalise the relevant definitions in our GCs.
- 3.4 The proposed changes to the definitions discussed in this section are set out in [Annex 11](#). A clean version of our proposed revised GCs is in [Annex 16](#).

New definition of “electronic communications service” in the EECC

- 3.5 The definition of an electronic communications service (ECS) currently used in our GCs is derived from the definition in the Act and is as follows:²⁶
- “a service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a content service.”*
- 3.6 The EECC introduces a new, broader definition of an ECS. This recognises that the services used for communications purposes, and the technical means of their delivery, have evolved considerably in recent years. End-users increasingly substitute traditional communications services with functionally equivalent online services such as voice over internet protocol (“VoIP”²⁷, messaging services and e-mail.²⁸ To ensure that end-users

²⁶ Section 32(2).

²⁷ VoIP uses a broadband connection to make calls, it includes services such as Skype and Vonage.

²⁸ EECC, Recital 15.

across functionally equivalent services are effectively and equally protected, the EECC has broadened the definition of electronic communications service to include a fuller range of services. In particular, it now brings certain over-the-top (“OTT”) services such as WhatsApp, Snapchat and Facebook Messenger into the scope of the regulatory framework. It also establishes three sub-categories of ECS:

- internet access services;
- interpersonal communications services (which in turn includes a distinction between number-based and number-independent interpersonal communications services); and
- conveyance services.

3.7 We propose to amend the definition of electronic communications service in the GCs to align with that in the EECC.²⁹ The definition we are proposing to use is as follows:

‘Electronic Communications Service’ means a service normally provided for remuneration via Electronic Communications Networks which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using Electronic Communications Networks and Electronic Communications Services, the following types of services:

(a) Internet Access Services;

(b) Interpersonal Communications Services; and

(c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for broadcasting and Machine to Machine Transmission Services.

3.8 We anticipate that the Government may want to amend the definition of an electronic communications service in the Act to reflect the revised definition in the EECC, and may also want to include legal definitions of the new sub-categories of ECS referred to below. We would take account of any amendments to the legal definitions of these services in the Act when finalising our GCs.

3.9 We discuss the three different categories of ECS below.

Internet access services

3.10 The EECC makes reference to Article 2 of Regulation (EU) 2015/2120³⁰ which defines ‘internet access service’ as a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

3.11 We propose to add the following definition of internet access services to our GCs, which is consistent with that Regulation:

²⁹ Definition taken from Article 2(4) of the EECC.

³⁰ [Regulation \(EU\) 2015/2120](#) lays down measures concerning open internet access (and amends Directive 2002/22/EC on universal and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union).

‘Internet Access Service’ means a service made available to the public which provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

Interpersonal communications services

3.12 The EECC introduces a new category of interpersonal communications services. These services can be either ‘number-based’ or ‘number-independent’. The definition of ECS used in the regulatory framework before the EECC included number-based interpersonal communications services (‘NBICS’) but did not capture number-independent interpersonal communications services (‘NIICS’).

3.13 Interpersonal communications services are described in Recital 17 of the EECC as services that enable interpersonal and interactive exchange of information between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s).³¹ Examples include services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Machine-to-machine communications are excluded from the definition of interpersonal communications services as they are not communications between persons.

3.14 The definition of interpersonal communications services in the EECC also excludes services that enable interpersonal and interactive communications but only as a minor ancillary feature that is intrinsically linked to another service. Recital 17 of the EECC explains that this exception should be interpreted narrowly, and gives as an example a communication channel in an online game.

3.15 We propose to add the following definition for interpersonal communications services to our GCs, which is consistent with the definition used in the EECC:

‘Interpersonal Communications Service’ means a service made available to the public which is normally provided for remuneration and enables direct interpersonal and interactive exchange of information via Electronic Communications Networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s). It does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service.

Number-based interpersonal communications services (NBICS)

3.16 A NBICS is a service that uses numbers from national or international numbering plans or which enables communication with a number or numbers in national or international numbering plans. This includes landline and mobile voice call services as well as text messages, but not services such as email.

³¹ This means that communications with a potential unlimited number of people, e.g. social networks, blogs, websites, are not included.

3.17 Recital 18 of the EECC makes clear that the “mere use of a number as an identifier should not be considered to be equivalent to the use of a number to connect with publicly assigned numbers” and therefore does not necessarily mean that a service is a NBICS. For example, some mobile apps that enable communication between users may ask users for their mobile number as a unique identifier to create a profile, however if the number is not used to enable communication with numbers in a national or international numbering plan then it would not classify as a NBICS.

3.18 We propose to add the following definition of such services in our GCs which is consistent with the description of these services in the EECC:

‘Number-based Interpersonal Communications Service’ means an Interpersonal Communications Service which connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan or which enables communication with a number or numbers in a national or international numbering plan.

Number-independent interpersonal communications services (NIICS)

3.19 A NIICS is an interpersonal communications service which does not connect to publicly assigned numbering resources. This includes services such as email as well as ‘over-the-top’ messaging services such as WhatsApp, Viber and iMessage. These services were not previously in scope of the regulation of electronic communications services.

3.20 NIICS are not subject to all of the regulatory conditions discussed in this consultation. For example, NIICS are specifically excluded from the scope of requirements on contract duration and termination as well as switching. Recital 18 of the EECC explains that “number-independent interpersonal communications services should be subject to obligations only where public interests require that specific regulatory obligations apply to all types of interpersonal communications services”.^{32,33}

3.21 We propose to add the following definition of such services in our GCs which is consistent with the description of these services in the EECC:

‘Number-independent Interpersonal Communications Service’ means an Interpersonal Communications Service which does not connect with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan, or which does not enable communication with a number or numbers in a national or international numbering plan.

³² More information on the scope of requirements can be found within the sections of this consultation that discuss particular requirements.

³³ Article 98 states that the end-user rights provisions of the EECC (i.e. the provisions which are the subject of this consultation and described in more detail in the remaining sections) shall not apply to microenterprises providing NIICS unless they also provide other electronic communications services.

Conveyance services

3.22 The third sub-category of services set out in the definition of ECS used in the EECC is services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine (M2M) services (which enable the exchange of information between devices)³⁴ and for broadcasting. This category overlaps with those described above, in that internet access services and some interpersonal communications services also fit the description of conveyance services. For the purposes of this consultation, we are particularly interested in those conveyance services which do not overlap with the other sub-categories of ECS.

3.23 We propose to add the following definition of machine to machine services to our GCs which is based on the EECC description of these services³⁵:

'Machine-to-Machine Transmission Service' means a service made available to the public which allows for the automated transfer of data and information between devices or software-based applications with limited or no human interaction.

3.24 However, we note that these services are out of scope of many of the consumer protection conditions proposed in this consultation.

Definitions for different categories of customers

3.25 The EECC distinguishes between a number of different categories of customers of communications services, and it uses these to set out which categories of customer benefit from the different end-user provisions.

3.26 A number of the end-user provisions apply not only to residential customers but also to **micro enterprises, small enterprises and not-for-profit organisations**. The EECC explains that *"the bargaining position of those categories of enterprises and organisations is comparable to that of consumers and they should therefore benefit from the same level of protection unless they explicitly waive those rights."*³⁶

3.27 We propose to make the following changes or additions to the definitions in the GCs to align with the different categories of customers in the EECC (and in doing so we take into account relevant definitions used in EU law more generally):

- a) **End-user**: This means all customers, i.e. both residential and business customers (both large and small). This term is already used in the directive which is replaced by the EECC³⁷, is defined in the Act and is also used and defined in our current GCs. Our only

³⁴ Machine-to-machine communication is often used for remote monitoring. In product restocking, for example, a vending machine can message the distributor's network, or machine, when a particular item is running low to send a refill. Utilities companies often rely on M2M devices and applications to bill customers e.g. through the use of smart meters.

³⁵ EECC, Recital 249.

³⁶ EECC, Recital 259.

³⁷ [Universal Service Directive 2009/136/EC](#), November 2009.

proposed change to the definition here is to extend it to include customers of bundles that are within scope (see below for proposed definition of a bundle).

- b) **Consumer:** a residential customer. This is also a term used in the current EU directives and is currently used and defined in our GCs.³⁸ Our only proposed change is to extend the definition to include residential customers of those bundles which are within scope.
- c) **Microenterprises:** This category of customer is referred to in the current EU regulatory framework but is not defined in our GCs (although some of our GCs apply to “small business customers” which has a similar definition – see paragraph 3.28). For the purposes of EU law generally, microenterprises are those with a staff headcount of fewer than 10 people and whose turnover or balance sheet total does not exceed 2 million Euros.³⁹

In our proposed definition below we have converted 2 million Euros to Pound sterling (GBP) in order to give provider’s legal certainty on how to comply with the rules which will apply to microenterprises. For the purpose of this consultation, we have converted using the 12-month average Euro reference exchange rate for GBP (1 December 2018 – 30 November 2019) as published by the European Central Bank in the Official Journal of the European Union which is EUR 1 = GBP 0.88166.⁴⁰ This equates to £1.7m. We propose to update this figure when we issue our statement using a 12-month average Euro reference exchange rate nearer the time of that publication. Thereafter, we would keep the figure under review in case of any significant fluctuations in the exchange rate.

We propose to add the following definition to our GCs:

‘Microenterprise’ means a Small Enterprise Customer who carries on an undertaking for which fewer than 10 individuals work (whether as employees or volunteers or otherwise) and whose annual turnover and/or annual balance sheet total does not exceed [£1.7m].

- d) **Small enterprises:** This is a new category of customer, which is not used in the current EU regulatory framework.⁴¹ For the purposes of EU law generally, small enterprises are those with a headcount of fewer than 50 individuals and whose annual turnover and/or annual balance sheet does not exceed 10 million Euros.⁴²

In our proposed definition below we have converted 10 million Euros to Pound sterling (GBP) for the same reasons and using the same methodology as for our proposed

³⁸ Note that the definition of ‘consumer’ used in this context is derived from EU directives and is different to the definition of ‘consumer’ set out in the Act.

³⁹ [Commission Recommendation 2003/361/EC.](#)

⁴⁰ [European Central Bank: euro reference exchange rate for Pound sterling \(GBP\)](#)

⁴¹ The current EU telecoms framework refers to “small and medium-sized enterprises (SMEs)” and our current GCs include the following definition of a ‘SME Customer’: *in relation to a Communications Provider, a Customer of that provider which is an undertaking for which fewer than two hundred and fifty (250) individuals work (whether as employees or volunteers or otherwise).*

⁴² [Commission Recommendation 2003/361/EC.](#)

definition of microenterprise above. Using the 12-month average Euro reference exchange rate for GBP (1 December 2018 – 30 November 2019) as published by the European Central Bank in the Official Journal of the European Union which is EUR 1 = GBP 0.88166, 10 million Euros equates to £8.8m. Again, we propose to update this figure when we issue our statement using a 12-month average Euro reference exchange rate nearer the time of that publication and keep it under review thereafter.

Consistent with this, we propose to add the following definition to our GCs:

‘Small Enterprise Customer’, in relation to a Communications Provider which provides services to the public, means a Customer of that provider who carries on an undertaking for which fewer than 50 individuals work (whether as employees or volunteers or otherwise) and whose annual turnover and/or annual balance sheet total does not exceed [£8.8m], but who is not himself a Communications Provider.

- e) **Not for profit organisations:** This is a new category of customer referred to in the EECC. We propose to add the following definition to our GCs:

‘Not For Profit Customer’, in relation to a Communications Provider which provides services to the public, means a Customer which, otherwise than as a Communications Provider, is a Customer of that provider and which by virtue of its constitution or any enactment:

(a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and

(b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes).

- 3.28 Our current GCs include a definition for Small Business Customer⁴³ which does not directly match any of the categories of customers in the EECC. We propose to retain the definition of small business customer as some of our existing GCs (for example, GC C4 on complaint handling and dispute resolution which falls outside the scope of the EECC) will still apply to this specific group of customers.
- 3.29 In response to our July mobile handsets document⁴⁴ (in which we used similar definitions of microenterprise, small enterprise and not for profit organisations), a number of business providers raised concerns about these definitions. They noted the definitions did not align with their current practice of identifying business customers, and argued that given the uncertainty around whether the EECC would be implemented, Ofcom should not extend the provisions to these customers. In particular, some providers (BT, Verizon, Vodafone)

⁴³ Small Business Customer is defined in our current GCs 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*”.

⁴⁴ Ofcom, July 2019. [Helping consumers to get better deals in communications markets: mobile handsets \(‘July mobile handsets document’\)](#). In section 5 of that document we set out concerns about linked split mobile contracts. We consulted on a proposal to implement the 24-month limit on fixed commitment periods to bundles comprising mobile communications services and terminal equipment ahead of the December 2020 EECC deadline. See section 6 of this consultation where we set out our updated proposals on implementation of the 24-month fixed commitment period limit.

noted that the definition of ‘not for profit’ customer could mean that large public sector bodies and multinational charities would be included in scope. Verizon noted that such large organisations generally negotiated contracts in a similar way to large business customers and had similarly strong bargaining power.

- 3.30 As above, we are using these definitions because they are required by the EECC. We recognise that their implementation will require providers to make changes to how they engage with relevant customers, including potential process changes for identifying the business size of their customers. As set out in section 6, we are no longer proposing to implement early the relevant provisions of the EECC with respect to bundles comprising mobile communications services, which removes the risk of a piecemeal approach creating additional costs for providers in implementing these definitions. Providers can also seek these customers’ permission to waive their rights to the relevant provisions, but would need to ensure that this permission has been appropriately given.

Definition of a bundle

- 3.31 The EECC recognises that bundles comprising at least either an internet access service or a publicly available number-based interpersonal communications service, as well as other services or terminal equipment, have become increasingly widespread and are an important element of competition. While bundles often bring about benefits for customers, the EECC is concerned that they can make switching more difficult and costly and raise risks of contractual ‘lock in’.⁴⁵
- 3.32 To ensure that customers are not hampered in their rights to switch their entire bundle or parts of it, the EECC requires that certain provisions⁴⁶ should apply to all elements of a bundle, including terminal equipment⁴⁷ and other services which are not directly covered by the scope of the provisions.⁴⁸
- 3.33 Recital 283 sets out that a bundle exists in situations where the elements of the bundle are provided or sold by the same provider under the same or a closely related or linked contract. We propose to add the following definition of bundle in our GCs to reflect this:
- ‘Bundle’ means where public electronic communications services and other service(s) and/or terminal equipment are provided or sold by the same Communications Provider under the same or closely related or linked contracts.*
- 3.34 In the rest of this consultation document we have made clear where the rules refer to bundles which include IAS and/or NBICS.

⁴⁵ EECC, Recital 283.

⁴⁶ These are the provisions regarding contract information, transparency, contract duration and termination and switching, which are set out in sections 4, 5, 6 and 7 of this consultation.

⁴⁷ Our proposed definition of “Terminal Equipment” in the GCs is: (a) equipment directly or indirectly connected to the interface of a Public Electronic Communications Network to send, process or receive information; in either case (direct or indirect), the connection may be made by wire, optical fibre or electromagnetically; a connection is indirect if equipment is placed between the terminal and the interface of the network; (b) satellite earth station equipment.

⁴⁸ EECC, Article 107(1).

- 3.35 In assessing whether a combination of contracts falls within the definition of a bundle, we would look at how the different contracts are sold or provided and whether they can be said to be closely related or linked in the circumstances.
- 3.36 We consider the following types of dependencies to be the most common types of links between services and/or terminal equipment:
- **Technical dependency** - where a customer would lose, or be impaired in using, one element of a bundle when terminating another.
 - **Contractual dependency** - where there are links between the rights or obligations for the provision of different elements of the bundle.
 - **Financial dependency** - where any prices, tariffs or charges for the provision of one element of the bundle are contingent on taking another element.
- 3.37 The Government's consultation on implementing the EECC proposes to give Ofcom express powers to set rules that apply to all elements of a bundle, provided that the bundle includes at least one internet access service or a publicly available number-based interpersonal communications service. It noted that this would result in Ofcom having express powers to regulate non-communications elements of a bundle including, potentially, services that are subject to different regulatory regimes.⁴⁹ We consider that our proposed definition is broad enough to capture these types of bundles.

Consultation questions

Question 1: Do you agree with our proposed changes and additions to the defined terms used in the GCs in order to align with the EECC, as set out in [Annex 11](#)?

Please provide evidence to support your response.

⁴⁹ DCMS, July 2019, [Implementing the European Electronic Communications Code: consultation](#), pages 37-38.

4. Provision of information to customers about their services

- 4.1 The EECC includes a number of measures to ensure customers are given clear information about their communications services before they enter into a contract so that they can make well-informed choices.⁵⁰ To support this aim, Article 102 of the EECC includes a set of rules on information requirements for contracts.
- 4.2 In particular, the new provisions make clear that certain contractual information must be provided to a customer on a durable medium before the customer is bound by that contract. This information also has to be provided in an accessible format for disabled customers. A summary of the information must also be provided to help customers make choices between different offers, before they are bound. All this information will become an integral part of the contract.
- 4.3 The EECC also requires providers to offer a facility to allow customers to monitor their use of communications services, and help them avoid bill shock.⁵¹
- 4.4 This section outlines our proposals for implementing the requirements in Article 102 and covers the following areas:
- providing contract information before a customer is bound by any contract;
 - the contract summary; and
 - helping consumers manage their use of communications services.
- 4.5 The revised GC text to put in place the obligations we are proposing in this section is set out in [Annex 11](#). This also includes the current text of the GCs that we are proposing to amend and a short description of the changes we are making. In addition, we are proposing some drafting changes to the current GCs in order to simplify or clarify their wording. These proposed changes are also included in [Annex 16](#).
- 4.6 We are also proposing to issue guidance on certain aspects of these requirements, in particular, on the provision of contract information and the contract summary. We discuss this guidance in the relevant sub-sections below, and the draft guidance is set out in [Annex 6](#).

Providing contract information

EECC requirement

- 4.7 Article 102(1) requires that, before a residential customer is bound by a contract, all providers of electronic communication services must provide specified information about the service they will be providing ('contract information').

⁵⁰ EECC, Recital 261.

⁵¹ EECC, Recital 266.

- 4.8 The aim of this requirement is to ensure that customers are given the appropriate information, in a manner which they can understand, about the communications service being offered to them before they enter into a contract, so they can make a well-informed choice.⁵² The Article also reflects that contracts are an important tool for customers to ensure transparency of information and legal certainty.⁵³ Customers need to be given information in a form that enables them to refer to it, and understand and evaluate their position throughout the duration of their contract.
- 4.9 Annex VIII of the EECC lists different sets of information that different types of providers are required to include in their contract information. Specifically, providers of all public electronic communications services, other than machine to machine services, are required to provide the following information:⁵⁴
- a) **the main characteristics of the service:** including the minimum level of quality of service the consumer can expect;
 - b) **information on pricing:** such as any charges for activating the service, including any recurring and consumption-related fees;
 - c) **information on the duration of the contract, and conditions for renewal and termination:** this includes, amongst other information, any fees due on early termination of contract; and information on terminal equipment unlocking, and cost recovery;
 - d) **compensation and refund arrangements:** including if quality of service is not met, or if the provider responds inadequately to a security incident, threat or vulnerability; and
 - e) **the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.**
- 4.10 ICS and internet access providers must then also set out additional information which includes:⁵⁵
- a) as part of the information on any minimum quality of service levels:
 - i) for broadband providers: information on latency, jitter and packet loss; and
 - ii) for ICS providers: time for initial connection, failure probability and call signalling delays;
 - b) any conditions, including fees, imposed on the use of terminal equipment supplied;
 - c) specific information relating to price, including (but not limited to):⁵⁶

⁵² EECC, Recital 261.

⁵³ EECC, Recital 258.

⁵⁴ EECC, Annex VIII (A).

⁵⁵ EECC, Annex VIII (B)(1).

⁵⁶ EECC, Annex VIII (B)(1)(2). Other information this provision includes are: facilities to safeguard bill transparency and monitor the level of consumption; details and conditions, including fees, of any after-sales service, maintenance, and customer assistance; and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained.

- i) details of the tariff plans, including the number of minutes, messages and data per billing period and, where relevant, whether consumers can carry over any unused minutes, messages and data to the following billing period;
 - ii) tariff information for any numbers or services subject to particular pricing conditions; and
 - iii) for bundled services and bundles including both services and terminal equipment, the price of the individual elements of the bundle to the extent they are also marketed separately.
- d) conditions for renewal and termination of bundled services, or elements of the bundle;
 - e) details of any personal data gathered prior to purchasing or collected during the provision of the service;
 - f) details on products and services for customers with disabilities; and
 - g) details on the process for dispute resolution.
- 4.11 Mobile and landline providers, as providers of number-based interpersonal communications services (NBICS), are additionally required to set out:⁵⁷
- a) any restrictions on access to emergency services or caller location information due to technical constraints; and
 - b) details on how customers can determine whether to include their personal information in a directory.⁵⁸
- 4.12 Finally, internet access providers are also required to include the information required in Article 4(1) of Regulation 2015/2120 (the Open Internet Regulation). This includes:⁵⁹
- a) information on traffic management measures;
 - b) how any volume limitation, speed and other quality of service parameters can impact on other internet services and applications;
 - c) the minimum, normally available, maximum and advertised download and upload speed;
 - d) for mobile networks: the estimated maximum and advertised download and upload speed of internet access, including any impact on service if the advertised speed is not received; and
 - e) compensation measures if consumers experience continued issues with internet speed or service.

⁵⁷ EECC, Annex VIII (B)(II).

⁵⁸ In accordance with Article 12 of Directive 2002/58/EC.

⁵⁹ EECC, Annex VIII (B)(III) and Regulation (EU) 2015/2150, Article 4(1).

- 4.13 In addition to the above information, Article 102(1) requires all providers to provide the information referred to in Articles 5 and 6 of the Consumer Rights Directive ⁶⁰ (which has been implemented in UK law in Part 2 of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 ('CCRs')).⁶¹ The CCRs require traders to provide information to consumers in relation to contracts concluded between them,⁶² and they distinguish between information that must be provided in relation to on-premises contracts, off-premises contracts and distance contracts.
- 4.14 According to Article 102(1), all contract information must be provided to customers in a clear and comprehensible manner, on a durable medium and in an accessible format for disabled customers. The Article specifies that where it is not feasible to provide this information in a durable medium, providers should make available "*an easily downloadable document*" which they "*expressly draw the customer's attention to the availability of*".
- 4.15 These contract information requirements apply to residential customers. They also apply to microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive their rights.⁶³
- 4.16 Finally, Article 102(4) of the EECC specifies that this contract information shall become an integral part of the contract, and shall not be changed unless the parties to the contract agree otherwise.

How we propose to implement

- 4.17 The existing GC C1.2 sets out a list of minimum requirements that providers are required to specify in a clear and comprehensive form when offering to provide services.
- 4.18 To implement Article 102(1) of the EECC, we are proposing to:
- amend and extend the list of information listed in the existing GC C1.2 to include:
 - the relevant information listed in the CCRs;
 - the information listed in the Open Internet Regulation;
 - the information required in Annex VIII to the EECC;
 - add a requirement for this contract information to be provided before the customer is bound by the contract, on a durable medium (or where that is not feasible, in an easily downloadable document which is drawn to the customer's attention) and at a time that reasonably allows the customer to make an informed decision about entering into the contract;
 - add a requirement for this contract information to become an integral part of the contract that cannot be altered without the consent of the contracting parties;

⁶⁰ [Directive 2011/83/EU](#)

⁶¹ [Consumer Contract Regulations 2013](#).

⁶² We note that although the CCRs refer to the provision of information to consumers, Article 102(1) also requires the provision of this information to other types of customers (see paragraph 4.18 below).

⁶³ EECC, Article 102(2). These groups of customers can waive all or just part of their rights.

- amend the scope of the conditions to extend them to micro and small enterprises and not for profit customers, unless they explicitly agree otherwise; and
 - specify the types of providers that the different information requirements apply to.
- 4.19 Our proposed amendments are set out in the new GCs C1.3, C1.4 and C1.7. The scope of our proposed requirements is set out in GC C1.1(a). The list of contract information is set out in a separate Annex to GC C1.⁶⁴ The Annex lists separately the type of information that must be provided by different types of providers. Where applicable, the Annex distinguishes between different types of contracts.
- 4.20 The current GC C7, concerning switching, includes a requirement for providers to set out specific information to certain customers before they enter into a contract for the provision of particular types of electronic communications services.⁶⁵ In order to implement Article 102, we are proposing to include a large part of that information in the Annex to GC C1. We also propose to add to the Annex certain additional information related to switching as part of our implementation of Article 106.⁶⁶ Specifically, our proposed changes, would mean that providers also have to provide the following information in order to comply with their obligations under the new GC C1.3:
- a) the arrangements for the provision of the relevant service, including the date for provision of the service;
 - b) an explanation that the customer can have their services provided by using a switching process;
 - c) the right to compensation if the provider fails to comply with their switching and porting obligations and missed service and installation appointments, including how such compensation can be accessed and how it will be paid.
- 4.21 These requirements would apply in relation to all public electronic communications services and all types of customers falling within the scope of the new GC C1.3. In order to avoid duplication, we are proposing to remove this information from GC C7.
- 4.22 In addition, where residential customers are switching IASs or NBICs, providers would need to inform those customers and include in their contract:
- a) the fact that the customer is switching their service;
 - b) a clear identification of services that will be switched;
 - c) where relevant, the Calling Line Identification of services that will be switched; and

⁶⁴ The proposed Annex to GC C1 retains the requirement on providers to provide information on quality of service, in accordance with Annex VIII of the EECC (specifically (A)(1) and (B)(1)1(i)). Alongside this, we are also retaining the requirement for providers to include details about service level guarantees and agreements in their contract information for small business customers as set out in revised GC C2.15, which specifies in more detail the necessary quality of service information for these customers. See section 5 paragraph 5.18.

⁶⁵ The current requirements only apply in relation to switches involving certain types of broadband services and fixed-line telecommunications services within Openreach's or KCOM's copper networks. Gaining providers are only required to provide the specified information when entering into a contract with residential or small business customers.

⁶⁶ See section 7 paragraph 7.104.

- d) the location of information on the switching process.⁶⁷
- 4.23 The EECC also requires contract information to be provided in an accessible format for disabled customers on request. In order to implement this requirement, we are proposing to insert a new requirement into GC C5. The proposed requirement is set out in GC C5.14 in [Annex 14](#) (more information on accessible formats can be found in section 11).
- 4.24 We expect that our proposed requirements would benefit customers by enabling them to make informed choices and take full advantage of the competitive environment, as well as providing transparency and legal certainty. We note that providers are already required to set out a comprehensive list of contract information prior to a customer signing a contract under our existing GCs, the CCRs and the Open Internet Regulation. In most cases, providers will already be providing this information on a durable medium before or after entering into the contract.
- 4.25 Nevertheless, we recognise that providers will need to make some changes to ensure that their existing pre-contract information is consistent with, and includes all of, the relevant information that will now be required and to update their contracts in order to ensure that they include this information. We are also aware that some providers do not necessarily always provide contract information on a durable medium before the customer is bound by the contract, particularly for sales made over the phone (see also paragraph 4.38 below). Providers may also need to make changes to their processes, including customer sales journeys to ensure customers are given, and agree to, this information before the contract becomes effective.

Contract summary

EECC requirement

- 4.26 Article 102(3) requires providers of electronic communications services to provide customers with a concise and easily readable contract summary. The summary must contain:
- a) contact information for the provider;
 - b) the main characteristics of the service;
 - c) any activation, recurring and consumption fees;
 - d) duration of the contract and conditions for renewal and termination;
 - e) the extent to which any elements of the service are designed especially for disabled consumers; and
 - f) certain information on broadband performance as required in the Open Internet Regulation.⁶⁸

⁶⁷ See section 7 paragraphs 7.105 and 7.106.

⁶⁸ Specifically, the information required in points (d) and (e) of Article 4(i) of Regulation (EU) 2015/2120.

- 4.27 Providers are required to provide this contract summary free of charge, and before the customer is bound by the contract. Where providers are not able to provide the summary at the point of sale, it has to be provided without undue delay thereafter and the contract can only become effective when the customer has confirmed their agreement to the summary.
- 4.28 The purpose of this provision is to enable customers to easily make comparisons between offers and providers, and informed choices about what to buy, by summarising, in a clear and short (up to a maximum of three pages) summary document.⁶⁹
- 4.29 The requirement to provide this contract summary also applies to microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive this provision.⁷⁰
- 4.30 Article 107(1) then extends this requirement to all elements of a bundle of services or services and terminal equipment that include at least one internet access service or a publicly available NBICS.⁷¹
- 4.31 Article 102(4) also specifies that the contract summary shall become an integral part of the contract, and shall not be changed unless the parties to the contract agree otherwise.
- 4.32 The Commission is required to specify the contract summary template through an implementing act by 21 December 2019.⁷²

How we propose to implement

- 4.33 There is no current requirement in the GCs for providers to provide a summary of their contract terms. To implement the EECC we therefore need to:
- a) introduce a new GC requiring providers to provide a contract summary at a point before the customer is bound by the contract and which enables them to make an informed decision about what to buy;
 - b) require providers to comply with the summary template set out in the Commission's Implementing Act;
 - c) add a requirement for the contract summary to become an integral part of the contract that cannot be altered without the consent of the contracting parties; and
 - d) make clear that these GCs apply to residential customers, and also, unless they explicitly agree otherwise, to microenterprise, small enterprise, and not for profit customers.
- 4.34 Our proposals to implement these changes are set out in the new GCs C1.5 to C1.7. The scope of our proposed requirements is set out in GC C1.1(a).

⁶⁹ Where different services are bundled under the same contract, or a single page otherwise. EECC, Recital 261.

⁷⁰ EECC, Article 102(2).

⁷¹ See section 3 for a definition of bundles.

⁷² The Commission recently consulted on a draft template for this contract summary: 2019, European Commission. [Contract summary template](#) for electronic communications service providers.

- 4.35 We also think it is appropriate to extend the requirement for contract information to be provided, on request, in an accessible format for disabled customers to include the contract summary. This would ensure that any customer who needs an alternative format due to their disability has equivalent access to electronic communication services by having access to the contract summary as well as the more detailed contract information. We consider that our proposal aligns with the approach set out in the EECC in relation to equivalence of access for disabled customers (Article 111(1)) and the requirement that the contract summary must include the extent to which any elements of the service are designed especially for disabled customers. To implement this, we are proposing to insert a new requirement into GC C5. The proposed requirement in GC C5.16 is in [Annex 14](#) and more information on accessible formats can be found in section 11.
- 4.36 The contract summary will give customers information about their contracts in a standardised format. We expect this will make it easier for customers to compare different offers and identify the important information in the contract being offered to them.
- 4.37 As these are new requirements, providers will need to make changes to the pre-sale information they give customers, so that it includes this contract summary. In particular, providers will need to ensure that this contract summary is available in stores and for their online and telephone sales processes.
- 4.38 Where providers offer contracts over the phone, they will need to find an appropriate mechanism to make the contract summary available to customers in a way which ensures that the customer has an opportunity to assess it and decide whether to enter into a contract on the terms summarised. For example, the provider could send the summary during the call (e.g. via an online account/email/SMS etc.) and offer the customer an opportunity either to confirm that they wish to contract on that basis during the call or afterwards. Alternatively, the provider could send the summary to the customer immediately after the call and, for the contract to become effective, the customer would need to actively confirm their agreement to the terms within it (e.g. by sending an email or signing the contract electronically).

Guidance on contract information and the contract summary

- 4.39 Previously we have given guidance to providers on how to comply with the contract requirements set out in our general conditions.⁷³ Providers have indicated that such guidance is helpful in considering how to implement and comply with requirements.
- 4.40 Therefore, in the interests of ensuring providers are clear about the nature of the requirements described above (the proposed new GCs C1.3-C1.7), how they should be implemented in practice, and the minimum steps providers need to take to ensure compliance, we propose to set out guidance in relation to these new GCs.

⁷³ For example our [Condition C1 guidance](#) on contract termination procedures.

- 4.41 In our July Mobile handsets document⁷⁴ we highlighted that guidance was likely to be necessary in particular in relation to how the requirement to include information about “prices for individual elements of a bundle” will apply to bundled mobile handsets contracts (i.e. contracts which include a mobile handset and airtime in a single contract).
- 4.42 We are also proposing guidance on a number of other areas where we consider further clarity is appropriate, including: when and how the contract information and contract summary is provided, information on prices, the conditions for termination of certain types of bundles, and device locking. We discuss each element of this proposed guidance further below.

How the contract information and contract summary should be provided

- 4.43 As set out above, the EECC provisions make clear that the contract information must be provided on a durable medium, before the customer is bound by the contract. Similarly, for the contract summary, the relevant provision of the EECC is clear that it must be provided before the customer agrees to the contract, and the contract only becomes effective once the customer has received the contract summary and agreed to it.
- 4.44 We have therefore set out in our proposed guidance how we would expect providers to implement these requirements in a way which will achieve the objectives of the EECC. In particular we propose that the information needs to be provided in a clear and understandable way, and at a point in the sales process where a customer has made an initial selection of services. The guidance also sets out examples of what could constitute a durable medium.

Information on core subscription price(s)

- 4.45 One of the key pieces of information required by Article 102(1) is the provision of information about the recurring price for the services the customer is being offered. This is defined in the GCs as the core subscription price;⁷⁵ this price includes both the recurring price of the customers’ service during their minimum contract period (or the ‘commitment period’⁷⁶ as defined in the GCs) as well as the price the customer will pay once that commitment period has ended.

⁷⁴ Ofcom, 2019. [Helping consumers to get better deals in communications markets – mobile handsets \(‘July Mobile handsets document’\)](#), paragraphs 4.64 – 4.66.

⁷⁵ ‘Core Subscription Price’ 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”;

⁷⁶ Currently the GCs refer to the term ‘Fixed Commitment Period’. We are proposing to remove the word ‘Fixed’ from this definition, and to also remove the last part of the definition which states “...and in respect of which the Subscriber may be required to pay a charge to terminate the contract”. These changes are to ensure consistency with the terminology used in, and the meaning of, the EECC. They reflect that the term relates to a specified period in which the Communications Provider and Subscriber have obligations under the contract. Our proposed amendments to the GCs in [Annex 16](#) therefore define the term ‘Commitment Period’ as: “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

- 4.46 The core subscription price(s) is one of the most important aspects of the information which is presented to customers before they enter into a contract. It is the price(s) which the customer is bound to pay each month and therefore it is essential that the customer has a clear understanding of what they are committing to paying, as well as any potential changes to that price either during, or after the commitment period.
- 4.47 We have seen evidence that the way in which some providers present their core subscription price(s) can create customer confusion, particularly where there are changes to those prices during the lifetime of the contract. We regularly receive complaints from customers about providers increasing their subscription prices during their commitment period. Ombudsman Services also recently highlighted in its Annual report that these types of price increases continue to be a frequent cause of dispute.⁷⁷ A number of providers offer contracts to customers which specify that the core subscription price will be £X for part of the contract period and £X + a measure determined by an inflation index (e.g. £X + the retail price index ('RPI') or £X + the consumer price index ('CPI'))⁷⁸ for a later part of that period. Specifying this price in their contracts means that providers are not required to give customers a right to exit their contract without penalty when the price uplift takes effect in the later part of the contract period.⁷⁹
- 4.48 However, even though providers specify these price(s) at the point of sale and in contracts, we regularly see a spike in complaints to our customer contact centre about these prices when the uplifts take effect and are communicated to customers. This indicates that customers may not be sufficiently clear or understand the impact on their monthly price at the point at which they signed the contract. In particular, we are concerned that customers are not necessarily aware what the reference to RPI or CPI in the provider's pricing terms means in practice. We consider it is unlikely that most customers are familiar with what an RPI or CPI uplift might be, and then be able to assess how it may affect the core subscription price which is being offered to them.
- 4.49 We are therefore proposing additional guidance on how providers comply with the requirement to set out core subscription prices as part of the contract information. In particular, we are proposing that providers should ensure that where the customer's core subscription price is set on a basis such as £X for contract period 1 and £X+ inflation index for period 2, providers should explain, in accessible terms, how this increase might affect the price they will pay. For example, we are proposing that, where the core subscription price is linked to a specific pricing index (such as RPI or CPI), providers should give

required to pay for services, facilities and/or Terminal Equipment provided under the contract and the Communications Provider is bound to provide them".

⁷⁷ [OS Annual Activity Report 2019](#)

⁷⁸ For example, [EE](#), [Three](#), [O2](#), and [Vodafone](#) specify that their mobile contracts will increase by RPI during a specific month (usually either April or March), based on the RPI rate published by the Office of National Statistics. [BT](#) contracts increase by CPI in March each year.

⁷⁹ In accordance with the requirements in the current Conditions C1.6 to C1.8. As discussed in section 6, we are proposing amendments to these conditions to implement the provisions of the EECC, as well as the associated guidance (in [Annex 7](#)). However, it will remain the case that increases to core subscription prices of the kinds described in this paragraph, which are specified at the point of sale in accordance with our guidance, will not trigger the requirement for customers to be given a right to exit their contracts without penalty.

customers an example of how an application of the pricing index would affect the core subscription price they will pay. This is explained further in paragraphs A6.14-A6.15 of the proposed guidance.

- 4.50 In addition we also propose to clarify in the guidance that, in accordance with the definition of core subscription price (which captures the prices both during and after any commitment period), as part of setting out this price in their contract information, providers should set out:
- a) the expected price (or a reference to the relevant list price) that the customer will pay after the commitment period; or
 - b) a statement that the customer will continue to pay the same price after the commitment period has ended.
- 4.51 Our provisional view is that the proposed guidance will help ensure that providers comply with these conditions and do so consistently. That would help customers make accurate comparisons between offers from providers and make informed choices about the prices they commit to pay throughout their contracts.
- 4.52 Including the above information in customer contracts will ensure customers are given a durable and transparent record of the prices they are liable to pay. They will be able to refer to this, and make informed assessments of their position and their best interests, throughout the lifetime of the contract with their provider.

Price information on individual elements of bundles

- 4.53 One of the new pieces of information required by Annex VIII of the EECC (and reflected in our proposed amendments in the Annex to GC C1) is, for bundled services and bundles including both services and terminal equipment, the *“price of the individual elements of the bundle to the extent they are also marketed separately”*.
- 4.54 In our July Mobile handsets document, we noted that these provisions of the EECC would mean that, before customers entered into bundled mobile contracts, they would be given information about the prices for which they could buy the handset and airtime from the provider separately.
- 4.55 In response to our July Mobile handsets document, a number of respondents (including Which?, Citizens Advice, uSwitch, and the Communications Consumer Panel (CCP)) agreed with the importance of specifying the price of the individual elements of the bundle. The CCP suggested that Ofcom should work with industry to develop a standard for what constituted clear and transparent information. uSwitch said this information should be provided before what might be described as the “basket stage” (for example in online shopping), and should include a specific prompt for customers to shop around to get the best deal. It noted that increased transparency about the costs of all elements of a bundle would enable third parties to give more information to customers using comparison sites.
- 4.56 We agree with uSwitch that it is important that this information is provided at the stage of a customer’s purchasing journey that ensures they are able to make accurate comparisons

between the different options available to them and informed choices about which to contract for. The requirements to list the contract information will not apply to third parties such as comparison sites but ensuring that providers display that information at an appropriate stage on their websites would mean third parties are able to use it as part of the information they provide on comparison sites. We also agree with the CCP that consistency of approach across industry is important, as it will ensure customers can make easier comparisons between different offers and be better placed to make informed choices.

4.57 We have therefore set out in our proposed guidance how we would expect providers of bundled mobile handset contracts to provide information about the price of individual elements of bundles in order to comply with the proposed requirement in the Annex to GC C1. This includes that, where a provider sells handsets and/or SIM-only tariffs separately, for each bundled mobile contract it offers, it would need to state alongside the price of that bundled mobile contract:

- a) the price for which the same handset could be bought separately (where it sells them on a standalone basis); and
- b) the equivalent monthly SIM-only price for the airtime tariff.

4.58 We also propose guidance on how we expect providers to identify the 'equivalent' SIM-only price in these circumstances. A key purpose of this guidance is to ensure that providers are clear what the proposed GC requires and that they take a consistent approach in complying with it, setting out the relevant prices in a way that allows customers to easily make comparisons and informed choices.

4.59 Our July mobile handsets document set out consumer research evidence of customer confusion about bundled mobile handset contracts, and we noted that a lack of transparency about the price these customers pay for the different elements of the bundle was making it difficult for them to evaluate what they are buying, and whether that is the best option for them.⁸⁰ Information about the price of individual elements of mobile handset bundles is therefore important for customers to make an informed decision and accurate comparisons between different offers. We are also proposing, that, for bundled mobile handset contracts, it would be good practice for providers to set out this information at the point that it is most useful to customers in making comparisons between different offers, i.e. at an earlier stage of the customers purchasing journey (such as before the basket stage for online sales).

4.60 Our provisional view is that our proposed guidance will help ensure that, in complying with the proposed new GC C1.3, bundled mobile handset providers are setting out the required information in a way which achieves the objectives of Article 102(1).

⁸⁰ July Mobile handsets document, paragraphs 3.52 – 3.55.

Information on contract duration and conditions for renewal/termination of bundled contracts

- 4.61 The information that providers are required to provide as part of Article 102(1) includes the conditions for renewal and termination of bundles comprising at least an IAS or publicly available NBICS, or elements of the bundle.⁸¹
- 4.62 In section 9 of this document we set out concerns that may potentially arise in relation to non-coterminous linked contracts, i.e. linked contracts with commitment periods that do not align.⁸² We explain, for example, that customers on these types of contracts may often face unexpected costs when one of their services reaches the end of their commitment period and that the complexity of these types of contracts can make it harder to compare deals. In order to ensure that customers are better informed in relation to these types of bundles, we are proposing to give guidance on the information that we would expect providers to provide.
- 4.63 In particular, our proposed guidance sets out that providers must make clear to customers that the linked contracts have commitment periods that will end on different dates and to set out what would happen to the different contracts if one contract expired, was cancelled or renewed by the customer. We also set out our expectation that this information must be provided to customers:
- a) when they enter into non-coterminous linked contracts at the same point in time; and
 - b) when they enter a contract for the provision of an additional service or terminal equipment with a different end date to their existing contract with the same provider, such that they become bound by non-coterminous linked contracts.
- 4.64 In addition, we note that Article 107(3) requires that where a provider is offering a service or terminal equipment in addition to the customer's existing service, they shall not extend the original duration of the contract to which the additional service or terminal equipment is being added, unless the customer expressly agrees otherwise. As set out in section 6, this requirement is reflected in our proposed amendments to GC C1.12.

Information on device locking

- 4.65 As set out above, Article 102(1) requires providers to give customers information on any conditions that apply to the use of terminal equipment supplied to them, including fees, as well as information on retaining any terminal equipment at the end of the commitment period, including any fees involved.⁸³

⁸¹ See section 3 for the proposed definition of a bundle. This is set out in Table B, 4(a) of our proposed amendments to GC C1 ([Annex 16](#)).

⁸² We refer to linked contracts because this is the most common form of non-coterminous bundles but we would apply the same approach to bundles of services and equipment that are on the same contract but where the end of the commitment periods do not align.

⁸³ These are set out in Annex VIII B I(1)(ii) and A(3)(iv).

- 4.66 To comply with their obligations, we would expect providers to tell customers at the point of sale if the device they are purchasing is locked, what that means, and when they can unlock it, (or when it will be automatically unlocked, where applicable). We would also expect them to clearly set out whether there are any fees involved in unlocking their device.
- 4.67 In section 8 we set out our proposal to stop providers selling locked devices to residential customers. If we implement this option, we propose that the ban would come into effect 12 months after the date of publication of our statement. In this case, providers would only need to give residential customers information on locked devices from 21 December 2020 until the ban came into effect.

Helping customers manage their use of communications services

EECC requirement

- 4.68 Articles 102(5) and 102(6) are intended to help residential customers manage their use of, and spend on, communications services that are billed on the basis of time or volume, as opposed to where a customer pays a fixed amount for unlimited use of services.⁸⁴
- 4.69 Specifically, Article 102(5) requires providers to offer residential customers a means of monitoring and controlling their use of such services. As part of this, providers need to give customers timely information on how much of the service(s) in the customer's tariff plan they have used. Providers also need to notify these customers when a service allowance included in their tariff plan has been fully used up.
- 4.70 To avoid customer bill shock, Article 102(6) enables Ofcom to require providers to give customers additional information on their consumption level, and to set a consumption limit (which could be financial or volume-related) that would prevent further use of services in excess of that limit.
- 4.71 These provisions apply to internet access services or publicly available interpersonal communications services that are billed on the basis of time or volume.

How we propose to implement

Changes to the GCs to help customers control their usage

- 4.72 Under GC 3.7, providers already have to give customers access to adequate billing information so that they can monitor their usage and expenditure and exercise a reasonable degree of control over their bills. Providers typically enable their customers to do this online and/or via mobile apps.
- 4.73 To implement Article 102(5), we are proposing to:

⁸⁴ EECC, Recital 266.

- amend GC C3.7 to include a requirement that the billing information must be “up-to-date”; and
 - introduce a new GC to ensure residential customers are notified when a service included in their tariff plan is fully used up (in line with the requirement in Article 102(5)). We propose that this notification includes information on the charges customers would pay if they go on to use those services outside their tariff plan.
- 4.74 This new GC would mean, for example, that a mobile customer with an allowance of texts, minutes and data included in their tariff plan would receive a notification when they use up their allowance for any one of these services. Therefore, if their contract included 100 texts, 100 minutes and 30GB of data a month, under this new requirement they would receive a notification when they have sent their one hundredth text of the month, and would receive a separate notification if they also use up their 30GB of data or 100 minutes call allowance.
- 4.75 It would also tell customers what charges would then apply, so that customers understand the implications of continuing to use these services once the allowances in their tariff plan have been used up.⁸⁵ This is to help them avoid unexpected charges. As the purpose of Article 102(5) is to help customers manage their spend on communications services, we consider that giving customers information on charges is important to give full effect to this provision.
- 4.76 We would expect that the notification is sent by text for mobile services and by either text or email for broadband services. The information on charges that apply if customers continue to use their services may be included as a link in the text or email.
- 4.77 We consider that these proposals would benefit customers by providing them with timely information that they can use to help manage their consumption and avoid bill shock. We do not expect the changes we are proposing here to have a significant impact on providers. This is because the main mobile and broadband providers that offer services with a limited allowance already notify customers when they use up the services included in their tariff plan. Some also already tell customers when they are approaching this limit.⁸⁶
- 4.78 We do not expect the inclusion of information on charges in the notification to significantly increase costs for providers. While providers that do not do so already will have to make some changes to ensure that this information is included in the notification, this will be limited where the information is provided through a link in a text message or email.
- 4.79 Our proposed amendments are set out in revised GCs C3.7, C3.13 and C3.14. The scope of these requirements is set out in GC C3.1(d) and (e).

⁸⁵ This notification is separate to any notification relating to a mobile bill cap under section 124S of the Act (see paragraph 4.80), which a customer may receive at a later date. In relation to the mobile bill cap, a provider can only bill a customer more than the mobile bill cap amount if the customer gave their prior consent to spending more than that limit.

⁸⁶ For example, for pay-monthly mobile services, [EE](#), [Three](#) and [O2](#) all text customers when they use up 80% and 100% of their data allowance. [BT](#), [Sky](#) and [Virgin Media](#) all notify broadband customers with a capped usage allowance when they have used up their allowance or when they are about to do so. Sources accessed 10 December 2019.

We are not proposing to introduce new requirements to give customers additional information on their consumption level or to set consumption limits

- 4.80 Under section 124S of the Act, mobile providers are already required to enable residential customers to set a bill limit, if they wish to do so.⁸⁷ These are caps on a customer's bill, above which the customer cannot be charged for provision of the service. Mobile providers must notify the customer in a reasonable time if a limit is likely to be reached before the end of their billing period, and as soon as practicable if a limit is actually reached.
- 4.81 Given the existing legislation in this area, we do not propose to introduce any additional requirements on mobile providers to set caps on customers' spend or usage.
- 4.82 We have considered whether there is a case to introduce a similar requirement for broadband services. Few customers still choose products with limited data allowances⁸⁸ and, Ofcom receives very few complaints from broadband customers about being billed for exceeding their data allowance.⁸⁹ This may in part be because providers already have processes in place to help protect customers from significant bill shock.⁹⁰
- 4.83 Overall, we consider that the available evidence does not indicate a need for regulatory intervention at this time. We are proposing that the new notification tells customers what they will be charged to continue using services and this should help them manage their bills. However, we will continue to monitor this issue and may consider taking action in future, if necessary, for example if we see evidence of broadband customers not being adequately protected from bill shock and excessive data charges. It is important that broadband providers proactively adopt policies to ensure that customers with fixed data allowances are treated fairly.
- 4.84 We also do not consider it necessary at this time to introduce further requirements to give customers additional information on their consumption levels beyond what is already provided in their bills.

Implementation

- 4.85 We propose that all the requirements, and guidance, discussed in this section in relation to the provision of information at the point of sale and in contracts should apply to any new contracts entered into from 21 December 2020.

⁸⁷ Digital Economy Act 2017, [Billing limits for mobile phones](#)

⁸⁸ Around 3% of residential broadband customers take a service with a limited data allowance. Source: BT, EE, Plusnet, Sky, TalkTalk and Virgin Media response to formal information request dated January 2019. Figures quoted were calculated from data provided as at 30 November 2018. Data cleaning removed approximately 1.6% of all customers see paragraphs A4.5 – A4.10 of [Helping consumers get better deals: Annex 4, Analysis of provider data](#).

⁸⁹ Between January 2018 and July 2019 we received only 16 complaints from broadband customers about data charges.

⁹⁰ For example, if a Virgin Media broadband customer exceeds their data allowance by 2GB, customers will automatically receive an unlimited data top up, charged at £7.50. These means that the maximum a customer can be charged for exceeding their allowance in a given billing period is £7.50. For Sky, if a customer goes over their data allowance twice within a six-month period, they will automatically be upgraded to a higher data allowance. Source: Virgin Media, [Broadband data allowance](#) as at 10 September 2019; and Sky, [Broadband data usage allowance](#) as at 10 September 2019.

- 4.86 We propose that requirements to help customers manage their usage (GCs C3.7, C3.13 and C3.14) should apply from the 21 December 2020 in relation to all relevant services, whether they are provided under an existing contract or under new contracts entered into after that date.

Legal tests

- 4.87 We consider that the changes we are proposing to make to the conditions outlined in this section meet the tests for setting or modifying conditions in section 47(2) of the Act. Our proposed changes are:
- **objectively justifiable**, in that they are required to implement the relevant requirements of the EECC in order to achieve the consumer benefits pursued by it;
 - **not unduly discriminatory** since the proposed changes to this condition would ensure that the same regulatory measures apply in respect of all providers of relevant electronic communications services, as required by the EECC;
 - **proportionate** as our provisional view is that to the extent that our proposed changes would introduce any additional regulatory burden on industry, they are limited to what is necessary to ensure compliance with the requirements in the EECC; and
 - **transparent** as the reasons for the changes that we are proposing to make to this condition are explained in this section and the effects of the proposed changes would be clear to communication providers on the face of the revised conditions themselves.

Consultation questions

- 4.88 We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

Question 2: Do you agree with our proposed changes to the GCs to implement Article 102, as set out at Annexes [11](#) and [16](#)?

Question 3: Do you agree with our proposed guidance in [Annex 6](#) on our expectations for how providers should comply with the provision of contract information and the contract summary?

Please provide evidence to support your response.

5. Publication of information and provision of data to third parties

- 5.1 The EECC includes a number of measures to ensure that customers have clear and comparable information on communications services.⁹¹ This information plays a key role in ensuring that competitive communications markets work well for customers by allowing them to compare offers and make informed decisions.
- 5.2 This section outlines our proposals for implementing the requirements in Article 103 and Article 104 in the following areas:
- a) publication of information (Article 103(1));
 - b) publication of quality of service information (Article 104); and
 - c) the provision of data to third parties for the purpose of making available independent comparison tools (Article 103(2)).
- 5.3 Article 103 also contains requirements to ensure that there is at least one independent comparison tool to enable customers to compare communications services. Our proposals to implement these requirements are set out in a separate consultation on a review of our voluntary accreditation scheme for digital comparison tools.⁹²
- 5.4 The revised GC text we propose to put in place for the obligations we are proposing in this section is set out in [Annex 11](#).
- 5.5 In addition, we are proposing some drafting changes to the current GCs in order to simplify or clarify their wording. These proposed changes are also included in [Annex 16](#).

Publication of information

EECC requirement

- 5.6 Article 103(1) seeks to provide transparency about providers and their services, in turn helping customers compare different providers and services more easily and make informed choices. It requires providers of internet access services (IAS) or publicly available interpersonal communication services (ICS) to publish a number of pieces of information.⁹³ This information is set out at Annex IX of the EECC and includes:
- a) contact details of the provider;
 - b) description of the services offered:
 - i) scope and the main characteristics of each service provided, including any minimum quality of service levels, where offered, and any restrictions imposed by

⁹¹ EECC, Recital 265.

⁹² Ofcom, December 2019, [Digital comparison tools for telephone broadband and pay TV](#)

⁹³ Where they make the provision of those services subject to terms and conditions.

the provider on the use of terminal equipment supplied (e.g. where a mobile device is locked);

- ii) tariffs, including information on any allowances in a particular tariff plan, such as the fixed number of voice minutes, text messages or gigabits of data included as part of the tariff;
 - iii) the applicable tariffs for additional communication units (e.g. texts, voice minutes or gigabits of data), numbers or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, as well as prices of terminal equipment;
 - iv) after-sales, maintenance and customer assistance services and relevant contact details;
 - v) standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers as a whole or for individual elements of the bundle, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant;
 - vi) information on access to emergency service and caller location and any limitations (where the provider offers number-based interpersonal communications services). Providers of number-independent interpersonal communications services, need to provide information on the degree to which access to emergency services are supported;
 - vii) details of products and services, including any functions, practices, policies and procedures and alternations in the operation of the service, specifically designed for end-users with disabilities.
- c) dispute resolution mechanisms, including those developed by the provider.

5.7 Article 103(1) requires that this information must be published in a “clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities.” It also states that the information published shall, on request, be supplied where relevant to the national regulatory authority (i.e. Ofcom) before its publication.

5.8 In addition, Article 107(1) requires that providers publish this information for all other services and terminal equipment that are sold in bundles with IAS or number-based interpersonal communications services (NBICS).

How we propose to implement

5.9 Under current GCs C2.2 and C2.3, providers are already required to publish certain information when services are provided under standard conditions, including the name and registered office address, a description of the services offered, standard tariffs and any additional charges, any compensation and refund policies, any types of maintenance service offered, standard contract conditions and available dispute resolution mechanisms.

- 5.10 GC C2.12 specifies how this information should be published, including that providers should send a copy of the information to any customer that reasonably requests it, and that a copy of the information must be included in an easily accessible and reasonably prominent manner on their website.
- 5.11 To implement the EECC, we are therefore proposing to:
- amend and extend the list of requirements in the existing GC C2.2 to reflect the information required by Article 103(1) and Annex IX;
 - amend the existing GC C2.12 to require that information published on providers' websites must be clear, comprehensive and machine-readable, and be in a format that is accessible to customers with disabilities;
 - add a new requirement to require providers to give Ofcom the information they are required to publish ahead of its publication, should Ofcom request it; and
 - amend the scope of these requirements to apply to number-independent interpersonal communications services (NIICS), and all elements of bundles with IAS or NBICS.⁹⁴
- 5.12 As set out in paragraph 5.6 b(i) above, under Article 103(1) and Annex IX, providers are required to publish information on the main characteristics of each service provided, including any minimum quality of service levels, where offered. We note that IAS providers are already under an obligation to publish broadband speeds information. In so far as fixed services are concerned, this should include the minimum, normally available, maximum and advertised download and upload speeds.⁹⁵ To enable customers to easily compare different offers of fixed internet access services and make informed choices, we would also expect providers who offer a minimum guaranteed speed and normally available download and upload speeds at address level to also publish this information as part of complying with their obligations under Article 103(1).⁹⁶
- 5.13 The information that providers are required to publish under Article 103(1) can be important in allowing customers to compare services and helping them to make informed decisions. Providers are already required to provide much of the information required by Article 103(1). Where they do not currently publish this information, providers will have to make changes to their websites. We do not expect the cost of making these changes to be significant. In particular, we note that many fixed broadband providers that guarantee minimum and normally available download and upload speeds already enable customers to check address-level broadband speeds on their websites; if they do not already do so they will incur some costs in publishing this information.
- 5.14 The detail of our proposed changes to the GCs is set out in revised GC C2.3, C2.4 and C2.16. The proposed scope of these conditions is detailed in GC C2.1.

⁹⁴ See section 3 for our proposed definition of Bundle and Number-Independent Electronic Communication Service.

⁹⁵ Regulation (EU) 2015/2120

⁹⁶ Information on the main characteristics of the service provided, including minimum levels of quality where offered must be included in the contract information given to customers in accordance with GC C1.3.

Publication of quality of service information

EECC requirement

- 5.15 Article 104(1) of the EECC is intended to improve the availability of quality of service data for customers.⁹⁷ It enables Ofcom to require providers of IAS or ICS to publish comprehensive, comparable, reliable, user-friendly and up-to-date information, for all customers, on:
- the quality of their services, to the extent that the provider controls at least some elements of the network either directly or through a service level agreement; and
 - the quality related to the provision of services offered to ensure equivalent access for customers with disabilities.
- 5.16 Ofcom may require providers to inform customers if the quality of the services they provide depends on any external factors, such as “control of signal transmission or network connectivity”.
- 5.17 To implement this provision, Ofcom would need to specify the quality of service measures, the applicable measurement methods, as well as the content, form and manner in which the information should be published. In doing so, we would need to take into account BEREC guidelines, which BEREC has to publish by 21 June 2020. Furthermore, Article 104(2) says that, where appropriate, the parameters, definitions, and measurement methods set out in Annex X of the EECC should be used.

How we propose to implement

We do not propose to introduce new requirements to publish quality of service information at this stage

- 5.18 Providers have existing requirements to publish certain information on quality of service:
- In 2017, Ofcom introduced new General Conditions to improve the transparency of information for SME customers. These came into effect in October 2018 and include a requirement for landline and fixed broadband providers to publish information on any service level agreements or service level guarantees that apply when SME customers suffer loss of service, delayed provision, or a missed appointment. Providers are also required to give this information to SME customers when they enter into a contract.⁹⁸
 - In addition, the EU Open Internet Regulation⁹⁹ requires broadband providers to publish information on the service they provide, including information on the speed of IAS.¹⁰⁰ We report on providers’ compliance with these regulations annually.¹⁰¹

⁹⁷ EECC, Recital 271.

⁹⁸ See GC C2.14 and C2.15. See also section 4 for further details on the requirement on providers to give customers information when they enter into a contract.

⁹⁹ Regulation (EU) 2015/2120

¹⁰⁰ Regulation (EU) 2015/2120, Article 4(1)

¹⁰¹ Ofcom, [Monitoring compliance with the net neutrality rules](#)

- 5.19 Furthermore, Ofcom has taken additional measures to improve customers' ability to compare the quality of service offered by providers, including through:
- the **Broadband Speeds Code of Practice**. Signatories to this Code of Practice need to ensure that customers are given clear speed information to help them compare offers from different providers. For example, providers have to publish a facility such as a line checker to help customers find out what broadband speed they would get from a provider at a particular address; and
 - our **annual report on Comparing Service Quality**.¹⁰² We collect and publish information on the UK's main broadband, mobile and landline providers across a range of metrics, including time taken to provide a new service, and missed appointments. We have recently used new information gathering powers to start collecting new (and improved) data on faults, the time taken to provide new services, and missed appointments. This new data will be published for the first time in our 2020 report.
- 5.20 There are also existing requirements for providers to publish quality of service information on relevant services for end-users with disabilities. Under the existing criteria that Ofcom uses to approve text relay providers, providers that offer facilities for the receipt and translation of voice communications into text must publish how they have performed against a number of key performance indicators (KPIs). These KPIs include, among other metrics, the percentage of standard relay calls answered within 15 seconds, the percentage of emergency relay calls answered within 5 seconds, and the percentage of standard relay calls abandoned. We are proposing similar requirements on approved emergency video relay providers (see section 10).
- 5.21 Article 104 is a discretionary provision. We are not proposing to introduce new regulatory rules to implement it at this time. However, we intend to consider our position further after we have published the new metrics in the 2020 Comparing Service Quality report, and after BEREK has finalised its guidelines on quality of service measures.

Provision of data to third parties

EECC requirement

- 5.22 Article 103(2) requires that end-users should have access, free of charge, to at least one independent comparison tool that enables comparison and evaluation of different IAS and ICS, with regards to:
- a) prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and
 - b) minimum quality of service where offered, or providers are required to publish such information pursuant to Article 104.

¹⁰² Ofcom, April 2019, [Comparing Service Quality](#), page 28.

- 5.23 Article 103(3) of the EECC sets out the requirements of the comparison tool referred to in Article 103(2) and states that a comparison tool fulfilling these requirements shall, upon request by the provider of the tool, be certified by national regulatory authorities.
- 5.24 Article 103(3) states that third parties shall have a right to use, free of charge and in open data formats, the information published by providers of IAS and ICS, so as to provide such comparison tools.

How we propose to implement

- 5.25 There are no rules in the current GCs requiring providers to give third parties access to data. Therefore, to implement this provision, we propose to introduce a new GC. Subject to, if relevant, agreeing reasonable terms on data security, this would require providers to make available to qualifying third parties,¹⁰³ free of charge and in open data formats, information related to prices and tariffs of services and the minimum quality of service of such services, for the purposes of providing a comparison tool.
- 5.26 As set out in paragraph 5.3 above, in parallel to this consultation we are publishing a consultation setting out our proposals to revise our accreditation scheme in order to bring it into line with the requirements of the EECC. In that document, we propose to require accredited comparison tools to ensure that they compare providers' offers by reference to price and minimum quality of service. We also expect that comparisons of fixed broadband services by minimum quality of service should include the minimum and normally available download and upload speeds offered by providers. Where this information is published by providers at an address level, we would expect accredited comparison tools to also allow for comparisons by reference to these metrics. In order to comply with our proposed GCs in relation to third party access to data, we would therefore expect providers to make available this information to qualifying comparison tools.
- 5.27 Comparison tools play an important role by helping customers navigate the market, allowing the comparison of different providers by price, product and service quality. The proposed provision of information will make it easier for qualifying comparison tools to access the information needed to offer an accurate, reliable service that benefits customers. Today, providers supply this information to some third parties on commercial terms or third parties seek other sources for similar information, which may not be reliable and therefore lead to a poor experience for customers.
- 5.28 We recognise that the provision of data to third parties could lead to an additional cost burden for providers. The cost impact may vary across providers and could depend on factors such as the open data format used to provide data to relevant third parties, the datapoints being made available and the current data-sharing arrangements between providers and relevant third parties.
- 5.29 We understand that some providers and third parties are discussing a new commercial agreement that may meet the requirements of Article 103(2) and 103(3) of the EECC. We

¹⁰³ Third parties meeting the conditions set out in GC C2.20.

welcome this initiative and we will consider carefully whether any final agreement, when we are notified of it, would meet the requirements of the EECC.

- 5.30 The detail of our proposed GCs is set out in GCs C2.19, 2.20 and 2.21. The proposed scope of these conditions is detailed in GC C2.1.

Implementation

- 5.31 We propose that all the requirements discussed in this section should apply from 21 December 2020.

Legal tests

- 5.32 We consider that the changes we are proposing to make meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- **objectively justifiable**, in that they are required to implement the relevant requirements of the EECC in order to achieve the customer benefits pursued by it;
 - **not unduly discriminatory** since the proposed changes to this condition would ensure that the same regulatory measures apply in respect of all providers of relevant electronic communications services, as required by the EECC;
 - **proportionate** as our provisional view is that to the extent that our proposed changes would introduce any additional regulatory burden on industry, they are limited to what is necessary to fulfil the requirements in the EECC; and
 - **transparent** as the reasons for the changes that we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communications providers from the revised condition itself.

Consultation questions

- 5.33 We welcome stakeholder comments on the following question in relation to the proposals set out in this section:

Question 4: Do you agree with our proposed changes to the GCs to implement Article 103 and our proposed approach to implementing Article 104, as set out in [Annex 11](#)?

Please provide evidence to support your response.

6. Contract duration and termination

- 6.1 The EECC includes a number of measures to help customers switch provider or terminate their services when it is in their best interests to do so, without being hindered by legal, technical and practical obstacles.¹⁰⁴ To support this aim, Article 105 includes a set of rules relating to contract duration and termination, including requiring providers to give their customers “best tariff” information at an appropriate time
- 6.2 As set out in section 3, the EECC is also concerned with the impact that bundling may have on switching. Specifically, it is concerned that where the different elements of a bundle,¹⁰⁵ including any terminal equipment, are subject to different rules on contract duration, termination and switching, customers are effectively hampered in their rights to switch provider for the entire bundle or parts of it.¹⁰⁶ Article 107(1) therefore extends the application of Article 105 to all elements of any bundle which includes an internet access service (IAS) or a number-based interpersonal communications service (NBICS).
- 6.3 This section outlines our proposals for implementing the requirements in Article 105 and Article 107. It covers the following areas:
- disincentives to switch;
 - contract duration;
 - extending contract duration when adding a service or equipment;
 - extending end-of-contract notifications and best tariff advice to bundles;
 - right to exit following contractual changes; and
 - right to exit if a contract rolls over.¹⁰⁷
- 6.4 Where relevant, we also set out proposed key changes to our existing guidance on contract requirements in order to align with proposed changes to our existing rules.¹⁰⁸ The guidance covers the following:
- identifying business customers;
 - conditions and procedures for contract termination;
 - end-of-contract and annual best tariff notifications;
 - contractual modifications, and
 - automatically renewable contracts.
- 6.5 The revised GC text that we propose to put in place for the obligations we are proposing in this section is set out in [Annex 12](#). In addition, we are proposing some drafting changes to

¹⁰⁴ EECC, Recital 273.

¹⁰⁵ Our proposed definition of a bundle is set out in section 3.

¹⁰⁶ EECC, Recital 283.

¹⁰⁷ The EECC also makes provision for national law remedies to be available to consumers in specific circumstances, e.g. Article 105(5) on right to exit where there are service performance discrepancies. Government has indicated that it will make necessary changes to ensure that these requirements are implemented. These provisions are therefore not covered in this consultation. See [DCMS consultation: Implementing the European Electronic Communications Code](#), July 2019, page 34.

¹⁰⁸ [Ofcom’s Guidance under General Condition C1 – contract requirements](#) and our end-of-contract and annual best tariff notifications guidance in Annex 2 of the [May 2019 End-of-contract notification statement](#).

the current GCs in order to simplify or clarify their wording. These proposed changes are included in [Annex 16](#).

- 6.6 In sections 7 and 8, we consider potential further measures relating to the requirement in Article 105(1) that conditions and procedures for contract termination do not act as a disincentive to switch.

Disincentives to switch

EECC requirement

- 6.7 The first part of Article 105(1) sets out a general requirement that conditions and procedures for contract termination should not act as a disincentive to changing provider. Article 107(1) extends this requirement to bundles. It applies in relation to publicly available electronic communications services, but number-independent interpersonal communications services (NIICS) and transmission services used for the provision of machine-to-machine services are excluded from the scope of this provision.¹⁰⁹
- 6.8 These provisions apply to residential customers. They also apply to micro and small enterprises and not for profit organisations, unless they explicitly agree to waive their rights.¹¹⁰

How we propose to implement

- 6.9 Our current rule in GC C1.3 already sets a requirement on providers that conditions and procedures for contract termination should not act as a disincentive to switch. This provision currently applies to both residential customers and to all types of businesses. It also applies to all public electronic communications services.
- 6.10 To implement the EECC, we propose to make the following changes:
- Limit this rule to contracts for residential customers, micro and small enterprises and not for profit organisations only.
 - Exclude NIICS and transmission services used for the provision of machine-to-machine services from this rule.
 - Extend the rule so that it also applies to bundles with an IAS or NBICS.
- 6.11 We also propose to make consequential changes to our existing guidance relating to conditions and procedures for contract termination to reflect the proposed change to the GC, so that the guidance applies to contracts for residential customers, micro and small enterprises and not for profit organisations only. We propose an additional section in the guidance to set out how we will consider whether providers have taken reasonable steps

¹⁰⁹ See section 3 for definition of Number-Independent Interpersonal Communications Services and Machine-to-Machine services.

¹¹⁰ EECC, Article 105(2) and Article 107(4).

to identify the different categories of business customers to which the requirements in C1 apply.

- 6.12 We consider that our proposed amendments will have little to no impact on providers. The general rule on disincentives to switch is already in our GCs and therefore we would expect providers to already ensure that their conditions and procedures for termination comply with this requirement, including in relation to different elements of a bundle which might affect this rule. However, our proposed amendments would clarify that the provision applies to all elements of a bundle and therefore some providers might need to review their conditions and procedures in light of this clarification.
- 6.13 Our proposed amendments are set out in revised GC C1.8, which includes some minor drafting changes incorporating the amended defined terms used in GC C1. The scope of the requirement is set out in revised GC C1.1(b) and (f). Our proposed amendments to our guidance are set out in [Annex 7](#).

Contract duration

EECC requirement

- 6.14 Article 105(1) requires that providers do not include commitment periods of more than 24 months in contracts with customers (unless the contracts are instalment contracts exclusively for the deployment of a physical connection).¹¹¹ This is to help ensure that customers are able to change provider without being unduly hindered from doing so.¹¹²
- 6.15 This provision applies to public electronic communications services, other than NIICS and transmission services used for the provision of machine-to-machine services.
- 6.16 Article 107(1) extends this requirement to all elements of a bundle with an IAS or NBICS, to help ensure that customers are not effectively hampered in their rights to switch the entire bundle or parts of it. For these purposes, a bundle exists where the elements of the bundle are provided or sold by the same provider under the same or a closely related or linked contract.¹¹³
- 6.17 Both these provisions apply to residential customers. They also apply to micro and small enterprises and not for profit organisations, unless they explicitly agree to waive their rights.
- 6.18 Article 105(1) also allows for the introduction or maintaining of rules that mandate shorter commitment periods.

¹¹¹ Recital 273 notes that customers might prefer longer commitment periods for such physical connections and that they can be an important factor in facilitating the deployment of very high capacity networks up to or very close to end-user premises.

¹¹² See EECC, Recital 273.

¹¹³ See EECC, Recital 283.

How we propose to implement

24-month limit on commitment periods

- 6.19 Under GC C1.4, providers already have to ensure that any contract with a residential customer for the provision of an electronic communications service does not include a commitment period of more than 24 months.¹¹⁴
- 6.20 To implement Article 105(1), we are proposing to amend this GC to:
- exclude instalment contracts exclusively for deployment of a physical connection;¹¹⁵
 - extend the requirement to all elements of bundles with IAS or NBICS; and
 - extend the requirement to microenterprise customers, small enterprise customers, and not for profit customers, unless they explicitly agree otherwise.¹¹⁶

Linked split mobile contracts

- 6.21 Linked split mobile contracts are a subset of ‘split mobile contracts’,¹¹⁷ where the contract terms can require that if the customer terminates the airtime contract before the handset agreement expires, they must pay off any sums still due for the handset in a lump sum.
- 6.22 In our July mobile handsets document, we set out our concern that these linked split mobile contracts are likely to deter customers from switching. Specifically, we noted that some of these contracts include a handset agreement with commitment periods longer than 24 months with the effect that if the customer terminates the airtime contract (say, after 24 months, when they would still have a further 12 months to run on their handset contract), they must pay off any sums still due for the handset in a lump sum, constituting potentially large one-off payments.¹¹⁸
- 6.23 At the time, we set out our view that the combined effect of Articles 105(1) and 107(1), in light of the aims and objectives of the EECC, is that where services are sold in a bundle, all services that make up that bundle must be subject to the 24-month limit on the

¹¹⁴ A “Commitment Period” is defined in our proposed amendments to the GCs as “as a period beginning on the date that contract terms agreed by a provider and a customer take effect and ending on a date specified in that contract, and during which the customer is required to pay for services, facilities and/or terminal equipment provided under the contract and the provider is bound to provide them.” We discuss in section 4, footnote 76 how we have made small modifications to this definition from the existing “Fixed Commitment Period” in the current GCs.

¹¹⁵ Our proposed definition of an Instalment Contract for a Physical Connection is “a contract in which a Consumer, Microenterprise Customer, Small Enterprise Customer or Not for Profit Organisation, as the case may be, has agreed to instalment payments exclusively for the deployment of a physical connection, excluding provision of any Terminal Equipment, and which is separate from any contract or contracts for the provision of a Public Electronic Communications Service or Bundle.”

¹¹⁶ We note that responses from some providers to our [July Mobile handsets document](#) argued that there should not be a 24-month limit on commitment periods for business customers. To clarify, Article 105(1) is a mandatory provision and therefore Ofcom has no discretion over the scope of this requirement.

¹¹⁷ ‘Split mobile contracts’ are those where the customer purchases both an airtime tariff and a mobile handset under two contracts, and where the monthly price to the customer is separated into prices for the airtime and handset, and the handset is usually provided under a consumer credit agreement.

¹¹⁸ Section 3, [July Mobile handsets document](#) Ofcom, July 2019.

commitment period set out in Article 105(1), including airtime and handset contracts that are linked split contracts as described above.¹¹⁹

- 6.24 We also explained that there are already a number of providers that sell contracts for handsets and airtime which are either for durations of up to 24 months, or, where the handset contract is for more than 24 months, that contract is not linked to the airtime contract as described above (and so does not form part of a bundle for the purposes of Article 107(1)). Such providers' contractual arrangements would not be affected by our proposals to limit the length of all bundled contracts to 24 months, in light of the EECC.
- 6.25 In response to our consultation, we received views that argued we had misinterpreted the effect of Articles 105(1) and 107(1), and specifically that those provisions do not operate so as to prevent all linked split contracts which include handset repayment terms of longer than 24 months.
- 6.26 These arguments do not affect our proposed implementation of the EECC in GC C1, as they go to the application of those provisions rather than the way they are drafted. We remain concerned that bundled contractual arrangements that have the effect of tying customers in for periods of longer than 24-months can act as a disincentive to switch contrary to the intention of the EECC and fall within the scope of Article 105(1). We are considering these submissions further.

We are no longer proposing early implementation of the 24-month limit for mobile handset bundles

- 6.27 In our July mobile handsets document, we consulted on a proposal to implement the 24-month limit on commitment periods to linked split mobile contracts ahead of the December 2020 EECC deadline. We proposed an amendment to the existing GC C1.4 to reflect this¹²⁰ and proposed an implementation period of three months from the date of our final statement. Our consultation closed in September and we received a number of responses, some of which raised specific concerns about the proposed implementation timings.¹²¹
- 6.28 Whilst uSwitch, Vodafone and Three agreed with our proposed implementation timing, some providers disagreed and said implementation would involve system changes which would take longer than three months. In particular, Tesco said implementation would be a complicated process, involving dependency on third parties providing its customer services, billing and financing, and it would be unable to make the necessary changes to its systems without significant risk to its business until the end of Q4 2020. O2 [redacted].
- 6.29 A number of business contract providers also said that they would need to make significant changes, in particular because the 24-month minimum length requirement had not previously applied to this type of contracts. Verastar and Virgin Media said they would need at least six months to implement the changes to business contracts because the

¹¹⁹ See paragraph 5.30 of Ofcom, [July 2019 Mobile handsets document](#).

¹²⁰ Ofcom, [July 2019 Mobile handsets document](#), section 5. Specifically, we proposed to extend Condition C1.4 to include bundles comprising mobile communications services and terminal equipment, including for small business customers of certain descriptions.

¹²¹ All the non-confidential responses are published here: [July 2019 Mobile handsets document](#).

changes would involve major disruption, including changes to websites, point of sale material, contracts, training materials as well as system changes. BT, Virgin Media and Verizon also said that a piecemeal approach to the changes required by the EECC was unhelpful and created additional complexity for providers.

- 6.30 Having considered these responses, we are no longer proposing early implementation of the 24-month rule for bundles of mobile services (including linked split contracts and relevant business contracts).¹²² The 24-month limit on commitment periods that applies to all relevant services and contracts will take effect from December 2020. We recognise that early implementation for bundles of mobile services could have led to additional costs for providers, in particular because of the complexity of implementing early for mobile services alone, as well as the extension to some business customers which would have led to some impact on providers of these contracts.

Impact of our proposals

- 6.31 As explained in paragraph 6.19, providers are already prohibited from including commitment periods of longer than 24 months for electronic communications services when these services are provided to residential customers. We therefore expect our proposals to have minimal, if any impact, on residential contracts for the provision of electronic communications services on a standalone basis, or for bundles provided under a single contract comprising an electronic communications service.
- 6.32 However, as reflected in the comments received on our July mobile handsets proposals (discussed below), we expect that there will be some impact on providers who offer non-electronic communication services and/or terminal equipment under contracts in a bundle with an IAS or NBICS and have a commitment period of longer than 24 months. We also expect an impact on providers offering relevant electronic communications services or bundles to micro-enterprise, small enterprise, and not for profit customers with a commitment period of longer than 24 months.
- 6.33 To comply with our proposed amended rules, providers may, in certain cases, have to make changes to their terms and conditions, amend their websites and any printed material which refers to their contractual terms, as well as brief their staff. System changes might also be required to ensure compliance.¹²³
- 6.34 Our proposed amendments are set out in revised GC C1.11, which includes some minor drafting changes incorporating the amended defined terms used in GC C1. The scope of the requirement is set out in revised GC C1.1(b) and (f).

¹²² Respondents also raised a number of other concerns and comments in respect of our proposals in the July Mobile handsets document. To the extent those comments are not already addressed by our updated proposals on the implementation of the 24-month commitment period, we will respond to them as part of our final decision on this proposal in our overall statement on all the end-user EECC provisions, currently planned for Q1 2020/21.

¹²³ There may also be some re-balancing pricing effects, in some circumstances, e.g. to the extent that current prices reflect providers' expectations that customers would not switch away to another provider for a period longer than 24 months.

Retaining the requirement that providers need to offer customers contracts with a commitment period of 12 months

- 6.35 Under current GC C1.5, providers have to ensure that customers are able to subscribe to a contract with a commitment period of 12 months. We are proposing to retain this requirement.
- 6.36 A large number of customers purchase 12-month contracts, suggesting that contracts of this length are of value to them: around 3.7 million broadband customers took up 12-month contracts in the period November 2017 to October 2018.¹²⁴ In addition, there were around [📶]¹²⁵ new 12-month mobile contracts in the first quarter of 2019.
- 6.37 There is some evidence that shorter contracts are valuable for vulnerable consumers. Specifically, the CMA has found that:
- For some low-income consumers *“even among those participants who preferred the certainty and fixed costs of a contract, there was a preference for contracts to be more flexible in nature, and shorter term (e.g. 12 months versus 18 months).”*¹²⁶
 - Vulnerable consumers can perceive longer contracts as a barrier to getting a good deal, particularly those contracts of 18 months or more and for which *“consumers incur high exit fees even if their circumstances have changed because of factors outside of their control.”*¹²⁷
- 6.38 Ensuring consumers can easily access the communications services they need is central to Ofcom’s work to protect all consumers, particularly those in vulnerable circumstances.¹²⁸ We would be particularly concerned if removal of the current requirement were to lead to a reduction in choice and availability of 12-month contracts for vulnerable consumers, making it harder for them to get a good deal.
- 6.39 Based on current practice, it is unclear whether providers would continue to offer 12-month contracts without a requirement to do so.¹²⁹ Therefore, we propose to maintain the current requirement on providers to offer a contract with a commitment period of 12 months. To reflect the intended scope of the current requirement in GC C1.5, we propose to explicitly exclude machine to machine transmission services and NIICS from the application of this rule.

¹²⁴ Based on the provider responses from BT, EE, Plusnet, SKY, TalkTalk and Virgin to the Ofcom Broadband Universal Service Obligation Formal Information Request dated 21 January 2019. This calculation includes 12-month broadband contracts taken up in the period 1 November 2017 to 31 October 2018 and excludes 12 month contracts that were terminated by consumers before November 2018.

¹²⁵ GFK data on Mobile Contract acquisition & Contract SIM Only sales units by length for Jan-March 2019. Figure redacted because of commercial confidentiality at the request of GFK.

¹²⁶ CMA, February 2019, [Consumer Vulnerability: challenges and potential solutions](#), page 17.

¹²⁷ Britainthinks, December 2018, [Getting a good deal on a low income: Qualitative research conducted with vulnerable consumers on behalf of the Competition and Markets Authority \(CMA\)](#), page 80.

¹²⁸ Ofcom has a duty to further the interests of consumers, having particular regard to the “needs of persons with disabilities, of the elderly and of those on low incomes” (See section 3(4)(i) of the Act).

¹²⁹ Looking at current practice, it is clear that providers take different approaches to contract length: some actively promote the availability of these contracts on their websites, whilst others do not publicise their availability, suggesting that these 12-month contracts do not form a key part of their commercial strategy.

6.40 We do not expect retaining this requirement to impose an additional burden on providers as it already forms part of their existing obligations.

6.41 The rule is set out in revised GC C1.13. The scope of the rule set out in revised GC C1.1 (e).

Extending contract duration when adding a service or equipment

EECC requirement

6.42 Article 107(3) requires that, where a residential customer has an existing contract for an IAS or NBICS and takes an additional service or equipment at a later date from the same provider, that provider may not extend the length of the original contract unless the customer expressly agrees to the extension. The aim is to help ensure that, when buying additional services, customers are not 'locked in' for a further commitment period, without making an informed decision to extend their contract.¹³⁰

6.43 Article 107(4) extends the application of this requirement to microenterprises, small enterprises and not for profit customers, unless they have explicitly agreed otherwise.

How we propose to implement

6.44 To implement this requirement, we are proposing a new rule that prevents providers from extending the duration of a contract when a relevant customer subsequently purchases an additional service or terminal equipment, unless the provider obtains the customer's express consent.¹³¹ Such consent must be obtained at the time when the customer takes the additional service or terminal equipment. This rule would apply to contracts for IAS or NBICS.

6.45 We expect the impact on providers to be small. In particular, we would expect providers to already be taking all necessary steps to ensure that their customers are making informed decisions, which would include expressly agreeing to any extension of their contractual period. To the extent that they do not already do so, then any additional safeguards that may be required will be an important protection for consumers and we expect operators to be able to incorporate them into their existing processes at a low cost.

6.46 Our proposed rule is set out in revised GC C1.12 and its scope is set out in proposed GC C1.1(c).

¹³⁰ EECC, Recital 283

¹³¹ The proposed definition of 'express consent' in the 'Definitions' section of the revised GCs ([Annex 16](#)) is that it means the express agreement of a Customer to contract with a Communications Provider, or to transfer their Public Electronic Communications Service(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.

Extending end of contract notifications and best tariff advice to bundles

EECC requirement

- 6.47 The second part of Article 105(3) requires that, before a contract is automatically prolonged, providers shall inform customers about the end of their contract and the means by which they can terminate their contract. At the same time, providers must give customers best tariff advice relating to their services. Providers are also required to provide customers with best tariff information at least annually.
- 6.48 Article 107(1) of the EECC extends these requirements to all elements of a bundle¹³² of services or services and terminal equipment that include at least one IAS or a NBICS, when these bundles are offered to a consumer. Furthermore, Article 107(4) extends these bundling requirements to all end-users that are microenterprises, small enterprises, or not for profit organisations, unless they have explicitly agreed to waive the provisions.
- 6.49 The aim of these provisions is to ensure that customers are given useful and effective information in order to make informed choices about the services they buy, including where those services include other types of service sold as part of a bundle with an electronic communications service.

How we propose to implement

- 6.50 In May 2019 we published a statement which confirmed the early implementation of the provisions of Article 105(3) in relation to public electronic communications services.¹³³ In particular our statement confirmed that, from February 2020, providers will be required to send end-of-contract notifications and annual best tariff advice to customers taking these services.
- 6.51 We said in our May 2019 statement that additional changes would be needed to the requirements in order to implement the bundling provisions of Article 107, in particular to extend them to include non-electronic communications services when sold as part of a bundle, both for consumers and for microenterprises, small enterprises, or not for profit organisations (in accordance with Article 107(4)). To do this we are therefore proposing to amend GC C1 as follows:
- a) to add a requirement for end-of-contract and annual best tariff notifications sent to customers to include details of other contracts taken by the customer as part of a bundle,¹³⁴ and the dates on which the commitment periods end for those other contracts;

¹³² See section 3 for a definition of bundles.

¹³³ Ofcom, May 2019, [Helping consumers get better deals: initial conclusions from our review of pricing practices in fixed broadband and statement on end-of-contract notifications and annual best tariff information](#)

¹³⁴ A bundle for these purposes means one including an internet access service or number based interpersonal communications services – see the new GC C1.2.

- b) to add a requirement for end-of-contract notifications sent to microenterprise, small enterprise, and not for profit customers, to include details of other contracts taken by these customers as part of a bundle, unless the customer has expressly agreed otherwise; and
 - c) to add a requirement for annual best tariff information provided to microenterprise, small enterprise, and not for profit customers, to extend to any contract forming part of a bundle, unless the customer has expressly agreed otherwise or that bundled contract continues to be subject to a commitment period.¹³⁵
- 6.52 The requirement in point a) is set out in our proposed amendment to the new GC C1.24 for end-of-contract notifications and GC C1.33 for annual best tariff notifications in [Annex 12](#). This amendment means that where a provider is sending an end-of-contract or annual best tariff notification for a public electronic communications service to a customer (in accordance with the existing requirements), from December 2020 these notifications will also need to include details of other contracts (including contracts for non-electronic communication services) that form part of a bundle with the contract subject to the notification, and the dates on which the commitment periods end for those other contracts.
- 6.53 These amendments mean that we are not proposing to extend the requirements such that providers would have to send standalone notifications for non-electronic communications services within a bundle. We are concerned that imposing such a requirement could conflict with existing requirements in other regulated sectors, for example the Financial Conduct Authority (FCA) has in place a number of rules about what information needs to be included in insurance renewal notifications.¹³⁶ Similarly, for providers offering handset loans there are a number of specific regulations relating to the provision of consumer credit and how providers supply information to customers about their loans.¹³⁷ This means that customers may not receive a specific end-of-contract notification for certain elements of their bundles (for example, where they are not covered by other sector specific notification requirements, e.g. for content services).
- 6.54 However, details of bundled contracts will be required to be included in the notifications for public electronic communications services, together with the date on which the commitment periods end for those bundled contracts. We are also proposing that best tariff advice should take into account non-electronic communications services within a bundle when those elements are no longer within a commitment period or that period is due to end shortly.¹³⁸ We consider that customers will be able to use this information to make an informed decision about their options and that these amendments are likely to be

¹³⁵ We are also proposing a number of drafting amendments to align the language used with the remainder of GC C1 – e.g. use of “Relevant Customer”; “Relevant Communications Service”, etc. These amendments are not intended to have any substantive effect.

¹³⁶ FCA, 2017, [Transparency in insurance renewals](#)

¹³⁷ [Offering credit to consumers: the law](#)

¹³⁸ See paragraph A7.106 of our proposed amendments to the guidance on end-of-contract and annual best tariff notifications at [Annex 7](#) and discussed at paragraphs 6.58-and 6.62 below.

sufficient to achieve the EECC's objectives in relation to how end-of-contract notifications and annual best tariff information should be implemented with respect to bundles.

- 6.55 We recognise that this proposed modification may mean providers will have to make additional changes to their end-of-contract and annual best tariff notifications after their implementation in February 2020, in particular where providers sell non-electronic communication services as part of a bundle. As discussed below, we are also setting out proposed guidance on how we expect providers to comply with these requirements which is consistent with our existing end-of-contract guidance on how linked contracts for public electronic communications services should be treated as part of the notifications. This consistency should also help limit the extent of any changes providers need to make to their notifications to incorporate these new provisions relating to bundles.
- 6.56 With respect to microenterprises, small enterprises and not for profit customers, the extension to bundles is on a similar basis as for residential customers and set out in our proposed new GCs C1.26 and C1.31 in [Annex 12](#). We said in our May 2019 statement that we had decided to give providers more flexibility in how they implemented end-of-contract notifications and annual best tariff advice for business customers and we therefore imposed less prescriptive requirements for these customers, whereas for residential customers we set out more detailed requirements about what the notifications should include, and how they are sent. The conditions we are now proposing with respect to microenterprise, small enterprise and not for profit customers are necessary in order to implement the requirements of Article 107(4) in particular.
- 6.57 We would expect that in extending end-of-contract notifications and annual best tariff advice to contracts these customers purchase as part of a bundle, providers should adopt a similar approach to implementation as that outlined in our May 2019 statement on the treatment of business customers. In exercising the flexibility we have provided, providers should be mindful of the objectives of the EECC when determining the best way to comply with the requirements, and that where a business shares significant characteristics, behaviours and needs with residential customers, we would expect them to receive information as part of an end-of-contract or annual best notification that is broadly similar to that received by residential customers. This is consistent with our approach in the May 2019 statement.¹³⁹

Changes to the end-of-contract and annual best tariff notification guidance

- 6.58 Our May 2019 statement included guidance on how we expect providers to comply with the requirements to send end-of-contract and annual best tariff notifications to consumers (referred to here as the 'ECN Guidance'). We are therefore also proposing to make a number of amendments to the ECN Guidance to reflect our proposed additions relating to bundles. First, we are proposing to insert a provision at the start of the ECN Guidance

¹³⁹ Ofcom, May 2019, [Helping consumers get better deals: initial conclusions from our review of pricing practices in fixed broadband and statement on end-of-contract notifications and annual best tariff information](#). See section 8 and paragraphs 8.14 and 8.19 in particular.

clarifying that references to a “bundle” in that guidance are to the definition of that term which applies to the underlying GCs - i.e. a bundle containing at least an internet access service or number-based interpersonal communications service.¹⁴⁰

- 6.59 The other proposed amendments to the ECN Guidance are set out in Annex 12¹⁴¹ and relate to three areas:
- the list of services included in the notifications;
 - the details of other contracts included in the notifications; and
 - best tariff advice.
- 6.60 On the list of services, we are proposing to clarify that where the provider is giving the customer a list of services which form part of the contract subject to the notification, this should also include any terminal equipment. Specifically, the previous wording only referred to “*all services which form part of the contract*”¹⁴² whereas we are now proposing it will say “*all services and terminal equipment which form part of the contract*”. Whilst we consider that the existing wording would have captured any terminal equipment as part of the services provided under the contract, in view of the wording of Article 107 of the EECC where it refers to ‘terminal equipment’ separately from ‘services’, we consider it is helpful to use similar language in the ECN Guidance for clarity.
- 6.61 Similarly, we are also proposing to add an additional paragraph to the guidance to clarify that where a provider lists terminal equipment, it should consider whether that terminal equipment forms part of the “*main services*” under the contract. The ECN Guidance currently explains that the customer’s ‘main services’ have to be listed in the notification itself, whereas other services can be listed separately provided they are in a single, easily accessible location that is clearly referenced.¹⁴³ The new paragraph we are proposing to add to the guidance explains that, in considering whether terminal equipment is a ‘main service’, providers should take account of the type of contract, and the importance which customers attach to the equipment, for example a mobile handset is likely to form part of the customer’s ‘main services’.
- 6.62 On the details of other contracts included in the notifications, we are proposing to amend the description of the details of other contracts taken with the same provider to clarify that, in addition to listing any linked contracts for public electronic communication services, providers should also list any contracts that constitute a bundle in their end-of-contract and annual best tariff notifications. This amendment (set out in paragraph A7.84-A7.89 of [Annex 7](#)) reflects the addition of the requirement for end-of-contract and annual best tariff notifications to include details of other contracts taken by the customer as part of a bundle as per paragraph 6.51a) above. We are also proposing to replace the definition

¹⁴⁰ See the new GC C1.2.

¹⁴¹ This Annex incorporates the ECN Guidance with our existing C1 Guidance to which we are also proposing a number of amendments related to other provisions of the EECC related to contract termination.

¹⁴² Paragraph A2.6 in the May 2019 Statement, now paragraph A7.76 in the ECN Guidance in Annex 16.

¹⁴³ Paragraph A2.7 in the May 2019 Statement, now paragraph A7.77 in the ECN Guidance in Annex 16.

of “*financially linked or interdependent*” with “linked contracts” in order to align with the definitions used elsewhere in our implementation of the EECC.

- 6.63 In the best tariff advice guidance we are proposing to:
- replace the existing reference to “*a bundled mobile handset and airtime contract*” with the “*mobile handset and airtime contracts that form part of a bundle*” to ensure consistency with the new requirements relating to these bundles, and in particular to clarify that linked split mobile contracts are also captured by this requirement;¹⁴⁴ and
 - amend the existing paragraph relating to how providers should include best tariff advice for multiple public electronic communication services provided under linked contracts to extend it to non-electronic communications services bundled contracts. In particular, the proposed modifications would mean that where the notification a provider is sending is for a service which forms part of a bundle with services or terminal equipment sold under another contract (or contracts), the best tariffs the provider presents should be for the services in that bundle in the same circumstances as currently set out in the ECN Guidance. That is, for end-of-contract notifications where there is an overlap in the 31 day window¹⁴⁵ for each contract in the bundle, or where that bundled contract is not subject to a commitment period.
- 6.64 Finally, where any direct quotes from the GCs in the ECN Guidance use the term “Subscriber”, we are proposing to replace this with the term “Relevant Customer” for consistency with our proposed changes to the relevant GCs.

Right to exit following contractual changes

EECC requirements

- 6.65 Article 105(4) gives customers the right to exit their contract without incurring further costs when notified of changes to their contractual conditions, unless the changes are exclusively to the benefit of the end-user, are of a purely administrative nature and have no negative effect on the customer, or are directly imposed by law.
- 6.66 The requirement applies to providers of all publicly available electronic communications services other than NIICS, and in relation to all categories of customer. However, it only applies to providers of transmission services used for machine-to-machine services where the end-users are residential customers, micro-enterprises, small enterprises or not for profit organisations.¹⁴⁶
- 6.67 Providers have to notify customers at least one month in advance of any changes to their contractual conditions and, at the same time, inform them of their right to exit (where

¹⁴⁴ For the same reasons, we are proposing a similar amendment to paragraph A7.95 of the ECN Guidance in relation to the options available to the customer.

¹⁴⁵ This is defined in paragraph A2.33 of the May 2019 Statement. It is now in paragraph A7.108 in the ECN Guidance in Annex 16. We have also proposed a minor amendment to this definition to make clear that the 31 day window refers to the 10-40 day time period in which an end-of-contract can be sent.

¹⁴⁶ EECC, Article 105(7).

applicable) without incurring any further costs. The notification should be clear and comprehensible, and provided on a durable medium. Customers should be able to exercise their right to exit within one month of receiving the notification.

6.68 In addition:

- Where a customer has the right to exit before the end of the commitment period pursuant to the EECC (e.g. for proposed contractual modifications that are not exclusively to the benefit of the customer), or to other provisions of Union or national law, Article 105(6) specifies that “*no compensation shall be due by the end-user other than for retained subsidised terminal equipment*”. If the end-user chooses to retain any terminal equipment that is bundled with the contract, “*the compensation due should not exceed its pro rata temporis value or the remaining part of the service fee until the end of the contract, whichever is smaller.*”
- Article 105(6) also requires that “*the provider shall lift any condition on the use of that terminal equipment on other networks free of charge at a time specified by Member States and at the latest upon payment of the compensation.*”
- Under Article 107(1), the requirements in Article 105(4) and Article 105(6) also apply to bundles with at least an internet access or number-based interpersonal communications service sold or provided to residential customers, and to micro and small enterprise customers and not for profit organisations, unless they explicitly agree to waive their rights.¹⁴⁷

How we propose to implement

Notification of contractual modifications, and the right to exit where changes are not to the benefit of the customer

6.69 The current GCs C1.6 – C1.9 set rules about contractual modifications that are likely to be of material detriment to customers. Specifically, providers are required to give customers at least one month’s notice of any such changes as well as the right to exit the contract without penalty. GCs C1.7 and C1.8 specify how this obligation applies to increases in the core subscription price for a service. We have also issued guidance on how we are likely to apply those conditions in relation to changes providers make to their contracts for residential customers and small business customers.¹⁴⁸

6.70 To implement Article 105(4), we propose to revise our rules so that providers are required to:

- give at least one month’s notice of all changes to the contractual conditions for the provision of public electronic communications services (excluding NIICS);
- give such notice on a durable medium¹⁴⁹ and in a clear and comprehensible manner;

¹⁴⁷ See section 3 for the definition of bundle.

¹⁴⁸ [Ofcom’s Guidance under General Condition C1 – contract requirements.](#)

¹⁴⁹ Durable Medium, as defined in the GCs, means paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future

- allow their customers to exit their contract without extra costs, unless the changes are exclusively to the benefit of the customer, are purely administrative and have no negative effect on the customer, or are directly imposed by law;
 - inform the customer of their right to terminate the contract (where applicable);
 - allow the customer to terminate their contract(s) within one month of the notice; and
 - ensure the termination takes effect from the day before the proposed modification comes into effect, unless the customer expressly agrees otherwise.
- 6.71 We also propose to remove the requirements in current GCs C1.7–1.9, which set out the circumstances where changes to the core subscription price are likely to be of material detriment. However, we are proposing to cover this in our guidance (see below).
- 6.72 Article 105(4) is designed to ensure that customers are notified of all contract changes and protected from changes that are not beneficial to them. We expect that implementation of this rule will have some impact on providers. In particular, there will be some costs associated with sending notifications of all proposed contractual changes. While providers might do this already, some may only notify customers where the proposed changes are likely to constitute material detriment (in line with the current requirement in GC C1.6(a)). Costs here are likely to be higher where providers send such notifications by post.¹⁵⁰ In contrast, we consider that the costs of sending out electronic notifications (such as email or SMS) are lower, although there will be some costs associated with generating the notifications.
- 6.73 Our proposed amendments are set out in revised GC C1.14, C1.15, C1.17 and C1.20, which also incorporate some minor drafting clarificatory changes. The scope of these requirements is set out in revised GC C1.1(d).

Proposed changes to guidance on contractual modifications

- 6.74 Our existing guidance sets out how we are likely to apply our current rules on contractual modifications. We are proposing to make a number of amendments to that guidance to reflect the above proposed changes to the GCs.
- 6.75 The proposed amendments to the guidance are set out in [Annex 7](#). In particular, we are proposing to:
- a) extend the scope of our guidance to include 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;

reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored.

¹⁵⁰ This may be because, for example, the provider does not have an email address or mobile telephone number to contact the customer via other means and/or some of their customers may have stated a preference to receive such communications by letter.

- b) amend our current guidance, which sets out how we are likely to apply the rules for contractual modifications that are likely to constitute material detriment, to how we are likely to apply the rules for any contractual changes in order to align with the revised GC, in particular where the contractual changes are not exclusively to the benefit of the customer;
- c) set out our likely approach to assessing changes to core subscription prices under our proposed GC. We propose to set out that where a provider's contract has the effect of binding a customer to pay a different core subscription price at different times during their commitment period, the rules on contract modification will not apply provided that those terms were sufficiently transparent to the customer;¹⁵¹
- d) amend the part of the guidance on notification of contractual modifications to make clear that the notice for changes that are **not exclusively to the benefit of the customer** should be set out with due prominence. While the revised rules require providers to notify customers of all contract changes, we consider it particularly important that notifications for non-beneficial changes are set out with due prominence to ensure that the customer is made aware of the changes and of their right to exit the contract to avoid those changes.
- e) we also propose to (i) remove "other printed material, such as pamphlets and magazines" as a suitable method of communicating non-beneficial contract changes and (ii) add SMS as a possible method for giving notice of contractual modifications; and
- f) amend the part of the guidance on notification of termination rights to set out our expectation that providers should make clear in the notification the deadline by which the customer is able to exercise their right to exit the contract without incurring an early termination charge.

Extending the notification of contract changes and the right to exit to bundles

- 6.76 We propose to add a new requirement in GC C1.15 to extend the notification of contractual changes and right to exit where those changes are not exclusively to the benefit of the customer, to all elements of a bundle comprising an IAS or NBICS.
- 6.77 In practice, this would mean that if a provider makes a contractual modification to **any** element of a bundle (including a service that is not an IAS or NBICS) within the commitment period it would need to notify affected customers of the change. In addition, for non-beneficial contractual changes, the provider would need to give the customer the right to exit their whole bundle without extra costs, should they choose to do so. As above, we expect that extending the right to exit to all elements of the bundle will have some impact on providers. In particular, more customers will now be able to exit their whole bundle when there is contractual modification made to one element of the bundle.

¹⁵¹ Our proposed new guidance on contract information and the contract summary (see [Annex 6](#)) provides examples of the ways in which providers could set out how such information in terms that would be clear and useful for customers.

6.78 In such cases, we consider that the provider’s notification of the contractual change should make it clear to the customer that their right to exit applies to all elements of the bundle; and that they can choose to exit or retain some or all of those elements if they so wish. We also consider that the notification should make clear whether the customer is able to retain any bundled terminal equipment and if so, any fees payable for retaining that equipment on termination (in addition to any fees for using the service until contract termination – see below). We propose to add this to our guidance on contractual modifications.

6.79 Our proposals here are reflected in revised GC C1.14, C1.15 and C1.1(f).

Fees payable where a customer has the right to exit

6.80 Our GCs currently require that where a customer chooses to exercise their right to exit a contract following notice of a contractual change, they should be allowed to do so “without penalty.” However, there are currently no provisions in the GCs setting out what customers may be required to pay in these circumstances, including in relation to any retained terminal equipment.

6.81 To give full effect to the requirement in Article 105(4) that customers exercising the right to exit should not incur any further costs when doing so, we are proposing to include a specific provision that, where a customer exercises their right to exit a contract or contracts for a public electronic communications service or a bundle comprising at least an IAS or NBICS (with the exception of bundles including terminal equipment – see below), they should only be required to pay the “Service Fee” due under those relevant contracts for the period up until the date on which their contract is terminated. This will be the day before the proposed modification comes into effect or the date requested by the customer.

6.82 We are proposing to define the term “Service Fee” as the amount sought by a Communications Provider for the provision and usage of an Electronic Communications Service or any other service included in a Bundle with an Internet Access Service and/or a Number-based Interpersonal Communications Service. This may include the customer’s monthly subscription charge¹⁵² (or a pro-rata amount of the monthly subscription charge if the contract is terminated part way through a billing month) and any other usage charges.¹⁵³

6.83 To provide further clarity as to the amount that customers may be required to pay in these circumstances, we are also proposing to expressly stipulate that customers should not be required to pay any early termination charges beyond their service fee.

¹⁵² This is the price that the customer is bound to pay to the provider at monthly intervals for services and/or facilities the provider is bound to provide in return for that price.

¹⁵³ For example, any charges incurred for using additional services that are not included in the monthly subscription charge.

Payment for bundled terminal equipment

6.84 We are proposing to make specific provisions in relation to the compensation due by a customer where they chose to terminate a bundle comprising terminal equipment. The EECC envisages that, in these circumstances, providers may require the customer to pay a fee for the equipment. In particular, Article 105(6) stipulates that where a customer exercises their right to exit any such bundles and chooses to retain the terminal equipment:

- i) *“no compensation shall be due by the end user other than for retained subsidised terminal equipment”* and
- ii) *“any [such] compensation shall not exceed its pro rata temporis value [...] or the remaining part of the service fee until the end of the contract, whichever is the smaller.”*

6.85 We note that customers on bundles with terminal equipment may not be able to retain their equipment in all cases following contract termination. For example, some providers require customers to send back their equipment e.g. broadband routers, TV set-top boxes, when they cancel their contract. Where they are able to choose to retain their equipment,¹⁵⁴ we set out proposals below on the fees that would be payable for retaining that equipment.

6.86 To implement Article 105(6) provision, we propose that, where a customer exercises their right to exit a bundle that includes terminal equipment (with the exception of linked split mobile contracts – see below), and wishes to retain the equipment (where possible), they shall pay their service fee until their contract is terminated, **and** whichever is the smaller of the following:

- a) **The remaining value of the terminal equipment.** This is *“an amount calculated in accordance with the terms set out in the contract and which should reflect the value of the equipment on the day on which the contract is terminated, taking into account any depreciation in its value considering the length of time for which it was used, minus any payments already made towards the cost of the equipment”*;¹⁵⁵ or
- b) **The “Terminal Equipment Fee”** for the period from the day on which the contract is terminated following the customer’s request to cancel until the end of the original commitment period. We propose to define terminal equipment fee as *“a proportion of the Core Subscription Price which reflects the provision of Terminal Equipment included in a Bundle with an Internet Access Service and/or a Number-based Interpersonal Communications Service. It excludes any amount due under a Mobile Device Loan Agreement.”* Our proposals for taking a different approach to bundles with terminal

¹⁵⁴ Or where they fail to return terminal equipment when requested to do so by the provider.

¹⁵⁵ We consider this is consistent with the reference in Article 105(6) to the pro-temporis value of terminal equipment.

equipment taken under mobile device loan agreements, i.e. linked split mobile contracts, are set out further below.

- 6.87 Information on any fees due on early termination of the contract, including fees on retaining terminal equipment should be set out in the contract, as required under Article 102(1).¹⁵⁶
- 6.88 We are proposing to make specific provision in relation to certain types of bundles including a mobile device. We note, in particular, that in the UK mobile market, there are two main types of mobile contracts that include a mobile device:
- The first is where a customer has a single contract for both the airtime and mobile device, and pays a single monthly price (we refer to these types of contracts as “**bundled mobile contracts**”).
 - The second is where a customer takes a mobile airtime contract and a linked contract for a mobile device that is generally provided as a consumer credit loan (we refer to these as “**linked split mobile contracts**”). In these cases, the monthly cost to the customer is separated into a price for the airtime and a separate charge for the handset.¹⁵⁷
- 6.89 We consider that our proposals above would readily apply in relation to bundled mobile contracts. However, given the specificities of linked split contracts, we are proposing to make certain adjustments to our proposed requirements in order to ensure the full effect of Articles 105(4) and (6).
- 6.90 In general, where the right to exit arises for a customer with bundled contracts, they can choose to exit all contracts in the bundle, or they can choose to retain some of the contracts if they so wish.
- 6.91 In the case of **linked split mobile contracts**, this means that the customer should be able to do either of the following:
- a) **Terminate their airtime contract only.** In this scenario, the customer should only be required to pay their service fee up to and including the day the airtime contract is terminated. They should not incur any additional costs for terminating the airtime contract, including any early termination charges. They should be allowed to continue with their separate handset contract. Providers cannot **require** the customer to terminate this separate handset contract, which would require repayment of the outstanding amount of the handset loan, because it is the provider who has triggered the customer’s right to exit (by making a contractual modification that is not exclusively to the benefit of the customer). We consider that this implements the requirement that customers should not incur any additional costs for terminating their airtime contract.

¹⁵⁶ See proposals in section 4 which implements the information requirements for contracts in Article 102(1).

¹⁵⁷ These contracts can be linked by a requirement that where a customer terminates their airtime contract early, they have to pay off the remainder of their handset loan agreement as a lump sum.

b) **Terminate the airtime contract and handset contract.** In this scenario, the customer should be required to (i) pay for their use of the service until the contract is terminated and (ii) pay the outstanding principal amount of the loan for the handset for terminating the handset contract if the terms allow for this. For (ii) customers should not be required to pay any penalty charges for early repayment of the handset loan. We consider this to be consistent with the EEC provision that customers may be required to pay compensation in relation to any retained terminal equipment but should not incur any further costs in this respect.

6.92 We expect that customers would benefit from the requirement which makes clear that they would only have to pay for the remaining value of their terminal equipment on contract termination. Customers on linked split mobile contracts would also benefit from having the choice to retain their terminal equipment and continue to pay their handset loan even if they so wish when they cancel their airtime.

6.93 We expect that providers would be affected by our proposals for payments due when terminating bundles with terminal equipment. In particular, providers would need to change their contract terms to reflect the new requirements and may incur costs associated with systems and process changes:

- For providers where terminal equipment is included in a single contract with the other elements of the bundle, they will have to (i) amend their contract terms to set out how they would calculate the remaining amount of any terminal equipment retained by the customer in accordance with our proposals, and/or (ii) the terminal equipment fee.
- For providers offering linked split mobile contracts, where they choose to make contractual changes that are not exclusively to the benefit of the customer during the commitment period, they will no longer be able to automatically require customers to terminate the handset contract and repay the outstanding loan for the handset immediately on termination of the airtime contract unless the customer also chooses to cancel the handset contract at the same time. There might also be some price re-balancing, in certain circumstances, e.g. to the extent that current prices reflect providers' expectation that customers will stay with them for the duration of their (longer) handset loan agreement.

6.94 Our proposals here are reflected in revised GC C1.16 to C1.18.

Lifting conditions on the use of terminal equipment

6.95 In some cases, providers may impose conditions on the use of terminal equipment where such equipment is provided alongside another service. We consider such conditions refer to technical conditions which limit the use of equipment to a provider's network.¹⁵⁸ For example, as explained in more detail in section 8, some providers currently "lock" the

¹⁵⁸ This would align with Article 105(6) which sets out that the provider "shall lift any condition on the use of that terminal equipment on **other networks** free of charge..." (our emphasis in **bold**).

mobile devices they sell, so that they cannot be used on another provider's network, until they are unlocked.^{159,160}

- 6.96 To implement the requirements in Article 105(6), we propose a new requirement in GC C1.19 to ensure that providers that impose conditions on the use of terminal equipment on other networks take all necessary steps to enable customers to remove those conditions free of charge on or before the day on which the contract is terminated, when that customer chooses to exercise their right to exit as set out above. In the case of linked split mobile contracts, conditions that limit the use of the mobile device to a provider's network should be lifted on termination of the airtime contract as this would allow the customer to use their handset on another provider's network if they decide to continue with the handset contract.¹⁶¹
- 6.97 For example, where a mobile device can only be unlocked manually using an unlocking code, the provider must ensure that they inform the customer that their phone is locked, provide them with the correct unlock code and instructions on how to use the code to unlock the phone. This information must be made available to the customer so that they can unlock their handset by the time their contract is terminated at the latest.
- 6.98 This requirement ensures that consumers are not hindered in their ability to switch providers in response to a contractual modification that is not to their benefit. We consider that this requirement would have an impact on mobile providers who have customers with mobile devices that are locked to their network and are still within their commitment period. Providers will be required to proactively notify their customers of the relevant information at a reasonable point in time to enable them to unlock their handset as soon as the contract is cancelled.
- 6.99 We consider the practice of mobile device locking further in section 8, which among other things, sets out a proposal to require providers to sell all mobile devices unlocked to residential customers. If, following consultation, we proceed with a new rule to ban device locking, our proposals here on the lifting of conditions on the use of terminal equipment would only apply to any contracts with residential customers comprising handsets that were locked before the ban took effect and where the customer is still within a commitment period.
- 6.100 Our proposals are set out in revised GC C1.19.

¹⁵⁹ We refer to this as a "handset locking restriction" in our revised GCs. We propose to define this as "any restriction applied on a mobile device sold or provided as part of a bundle with the mobile communications services of a communications provider and which limits use of that device on the electronic communications network of another communications provider".

¹⁶⁰ Some devices can be unlocked remotely by providers, but typically the customer would need to ask their current provider for a code to unlock the device. Customers may also approach third parties to unlock their handsets. This is explained further in section 8.

¹⁶¹ We note that the number of customers who have locked mobile devices on linked split contracts will reduce over time as providers who currently offer these contracts do not lock their devices or have recently stopped locking their devices (see section 8 on mobile device locking).

Right to exit if a contract rolls over

EECC requirement

- 6.101 Where a contract that specifies a commitment can be extended automatically, the first part of Article 105(3) requires that, after the contract has been extended, customers (both residential and business customers) should have the right to exit it at any time with a maximum one-month notice period, and without incurring any costs (except for the charges for receiving the service during the notice period).
- 6.102 The provision applies to providers of electronic communications services other than NIICS and other transmission services used for the provision of machine-to-machine services.
- 6.103 The provision applies to all bundles with an IAS or NBICS that are provided or sold to residential customers. It also applies to bundles provided or sold to micro enterprise and small enterprise customers, and not for profit organisations unless they explicitly agree to waive this right.

How we propose to implement

- 6.104 As set out above, current GC 1.3 provides that contract termination procedures must not act as a disincentive to switching provider. The same condition cites automatically renewable contracts as one example of conduct which may act as a disincentive to switch. Providers are therefore prevented from renewing the commitment period for contracts taken by residential customers and small businesses (i.e. businesses with no more than 10 employees), unless the customer gives their express consent to the renewal. This means that, for example, if the customer takes a contract with a two-year commitment period, the provider is not able to roll that customer on to another two-year commitment period without first getting that customer's express consent.
- 6.105 The rule was introduced in 2011 following a review in which we concluded that the automatic renewal of contracts reduced consumers' flexibility and may exploit consumer inertia.¹⁶²
- 6.106 As a result, the standard practice by providers offering services to residential customers and small businesses is that, at the end of a commitment period, contracts continue on a monthly basis until the customer gives notice to terminate, i.e. the customer continues to receive the service and can exit at any time by giving at least one month's notice. We sometimes refer to these as monthly rolling contracts.
- 6.107 The current rule does not however apply to contracts for larger businesses (i.e. those with more than ten employees/individuals), nor does it state that where contracts do automatically rollover, customers should be able to terminate at any time with a maximum one-month notice period, and without incurring costs except for services received during the notice period.

¹⁶² Ofcom, September 2011, [Automatically Renewable Contracts: Decision on a General Condition to prohibit ARCs](#).

- 6.108 To implement Article 105(3), we are therefore consulting on a new requirement in GC C1.22(a). This would ensure that when customers with contracts that can be automatically prolonged reach the end of their commitment period, they have the right to exit with one month's notice. In addition, should they choose to exercise this right, they should only be required to pay for services used up to the point at which their contract is terminated.
- 6.109 We are also proposing to retain our current rule to protect residential customers and small businesses from being entered into a new commitment period without their knowledge. We consider it important that providers have an obligation to seek express consent from these customers to ensure that contracts are not unintentionally renewed. We also propose to retain our guidance on automatically renewable contracts and have made some minor consequential changes (see [Annex 7](#)).¹⁶³
- 6.110 The aim of Article 105(6) is to ensure that the automatic extension of contracts does not result in a customer being tied into a contract for a further commitment period and that they do not incur undue costs when they decide to terminate an automatically renewed contract. We consider that our proposals to implement the requirements on termination following the end of the initial contract period will have little to no impact on providers in relation to contracts for residential customers and businesses with fewer than 10 employees. The terms in most contracts for these customers already allow them to terminate the contract after the end of the commitment period by giving at least one month's notice.
- 6.111 However, we consider that there will be some impact on providers that offer automatically renewable contracts to small enterprise customers with more than 10 employees, and not-for-profit organisations. Providers would have to make changes to their contract terms to reflect the new requirement, may be required to put system changes in place and train staff.
- 6.112 Our proposals are set out in revised GC C1.22 and the scope of this provision is set out in GC C1.1(f). The current rule on automatic contract renewals is set out in revised GC C1.10, which incorporates some minor drafting amendments.

Application to bundles

- 6.113 As noted above, this right to exit a contract when it is automatically extended also applies to bundles with an IAS or NBICS (under Article 107(1)) bought by residential customers. It also applies to bundles bought by micro and small enterprise customers and not-for-profit organisations, unless they explicitly agree to waive these provisions.

¹⁶³ The changes to the guidance are: (i) amending the references to the GCs to align with the numbering and text of the revised GCs, (ii) removing references to "existing ARCs customers affected by the amendments" and "migration process" which relate to when the rule was introduced in 2011 and would no longer be relevant for contracts for residential and small business customers today, (iii) refer to the new rules in GC1.22 which requires providers to ensure that customers have the right to exit the contract with a maximum one month notice when a contract is automatically renewed.

- 6.114 We propose to implement this extension to bundles as a new requirement in GC C1.22(b). However, we note that how this would work in practice, would depend on whether the contracts in the bundle have commitment periods that align or not:
- **where the commitment periods of the different elements of the bundle align**, the contracts would be automatically extended at the same time. In which case, we propose that the customer should be able to give notice to exit the whole bundle at the same time, without incurring any costs other than the service fee for the notice period; however
 - **if the contracts in the bundle have commitment periods that do not align**, they will reach the point at which they may be automatically extended at different times. Here we propose that the right to exit the contract(s) for the elements of the bundle with longer commitment period(s), should only apply once the customer has reached the end of those commitment period(s). This would therefore maintain the commitment period(s) that the customer agreed to when taking out those contracts.
- 6.115 We consider that there will be little to no impact on providers who offer bundles of communications services to residential and small business customers because the new requirement is consistent with their contracts now where they can exit at the end of the commitment period by giving at least a month's notice. However, we recognise that there might be some impact on providers who offer bundles of communications services with non-communications services to ensure that the requirements here apply to all elements of the bundle.

Implementation

- 6.116 We propose that all our requirements should apply to any new contracts entered into from 21 December 2020.
- 6.117 We propose that the requirements that apply throughout the duration of the contract (e.g. the rules on contractual modifications and right to exit when a contract rolls over) should also apply to contracts that were entered into before that date.
- 6.118 We acknowledge that requirements that must be complied with when entering into a contract (e.g. rules on contract duration) can only be applied to contracts taken out after that date.

Legal tests

- 6.119 We consider that the changes we are proposing to make to this condition meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- **objectively justifiable**, in that they are required to implement the relevant requirements of the EECC in order to achieve the consumer benefits pursued by it;

- **not unduly discriminatory** since the proposed changes to these conditions would ensure that the same regulatory measures apply in respect of all providers of relevant electronic communications services, as required by the EECC;
- **proportionate** as our provisional view is that to the extent that our proposed changes would introduce any additional regulatory burden on industry, they are limited to what is necessary to ensure compliance with the requirements in the EECC; and
- **transparent** as the reasons for the changes that we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communication providers on the face of the revised condition itself.

6.120 We have also carefully considered the case for maintaining some of our existing requirements, specifically the obligation on operators to offer customers the option of a contract with a commitment period of 12 months and the ban on automatically renewable contracts. For the reasons set out above, we consider that these rules remain objectively necessary and proportionate to what they are intended to achieve.

Consultation questions

Question 5: Do you agree with our proposed changes to the GCs to implement the requirements in Article 105, as set out in [Annex 12](#)?

Question 6: Do you agree with our proposed changes to the existing guidance as summarised here and set out at [Annex 7](#)?

Please provide evidence to support your response.

7. Switching and porting

Overview

- 7.1 It is important that customers are able to exercise choice and take advantage of competition in communications markets by being able to switch provider easily. Unnecessary difficulties when switching can give rise to customers suffering harm by making switching difficult, or by creating barriers that prevent customers switching entirely in some cases. Ensuring customers can switch easily is a long-standing priority for Ofcom; and we have already taken a number of steps to help achieve this.
- 7.2 In this section, we set out how we propose to implement and give full effect to Articles 106 and 107 of the EEC on switching (where a customer changes their fixed or mobile provider) and porting (where a customer keeps their telephone number when they switch provider).¹⁶⁴ The EEC requirements include that: the switch happens in the shortest possible time with the gaining provider leading the process; there is continuity of service, where technically feasible; providers adequately inform customers before and during the switch and do not switch customers without their consent; and providers compensate customers if things go wrong.
- 7.3 Article 106(6) gives Ofcom the discretion to specify the details of the switching and porting processes. The GCs already contain detailed process requirements for some, but not all, types of fixed and mobile switches. We do not intend to specify extensive new detailed processes at this time but we will do so if we decide this is necessary. Currently, we propose to:
- a) put in place new general switching rules which will set out at a high-level providers' obligations in relation to all switches. This will ensure all customers have a baseline level of protection as required by Article 106 (see paragraphs 7.35-7.83, 7.99-7.102, 7.137-7.140 and 7.154-7.161);
 - b) specify new specific rules for residential customers, in addition to the general rules, on information, consent and compensation. We also propose guidance on compensation and a prohibition on notice period charges beyond the switch date for residential customers only (see paragraphs 7.103-7.132, 7.141-7.145, 7.162-7.164 and 7.180-7.193);
 - c) largely retain, with some changes, the specific obligations in relation to the existing porting, Notification of Transfer and Auto-Switch processes (see paragraphs 7.199-7.203, 7.204-7.210 and 7.211-7.215). This will ensure that protections that already exist are maintained. Important changes to these existing processes include a new right under Article 106 for customers to be able to port their number for at least a month

¹⁶⁴ This consultation focuses on customers switching provider at the same location and does not consider switches when customers are moving home. It also does not consider provider-initiated migrations (e.g. providers migrating their customers from copper to full-fibre broadband). In this consultation, we sometimes refer to switching to cover switching both with and without a number port.

after they switch (or terminate their contract) and, if something goes wrong with the port, for the losing provider to reactivate the number and related services until the port is successful (see paragraphs 7.79-7.83 and paragraphs 7.65-7.68);

- d) give industry the opportunity to develop the detailed switching processes necessary for providers to comply with the new general and specific switching rules. We explain the work we have asked the Office of the Telecommunications Adjudicator (OTA) to carry out with industry to develop detailed process specifications for switching residential customers' fixed services.¹⁶⁵ We will consider whether we need to mandate new detailed processes for fixed services provided to residential customers or make any changes to the Notification of Transfer process in light of the OTA work with industry and responses to this consultation. If we decided this was necessary, we would expect to consult in Q1 2020-21 (see paragraphs 7.218-7.224).

7.4 We set out in the sub-sections below the background to this section (paragraphs 7.6-7.23) and the scope of our proposals and the services and customers to which they apply (paragraphs 7.25-7.34). We then set out our proposals in each of the areas noted above.

7.5 The revised GC text for the obligations we are proposing in this section is set out in [Annex 16](#).

Background

7.6 Effective switching processes are important to well-functioning markets. The ability to switch provider allows customers to exercise choice, purchase the service or combination of services which best meets their needs, and switch away if they are dissatisfied with a provider. Where switching processes do not work effectively, they can constrain customer choice, and hence can be harmful to competition and investment as well as to individual customers.

7.7 For these reasons, Ofcom has previously put in place a number of reforms to help make certain switching processes easier for customers.¹⁶⁶

7.8 Switching is also important in supporting future investment in, roll out and take-up of faster broadband. This is a priority for Ofcom.¹⁶⁷ Ultrafast broadband services provide more reliable, consistent and faster connections for customers. With the growth of alternative networks, customers will increasingly have the choice of switching between providers that use different physical fixed networks. Without effective switching processes, competition or investment in ultrafast broadband services may be constrained with customers potentially losing out on the benefits of these services.

7.9 The proposals in this section seek to ensure that switching works well for customers and supports customer choice and effective competition. This includes ensuring customers can

¹⁶⁵ [Office of the Telecommunications Adjudicator](#)

¹⁶⁶ Ofcom, December 2017, [Consumer Switching: Decision on reforming the switching of mobile communications services](#) and Ofcom, December 2013, [Consumer Switching: A statement on the GPL NoT+ elements](#).

¹⁶⁷ Ofcom, March 2019. [Annual Plan - Our programme of work for 2019/20](#), paragraph 3.7.

switch quickly, conveniently and without loss of service, that they are aware of the implications of their decision to switch, are protected throughout the process and are not switched without their consent.

7.10 In developing the proposals, we have had regard to the Government’s Statement of Strategic Priorities. This includes that Ofcom should continue to improve industry processes for broadband switching, including between different platforms.

Current regulation on switching and porting

7.11 The GCs currently place obligations on providers when switching particular types of customers and in particular circumstances and in relation to porting (e.g. the GCs apply to a sub-set of fixed switches based on the type of customer, the network and technology).¹⁶⁸ Different rules apply for fixed and mobile services and include a combination of customer-facing and ‘back-end’ process obligations.

Fixed services

7.12 Residential customers and small business customers with up to 10 employees can use the regulated Notification of Transfer process when they switch landline and/or broadband providers on the Openreach or KCOM copper networks (including fibre-to-the-cabinet services). The steps in this process are summarised in Figure 7.1.

Figure 7.1: Summary of Notification of Transfer process

Step	Description
Step 1: The customer signs up with the gaining provider	The customer chooses and signs up for a new service with the gaining provider.
Step 2: The gaining provider contacts the losing provider	The gaining provider contacts the losing provider and arranges the transfer of the service(s).
Step 3: Both providers write to the customer with details about the switch	<p>The customer receives a letter from the gaining and losing provider (by post or, with the customer’s agreement, electronically) informing them about the switch.</p> <p>The letter from the gaining provider includes details of:</p> <ul style="list-style-type: none"> • the estimated switch date. • the service(s) that will be switched. • the right to cancel the new contract free of charge, how long the right applies for and how to exercise it. <p>The letter from the losing provider includes:</p>

¹⁶⁸ See GCs B3 and C7.

- the estimated switch date.
- information on the service(s) that will be affected/unaffected.
- an explanation:
 - that the switch will automatically happen on the estimated date and no contact with the losing provider is necessary.
 - of any early termination charges that would apply at the estimated switch date.
 - of how the cost of any remaining service(s) will be affected if they are only switching some of their services.

If a customer receives these letters and decides to cancel the switch, they can contact the gaining provider to cancel their request. If the gaining provider has tried to switch the customer without their knowledge or consent, the customer can also contact the losing provider to stop the switch.

Step 4: The gaining provider coordinates the switch

The gaining provider coordinates switching the service(s). The date of the switch is based on a transfer period of a minimum of 10 working days.

- 7.13 The GCs do not place any obligations on providers in relation to switching fixed services where:
- a) the switch is between providers on different networks (e.g. between the Openreach and Virgin Media networks);¹⁶⁹
 - b) switches are to or from full-fibre broadband services, even within the same network; or
 - c) a customer is a business with more than 10 employees.
- 7.14 However, the GCs do place obligations on providers in relation to any customer who chooses to port their number. Providers are required to provide number portability on reasonable terms and conditions and within the shortest possible time. Any charges they apply to other providers for portability must be cost-oriented and based on incremental costs. Any charge providers apply to customers must not act as a disincentive to switch.
- 7.15 Providers must complete the number port and activation within one working day once all the necessary validation processes have been completed, the network connection is ready for use and the losing provider has received a request from the gaining provider to activate the port. Where the port is delayed beyond one working day or there is an abuse of the porting process, providers are required to provide reasonable compensation.

¹⁶⁹ See [Ofcom consultation and statement on switching landline, broadband and/or pay TV services between the Openreach, KCOM, Virgin cable and Sky satellite platforms](#).

Mobile services

7.16 We recently made switching and porting easier for mobile customers. Since 1 July 2019, mobile customers have been able to switch provider and port up to 24 numbers using the regulated Auto-Switch process.¹⁷⁰ The steps of this process are summarised in Figure 7.2.

Figure 7.2: Summary of Auto-Switch process

Step	Description
Step 1: Customer gets code from the losing provider	<p>The customer requests a code from the losing provider by text, online account or phone. The code is either a Porting Authorisation Code (PAC) if they are porting their number or a Service Termination Authorisation Code (STAC) if switching without a port.</p> <p>Providers must provide concise and easy to understand guidance for customers on the switching and porting process. They must publicise this guidance and make it readily available on their websites.</p>
Step 2: Customer receives code and information relevant to the switch	<p>The customer receives the code immediately if they are a residential customer by the same method it was requested, as well as by text. Business customers requesting the code by phone receive the code either immediately or, if this is not possible, within 2 hours. They will receive it within 2 days if requesting by online account or text. In all cases, the code is valid for 30 days.</p> <p>Customers also receive information about switching which must include:</p> <ul style="list-style-type: none"> • any outstanding charges for mobile services and any applicable early termination charge. • any information about outstanding loans or balances for a handset, where this is sold separate to the SIM / airtime contract. • any outstanding credit balances in respect of prepaid mobile services. • a web-link directing the customer, at a minimum, to the customer's account login page.
Step 3: The customer signs up with the gaining provider	<p>The customer chooses and signs up for a new service with the gaining provider (for example in-store, online or by phone) and gives them the code. The gaining provider gives the customer a new SIM, and where applicable, a handset.</p>
Step 4: The customer's old service is cancelled,	<p>Once the customer activates the new SIM card on the gaining provider's network, the old service is automatically deactivated and</p>

¹⁷⁰ See [Consumer Switching: Decision on reforming the switching of mobile communication services \(December 2017\)](#) for further details.

and the new service activated (where relevant) the customer's existing mobile number is transferred to the new service. These processes must be completed automatically within one working day (unless the customer indicates that they would like the new service to start at a later date).

7.17 The GCs do not place any obligations on providers in relation to switching mobile services where the switch involves more than 24 numbers. However, as noted above, the GCs do place other obligations on providers in relation to any customer who chooses to port their number (irrespective of how many mobile numbers the customer wants to port).

The EECC and switching and porting

7.18 As set out in section 2, the EECC includes a number of end-user rights relating to internet access services (IASs) and number-based interpersonal communications services (NBICs).¹⁷¹ Article 106 addresses the switching and porting of these services.

7.19 The EECC sets high-level protections to enable consumers to make an informed choice and to change providers when it is in their best interest to do so unhindered by legal, technical or practical obstacles including contractual conditions, procedures and charges.

7.20 It highlights that the possibility of switching between providers and number portability are important for effective competition. The availability of transparent, accurate and timely information on switching should increase end-users' confidence in switching and make them more willing to engage actively in the competitive process.¹⁷²

7.21 To achieve these objectives the EECC envisages switching and porting as a one-stop-shop and a seamless experience for end-users with Article 106 requiring that the processes must:

- a) be gaining provider-led;
- b) be efficient and simple;
- c) be carried out in the shortest possible time on a date agreed with the end-user;
- d) ensure continuity of service, unless technically not feasible;
- e) ensure loss of service is no greater than one working day;
- f) allow end-users to port their number for at least a month after termination;
- g) include automatic termination of the end-user's contract with the losing provider;
- h) involve no cost for the end-user to port their number;
- i) ensure that end-users are adequately informed and protected;
- j) ensure that switching and porting is only carried out with explicit consent; and

¹⁷¹ See section 3 paragraphs 3.10-3.11 and 3.16-3.18 on definitions and paragraphs 7.25 to 7.26.

¹⁷² EECC, Recitals 273 and 277-283.

- k) ensure end-users are compensated when things go wrong;
- 7.22 Article 106 enables Ofcom to specify details of the switching and porting processes. It requires providers to cooperate in good faith and not to abuse or delay any switching or porting processes. It also requires network operators to ensure there is no loss of service that would delay the switching or porting process.
- 7.23 In addition, Article 107 extends certain provisions of Article 106 to all services that are bundled with IASs or NBICCs.

Scope of our proposals

- 7.24 We describe below the customers and services to which our proposals in this section will apply.

Services in scope

EECC requirement

- 7.25 The provisions of Article 106 apply to either, or both, of:
 - a) IASs; or,
 - b) NBICCs.¹⁷³
- 7.26 Article 107 applies the provisions of Article 106(1) to all elements of a bundle if the bundle comprises at least an IAS or a NBICCs.¹⁷⁴

How we propose to implement

- 7.27 We propose to introduce new general switching rules that will apply to IASs and NBICCs. Some of these rules would also apply to any service or terminal equipment when provided as part of a bundle with IASs or NBICCs.
- 7.28 Article 106 applies a number of the same, or largely equivalent, provisions to the switching and porting of IASs and NBICCs (and in some cases bundles). Where this is the case, we propose to apply a single rule incorporating these requirements to provide a clear set of consolidated obligations for providers.
- 7.29 To implement this approach, the GCs will refer to ‘Communications Provider Migrations’ which encompass both the transfer of services and their activation, and the porting of

¹⁷³ We note that for provisions in Article 106 relating to NBICCs the text only refers to the porting of numbers. However, we consider that the intention of the EECC was for these obligations to also apply in the context of switching of NBICCs that do not involve porting (e.g. a customer switching a traditional landline voice only service without keeping their number). In particular, given the emphasis that the EECC places on the importance of switching, it is our view that it could not have intended to leave customers who choose to switch their NBICCs without porting their number unprotected. We consider the instances in which a customer would be switching only an NBICCs and not porting a number would be limited but, given our view of the intention of the EECC, we have ensured these are included in our proposed implementation of Article 106.

¹⁷⁴ In this section where we refer to all elements of a bundle we mean any services or terminal equipment provided as part of a bundle comprising an IAS or a NBICCs. See section 3 (paragraphs 3.30-3.45) for the definition of bundles.

numbers and their activation where the customer has requested to port their numbers. When discussing our proposed implementation in this section, where we refer to switching or switching processes, we also mean porting and porting processes in line with this approach. A number of the provisions of Article 106 are only relevant to the porting of numbers. In these cases, the relevant rules will specifically apply only to the porting process.

- 7.30 At this stage, the Notification of Transfer and Auto-Switch process obligations will continue to apply to the services to which they currently apply.¹⁷⁵ We may reconsider whether to retain or amend the Notification of Transfer requirements in light of the OTA work with industry to develop switching process specifications for residential fixed customers and responses to this consultation. The existing porting rules will also largely continue to apply as they currently do.¹⁷⁶
- 7.31 The scope of the new general switching rules are set out in draft GC C7.2 and the draft definitions. Where necessary we propose to move some porting rules from GC B3 to GC C7 to form part of the single set of general rules in relation to both switching and porting. See paragraphs 7.199-7.203 for a further explanation of changes to the obligations we propose to retain.

Customers in scope

EECC requirement

- 7.32 The requirements of Article 106 apply in relation to all end-users, which are defined to encompass both residential and business customers (except for a business which is itself a communications provider).¹⁷⁷

How we propose to implement

- 7.33 The new general switching rules we propose to introduce will apply to all customers. This includes all residential customers and all business customers, irrespective of the size or nature of the business (see paragraphs 7.35 to 7.83, 7.99-7.102, 7.137-7.140 and 7.154-7.161).¹⁷⁸
- 7.34 We also propose specific obligations for residential customers on information, consent, compensation and notice period charges (see paragraphs 7.103-7.132, 7.141-7.145, 7.162-7.164 and 7.180-7.193).¹⁷⁹

¹⁷⁵ In paragraphs 7.204-7.215, we summarise the limited changes we propose to make to the GCs relating the Notification of Transfer and Auto-Switch processes.

¹⁷⁶ See paragraph 7.203 relating to the scope of the number portability requirements.

¹⁷⁷ See section 3 (paragraph 3.26(a)) for the definition of 'end-user.'

¹⁷⁸ In the draft GC we propose to use the term 'Switching Customer.' This term refers to any end-user that is party to a contract with a provider of public electronic communications services for the supply of such services and who has requested, is requesting or considers requesting the switching of such services. This makes clear that the end-user to which a provider has obligations under our proposals is the end-user that has a contractual relationship with either provider.

¹⁷⁹ The rule on notice periods charges will also continue to apply, as it currently does, in relation to business customers when switching mobile services involving up to 24 numbers.

General switching rules

- 7.35 In this section we set out our proposals on general switching rules, applying to all customers in relation to:
- a) maintaining switching processes;
 - b) the process being gaining provider-led;
 - c) the timing and date of a switch;
 - d) continuity of service;
 - e) refunds;
 - f) responsibilities of third-party providers; and
 - g) porting specific obligations.
- 7.36 These general rules will apply to all existing processes, to any new processes that industry may develop or to any process a provider otherwise follows.

Maintaining switching processes

EECC requirement

- 7.37 Article 106(6) gives Ofcom the discretion to ‘establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-users.’ Article 106(6) also requires both the gaining and losing provider to cooperate in good faith and to not delay or abuse the switching and porting processes.
- 7.38 Article 106(1) requires Ofcom to ‘ensure the efficiency and simplicity of the switching process for the end-user.’ Article 107 applies the provisions of Article 106(1) to all elements of a bundle.

How we propose to implement

- 7.39 We do not propose to specify new detailed switching and porting processes at this time.¹⁸⁰ Instead we propose to set some general requirements on providers in relation to all residential and business customers to maintain processes and when switching a customer to comply with our rules and to follow any industry agreed processes.
- 7.40 In particular, for switches of IASs, NBICs, and all elements of a bundle we propose to require providers to maintain switching processes that are simple and efficient, including in relation to retaining or returning terminal equipment. Providers will have flexibility to

¹⁸⁰ See paragraphs 7.218-7.224 for a summary of the work we have asked the OTA to carry out with industry to develop detailed process specifications for residential customers switching fixed services. We may decide to specify detailed processes for these customers and reconsider whether to retain or make changes to the Notification of Transfer process in light of the OTA work and responses to this consultation.

determine the best way to comply with this requirement in a way that would be appropriate for the specific services or equipment in the bundle.

- 7.41 For switches of IASs and NBICs only, we propose that providers be required to:
- a) take all necessary steps to complete a switching process in accordance with relevant industry processes;
 - b) cooperate in good faith to complete a switching process in accordance with our requirements and any applicable industry processes; and
 - c) to not delay or abuse the switching process.
- 7.42 Taken together these requirements will ensure that providers cooperate with one another to ensure that switches of IASs and NBICs are completed in accordance with our proposed general switching rules. In many instances, development of new industry processes is likely to be necessary to ensure that providers comply with their obligations (e.g. where a customer wants to switch full-fibre broadband services or between different networks).
- 7.43 When designing and implementing new systems and processes, providers should also consider Ofcom's Fairness Commitments to enable customers sign up to, change and leave their services quickly and smoothly and ensure customers who are leaving do not face additional barriers or hassle compared to those who are signing up to new services as well as the aims of the EECC.¹⁸¹
- 7.44 Gaining providers will be required to allow customers to use switching processes they have in place in accordance with Article 106, if customers want to.¹⁸²
- 7.45 Our proposed amendments are set out in revised GC C7.4.

Gaining provider led processes

EECC requirement

- 7.46 Article 106(6) places an obligation on the gaining provider to 'lead the switching and porting processes.'¹⁸³

How we propose to implement

- 7.47 Alongside the obligations set out to maintain switching processes we also propose to set a general obligation on gaining providers to lead the switching of IASs and NBICs on behalf all residential and business customers.
- 7.48 Taken together, these obligations will ensure that where industry develops (or maintains) a switching process it must be designed in a way that ensures the gaining provider leads the

¹⁸¹ Ofcom's [Fairness for Customers commitments](#): commitment 5.

¹⁸² In paragraph 7.104 we explain our proposal for providers to inform customers of this right.

¹⁸³ Article 106 refers to the 'receiving provider' and the 'transferring provider.' In this consultation and the GCs we refer to the Communications Provider *to* whom a customer is switching, or considering switching, their services to as the 'gaining provider.' We use the term 'losing provider' to refer to the provider *from* which a customer is switching, or considering switching, their services.

switch for the customer and all providers must cooperate to enable gaining providers to perform that role.

- 7.49 The EECC seeks to make switching a seamless experience for customers by requiring the gaining provider to lead the process and offer a ‘one-stop-shop.’ Central to this is the gaining provider managing the switch so that a customer does not have to coordinate the end of one service and the start of another, contact the losing provider to terminate the old contract, or deal with two providers throughout the process or if something goes wrong.
- 7.50 For a gaining provider led process to be effective, a customer will need to give the gaining provider sufficient information to enable them to accurately identify the losing provider, the customer and the relevant services which the customer wishes to be switched. It is also important that a customer gives sufficient information to enable the gaining provider to verify with a losing provider that the customer is authorised to request a switch. Any industry systems and processes need to make provision for this, including where customers are switching between different physical networks.
- 7.51 In the current Notification of Transfer process, the name and address of the customer and the associated landline phone number helps fulfil this identification and verification function and providers are working from a common information platform related to the same physical network. All of this information is likely to be already known to the customer when they contact a gaining provider. In the Auto-Switch process this function is fulfilled by a code that a customer gets from the losing provider. The losing provider must provide this code on request within certain time limits and through a variety of communication channels.
- 7.52 We consider that the rules in relation to the Notification of Transfer and Auto-Switch processes reflect the principle of the EECC requirement and are consistent with our proposed obligation on the gaining provider to lead the switching process on behalf of the customer. Under both processes the gaining provider coordinates with the losing provider the end of one service and the start of another. Customer contact with the losing provider is also restricted to what is practically necessary to facilitate the switch.
- 7.53 Our proposed amendments are set out in the revised GC C7.5.

Timing and date of a switch

EECC requirement

- 7.54 Article 106(1) requires providers to ‘ensure that the activation of the IAS occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user.’ Article 107 applies the provisions of Article 106(1) to all elements of a bundle.
- 7.55 Article 106(5) requires that the ‘porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user. In any case, end-users who have concluded an agreement to port a number to a new

provider shall have that number activated within one working day from the date agreed with the end-user.’

How we propose to implement

- 7.56 We propose to implement the timing requirements of Article 106 by setting an obligation on all providers to ensure that a switch is completed on a specific date.
- 7.57 The GCs will specify that for IASs, NBICs and all elements of a bundle the date of the switch should be a date chosen by the customer where this is technically possible. Where a customer does not choose the date of the switch, the date should be as soon as possible.
- 7.58 In addition, where a customer does not choose a date, or the date they choose is not technically possible, we propose to specify the latest date for the switch.
- 7.59 This means that for IASs and NBICs, other than mobile switches,¹⁸⁴ the date of the switch should be no later than the working day after the date on which:
- a) all necessary validation processes have been completed;
 - b) the network connection is ready for use; and,
 - c) where relevant, the porting of any phone numbers is ready to be activated.
- 7.60 On the date a customer’s services are switched, the losing provider must cease to provide these services and the gaining provider must start to provide its services.¹⁸⁵ Where relevant, any numbers must also be ported and activated on this date.
- 7.61 Our proposals fulfil the aim of the EECC to allow customers, where technically possible, to specify the timeframe for the switching of their services, or for the switch to otherwise happen as soon as possible. As part of our proposal, we have maintained the existing provisions setting the latest point at which a port should happen¹⁸⁶ and applied these more broadly to switching of all IASs and NBICs. We consider that these requirements articulate, in general terms, for both mobile and fixed services, the point in time from which it will be technically possible to switch a customer’s services.
- 7.62 Our proposed amendments are set out in revised GC C7.3.

¹⁸⁴ Where the service is a mobile service the date of the switch should be no later than the working day after the customer gives their PAC or STAC to the gaining provider (if the customer has already activated a SIM) or the day after SIM activation (where the customer has already given their PAC or STAC to the gaining provider). As part of our proposals on timing in relation to mobile services, we have addressed an inadvertent narrowing of the scope of the porting requirements as a result of GC changes we made when introducing the Auto-Switch process. The changes made at that time meant that there were no longer provisions for the time in which a port must be completed for mobile services involving 25 numbers or more.

¹⁸⁵ For the avoidance of doubt, this requirement relates to the services the customer is switching (and any dependent services) and does not apply to other services that the customer wishes to continue to take from the losing provider.

¹⁸⁶ In the case of Auto-Switch also the latest date on which a switch without a port should happen. These current provisions are set out in GC B3.4 and C7.38 to C7.39.

Continuity of service

EECC requirement

- 7.63 Article 106 contains a number of requirements related to the provision of a customer's services during the switching process:
- a) Article 106(1) and 106(5), relating to switching IASs and porting numbers respectively, require that the losing provider must continue to provide its services on the same terms until the gaining provider activates its services.
 - b) Article 106(6) requires that end-users' contracts with the losing provider are 'terminated automatically upon conclusion of the switching process.'
 - c) Article 106(1) requires providers to 'ensure continuity of the IAS, unless technically not feasible.'
 - d) Article 106(5) requires that, where a porting process fails, the losing provider must 'reactivate the number and related services of the end-user until the porting is successful.'
 - e) Article 106(1) and 106(5) have similar requirements that loss of service during the switching and porting processes should not exceed one working day.¹⁸⁷
- 7.64 In addition, Article 107 applies the provisions of Article 106(1) to all elements of a bundle.

How we propose to implement

- 7.65 For switches of IASs, NBICs and all elements of a bundle we propose that:
- a) all providers will be required to ensure that there is continuity of service, where technically feasible, and that loss of service during the switching process does not exceed one working day; and,
 - b) losing providers will be required, where technically feasible, to continue providing their services on the same terms until the switch has been completed and the customer's services have been activated by the gaining provider.
- 7.66 For switches of IASs and NBICs only we propose that:
- a) losing providers will be required to automatically terminate customers' contracts on the day the switch is completed; and
 - b) where a porting process fails, losing providers will be required to reactivate the number and relevant services of a customer until the port is completed successfully.
- 7.67 Our proposals fulfil the aim of the EECC to ensure continuity of service so that customers are able to switch providers without being hindered by the risk of a loss of service. Where possible, losing providers should not cease providing their services until the gaining

¹⁸⁷ Section 8 (paragraphs 8.98, 8.102 and 8.109) sets out our proposed options to minimise loss of service while unlocking a mobile handset during switching.

provider has activated a customer's new services. This would mean that the customer would experience no gap in the provision of services. Where this is not technically feasible, for example because the gaining provider's services will be provided over the same physical infrastructure as the losing provider's services, we expect the gap in the provision of services to be as short as possible. In any case no customer should experience a loss of service greater than one working day.

7.68 Our proposed amendments are set out in revised GCs C7.4(d) and C7.7(a)-C7.7(c).

Refunds

EECC requirement

7.69 Article 106(6) requires losing providers to 'refund, upon request, any remaining credit to [customers] using pre-paid services. [The refund] may be subject to a fee only if provided for in the contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the [losing] provider in offering the refund.'

How we propose to implement

7.70 We propose to implement this requirement by placing an obligation on losing providers reflecting the text in the EECC.

7.71 Our proposed amendments are set out in revised GC C7.7(d).

Responsibilities of third-party providers

EECC requirement

7.72 Article 106(5) requires that providers 'whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.'

How we propose to implement

7.73 We propose to implement this requirement by setting obligations on providers of communications networks to ensure there is no loss of service that will delay switching or porting.¹⁸⁸

7.74 While the proposed requirements set out in this section apply to either the gaining provider or the losing provider, or both, third-party providers may also play an important role in facilitating any switch. This is particularly the case in relation to porting where a third-party provider may need to activate the port. For example, a customer of Provider B

¹⁸⁸ The GCs will contain two related conditions. The obligation in C7 will apply where a provider's network is used by either the gaining provider or the losing provider, or both, as part of the switching process. The related obligation in B3 will apply where a provider's network is used by either the 'Donor Provider' or the 'Recipient Provider', or both, as part of 'Number Portability' or 'Portability'. The use of the terms 'Donor provider' and 'Portability' ensures that, in relation to porting, the obligation also includes providers that may have to activate a port to a customer's new provider and provide ongoing forward routing for that number but may be neither the losing provider nor the gaining provider.

has a phone number from when they originally had a telephone service from Provider A. The customer decides to switch from Provider B to Provider C keeping the same number. To facilitate this, Provider A must change call routing arrangements so that calls are directed to Provider C rather than Provider B.

- 7.75 These requirements recognise this by placing additional obligations on such third parties. We have also maintained the existing requirements in relation to porting of numbers which include obligations on third-party providers.
- 7.76 Our proposed amendments are set out in revised GCs B3.4 and C7.17.

Porting specific obligations

EECC requirement

- 7.77 Article 106(2) requires Ofcom to ensure that customers have the right to port their numbers. Article 106(3) requires Ofcom to ensure customers can retain that right for ‘a minimum of one month after the date of termination, unless that right is renounced by the end-user.’
- 7.78 Article 106(4) requires Ofcom to ensure that ‘no direct charges are applied’ to customers ‘related to the provision of number portability.’

How we propose to implement

- 7.79 The current GCs already contain a requirement for providers to provide number porting on reasonable terms and conditions when requested by a customer. This will be moved from GC B3 to GC C7.
- 7.80 We propose to add that providers must provide number porting to customers that request it for at least a month after the termination of a contract unless the customer expressly agrees otherwise when terminating that contract. We expect that providers will ensure customers can contact them regarding porting a number after the termination of a contract through a variety of means, such as online, by phone or in person in a store.
- 7.81 We also propose to prohibit providers from charging customers directly for providing number porting.
- 7.82 Our proposed amendments are set out in revised GC C7.6.
- 7.83 We are making a number of other changes to the way the porting obligations are set out in the GCs. These are discussed in paragraphs 7.199-7.203.

Impact of general switching rules

- 7.84 We consider that the new general switching rules will ensure an appropriate baseline level of protection for all switches within the scope of Article 106. These proposals are designed to make switching easier, quicker and more reliable for customers. They should avoid or reduce loss of service during the switch. In addition, the proposals should help address

some of the process related factors that can deter certain customers from considering switching or going through with a switch.

- 7.85 Providers will need to update or develop and implement new systems and processes in order to comply with the requirements discussed in paragraphs 7.35 to 7.83. This will particularly be the case in relation to full-fibre broadband switches and switches between different physical networks.

General and specific rules on information, consent, compensation and specific rules on notice period charges

- 7.86 In this section we set out our proposals on general switching rules in relation to:

- a) information;
- b) consent; and
- c) compensation.

- 7.87 These rules will apply to all business and residential customers.

- 7.88 In addition, and alongside these proposals, we set out our proposed specific rules in relation to residential customers on:

- a) information;
- b) retaining records of consent and sales;
- c) compensation; and
- d) notice period charges.

- 7.89 First, we set out our decision not to apply the specific rules to business customers.

- 7.90 It is reasonable to expect that businesses are in general better equipped with the skills and resources to manage their communications services than residential customers. Businesses are likely to have better knowledge of the services provided under their contract and more resources to find out about those services and to consider the implications of switching providers. Larger businesses, especially those that are significant users of communication services, tend to have a stronger bargaining position than residential customers.

- 7.91 The business landscape is large and varied, and there are differences in the composition, character, and behaviour of businesses. The diversity among businesses means it may not be appropriate to specify certain specific rules that would apply to all business customers in the same way.

- 7.92 For these reasons, we are not proposing to mandate specific obligations on information, consent, compensation and notice period charges for business customers. We consider residential customers need certain specific as well as general protections in these areas. We set out our reasons for this in relation to each area below (see paragraphs 7.103-7.132, 7.141-7.145, 7.162-7.164 and 7.180-7.193).

- 7.93 Providers will still need to comply with the general switching requirements and the Notification of Transfer and Auto-Switch requirements but will generally have greater flexibility to judge what is appropriate for their business customers in relation to information, consent and compensation arrangements depending on the nature and needs of the relevant business customer.
- 7.94 We will keep under review whether some types of business customers (e.g. micro enterprises) would benefit from specific protections.

Information

EECC requirement

- 7.95 Article 106(6) requires Ofcom to ‘take appropriate measures ensuring that end-users are adequately informed... throughout the switching and porting process.’
- 7.96 Article 106(1) also specifically requires providers of IASs to provide end-users with ‘adequate information before and during the switching process.’ Article 107 applies the provisions of Article 106(1) to all elements of a bundle.
- 7.97 Article 106(9) requires Ofcom to ensure that ‘end-users are adequately informed about the existence of the rights to compensation’ contained in Article 106.
- 7.98 Article 111(1)(b) requires Ofcom to specify requirements on providers ‘to ensure end-users with disabilities benefit from the choice of undertakings and services available to the majority of end-users’.

How we propose to implement

General rule for all customers

- 7.99 We propose to set a general obligation on all providers to take reasonable steps to ensure customers are adequately informed before and during the switching process. This obligation will apply in relation to IASs, NBICSs and all elements of a bundle and for all residential and business customers. For IASs and NBICSs this obligation would include informing customers of the right to compensation.
- 7.100 Our 2018 consumer research showed that 18% of those switching fixed services and 28% of those switching mobile services experienced difficulties understanding the relevant steps to switch provider.¹⁸⁹ The EECC emphasizes the importance of the availability of transparent, accurate and timely information on switching to increase customer confidence in switching.¹⁹⁰

¹⁸⁹ Ofcom, [2018 Switching Experience Tracker](#), Q19A/B/C, table 44, page 230. In this research, fixed services includes triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV). Bespoke analysis suggests 14% dual play switchers (landline and broadband – 323 respondents) experienced difficulties understanding the relevant steps to switch provider.

¹⁹⁰ EECC, Recital 277.

Fair treatment and easier switching for broadband and mobile customers

7.101 We propose that all providers be required to provide easy to understand information on the switching process and to publicise this information and make it readily available on their websites. Such information must include details of the steps a customer may need to take to ensure they can continue to use any additional support services for disabled customers (see paragraph 7.117).

7.102 Our proposed amendments are set out in revised GC C7.10.

Specific rules for residential customers – gaining provider obligations

7.103 In addition to the general rule on information provision, we propose to set specific obligations on providers to give information to residential customers (in relation to IASs and NBICSs).

7.104 As discussed in section 4 (paragraph 4.20), we propose that the contract information gaining providers will be required to give to customers as part of GC C1.3 would include:

- a) the arrangements for the provision of the relevant service, including the date for provision of the service;
- b) an explanation that the customer can have their services provided by using a switching process; and
- c) the right to compensation for delay or abuse of the process for switching providers and porting numbers and missed service and installation appointments, including how such compensation can be accessed and how it will be paid.¹⁹¹

7.105 We additionally propose that when complying with these requirements in relation to residential customers switching IASs or NBICSs, gaining providers should inform those customers of:

- a) the fact that the customer is switching their service;
- b) the services that will be switched;
- c) where relevant, the Calling Line Identification of services that will be switched; and
- d) the location of information on the switching process (as discussed in paragraph 7.99).

7.106 This additional information would have to be provided before the residential customer enters into a contract for the services being switched and should be provided as part of the customer's contract information.

Specific rules for residential customers – losing provider obligations

7.107 We propose losing providers will continue to give information to residential customers largely as specified in the Notification of Transfer and Auto-Switch processes at this stage. However, we have made some small changes as part of consolidating the existing and new requirements as discussed in paragraphs 7.204 to 7.215.

¹⁹¹ As discussed in paragraph 4.21, these requirements will apply in relation to residential, microenterprise and small enterprise customers and Not for Profit Organisations, unless they have expressly agreed otherwise.

- 7.108 In addition, we propose that, for switches outside the scope of the Notification of Transfer and Auto-Switch processes, losing providers must inform residential customers of:
- a) an explanation that the customer is switching their service;
 - b) the date of the switch, where this is known to the losing provider;
 - c) a clear identification of services that will be switched, including, where relevant, the Calling Line Identification of services that will be switched;
 - d) the impact, whether direct or indirect, financial or otherwise, that the switch will have on any services provided to the customer by the losing provider including additional support services for disabled customers;
 - e) the services that will be unaffected by the switch;
 - f) the total charges due on the date of the switch where this is known to the losing provider, or if this is not known the date the information is provided. This should be presented as a single charge aggregated across all services being switched;
 - g) an explanation of the cost and any process or conditions for retaining or returning equipment;
 - h) where relevant, an explanation of any credit balances for pre-paid services including the right to a refund and the process for claiming a refund in relation that credit balance
 - i) where to find the provider's guidance on the switching process; and
 - j) the right to compensation.
- 7.109 The information from the losing provider would have to be accurate, clear, comprehensible, in neutral terms and provided on a durable medium. Where a provider gives information to customers in an electronic format it would also have to include a link to the customer's online account. If in a letter format, the provider would have to include their contact details.
- 7.110 We consider that residential customers are less likely than business customers to have knowledge and an understanding of the services provided under their contract and less resources to find out about those services and to consider the implications of switching providers. Therefore, we think it is important that these customers are provided with specific information on the impacts on their services as a result of any switch to support them in making informed switching decisions. This additional information should increase customers' confidence in switching and may make them more willing to engage actively in the competitive process.
- 7.111 We also think that residential customers should be at least as informed as part of any new switching process as they are under the existing regulated processes. Both the Notification of Transfer and Auto-Switch processes set out specific pieces of information that customers should be given during the switching process. We considered these requirements in developing our proposals for requirements that will apply outside of these two switching processes as set out below:

i. Explanation of the switch, the date of the switch and services being switched (Items a), b) and c))

7.112 For residential customers to make an informed choice about switching their services, all providers need to clearly state that the customer is switching their services and identify the services that will be switched, including identifying any phone number that will be switched. Gaining providers should clearly explain to residential customers the date on which the switch will occur. Where they have this information, losing providers should also provide it.

ii. Impacts on other services and unaffected services (Items d) and e))

7.113 Information from the losing provider about the impact of switching on other services is key to enabling customers to make a fully informed choice. These impacts could include additional services that would be terminated, changes in prices or changes to other contractual terms because of the switch. It is also important to be clear about the services which would remain unaffected by the switch and which the customer would therefore still receive from the losing provider.

7.114 When we enhanced the Notification of Transfer process, we considered this information would ensure that the customer is better informed before making the decision to commit to the switch. We also noted it would prevent the losing provider from presenting vague and confusing information about the possibility of loss of services, which may prompt the customer to contact the losing provider or result in some customers not being fully informed of the implications of their decision to switch.¹⁹² We think residential customers switching under other new processes will benefit from receiving similar information on the service impacts of switching.

iii. Support services for disabled customers (Item d))

7.115 Customers may make use of the additional support services that providers are required to make available to disabled customers. Currently, these services are:

- a) free directory enquiries for disabled customers who cannot use a printed directory;
- b) priority fault repair for people who depend on the telephone because of illness or disability;
- c) third party bill management, enabling a friend or relative to help manage the account of disabled customers;
- d) bills and contracts in accessible formats on request for blind and vision impaired customers;
- e) text relay services enabling some or all of a phone call to be made or received in text format; and

¹⁹² Ofcom, December 2013. [Consumer Switching: A statement on the GPL NoT+ elements](#), paragraphs 3.123-3125.

f) access to emergency services via text message for customers with hearing or speech impairments.¹⁹³

7.116 To enable customers who use these additional support services to make a fully informed choice about a switch they need to be informed of any impact on these services that switching may have. For example, a losing provider would need to inform a customer that the services will stop when they switch and explain that they would need to inform the gaining provider if they want to continue to use these services.

7.117 Guidance from providers on the switching process must include information that customers may continue to use these services. Customers should be made aware that additional support services for disabled customers can be accessed regardless of who will be providing their service after the switch and that they are likely to need to inform the gaining provider they want to use these services. This is important in ensuring disabled customers can benefit from the choices available.

iv. Total charges (Item f))

7.118 To support customers to make informed decisions and to increase their confidence in switching, as part of the switching process, losing providers need to make clear to residential customers the financial implications of switching.

7.119 As part of the Auto-Switch process we mandated financial information to be ETCs, outstanding handset charges, and the amount of any outstanding credit (for PAYG customers). We noted in our Auto-Switch Statement that the switching information should set out the total charge for mobile services (if any) to be paid by the customer to their current provider.¹⁹⁴

7.120 When we enhanced the Notification of Transfer process, we determined that providing information on ETCs was important in avoiding confusion which might result in unnecessary calls to the losing provider. We also noted it would likely reduce the number of customers who are made aware of their ETC only after they have paid it.¹⁹⁵

7.121 In our view, the total charge aggregated across all services switched gives a clear indication of the likely total cost to the customer of switching away from the losing provider. This will help inform the customer's decision on whether it is in their best interest to switch. For example, if the customer would need to pay a substantial ETC to leave their contract early, it may be in their best interest to delay the switch until the end of their fixed commitment period.

7.122 We think it is important that this information is provided as part of the switching process rather than simply relying on the information set out in the customer's contract.

¹⁹³ See Condition C5. In section 11, we set out a proposal to extend these requirements.

¹⁹⁴ Ofcom, December 2017, [Consumer switching - Decision on reforming the switching of mobile communication services](#), page 47. However, we did not specify in GC C7 that in all circumstances where Switching Information is provided, financial information should also be aggregated as a total charge. We have made this clearer in draft GC C7.12(f).

¹⁹⁵ Ofcom, December 2013. [Consumer Switching: A statement on the GPL NoT+ elements](#), paragraph 3.115.

Residential customers may not remember the precise terms of the contract that may have been agreed many months before.

- 7.123 We accept that at the time the information is given the total charge may not represent the actual final cost to the customer once any additional service charges are included. However, we consider that these charges would represent the most significant charges that a customer may face. Where a provider can give complete information as to the final cost to the customer, we expect them to do so.

v. Process and cost of retaining or returning equipment (Item g))

- 7.124 As well as understanding the costs of any equipment they retain, it is important that losing providers explain the process and cost for returning any equipment. Our 2018 consumer research found that just under one in ten of fixed market switchers who switched in the last 6 months experienced difficulties returning providers' equipment when they switched.¹⁹⁶ This will help customers to make informed decisions and help ensure they understand the steps they need to take.

vi. Credit balances on pre-paid services (item h))

- 7.125 The general switching rules will require providers to refund, upon request, any remaining credit to customers using pre-paid services. We propose that in addition losing providers should explain to residential customers any credit balance they have in relation to pre-paid services, the right to a refund of that balance and the process for claiming a refund.

vii. Where to find information on the switching process (Item i))

- 7.126 As part of the general switching rules, providers will be required to provide and publicise guidance about the switching process and make it readily available on their websites. We propose that the information from the losing provider tells the residential customer where they can find this guidance.

viii. Compensation (item j))

- 7.127 Article 106(9) requires customers to be informed about their right to compensation. We propose that losing providers remind customers about these rights as part of the switching process.

ix. Other information

- 7.128 It is likely that certain customers may find additional information helpful when they are considering switching providers. We have previously noted that this information could include outstanding contract duration and loss of benefits such as priority access to tickets.¹⁹⁷

¹⁹⁶ Ofcom, [2018 Switching Experience Tracker](#). Q19A/B/C, tables 42-44, pages 199, 215, and 231. Fixed market switchers, who switched in past 6 months (excluding home movers) and had difficulty returning their previous provider's equipment – major 2% and minor: 6%.

¹⁹⁷ Ofcom, March 2016. [Consumer switching: Proposals to reform switching of mobile communications services](#), paragraphs 5.49-5.50.

- 7.129 Much of this information can currently be found either at providers' websites, or through customers' online accounts with their provider. Providing a link to the customer's online account (where the information is given electronically) allows them to readily find this information without needing to speak directly to their provider.

How the information is provided

- 7.130 Information from gaining providers regarding switching needs to be provided at the point of sale alongside other contract information so that the consequences of switching can be considered before consenting to the terms of the contract.¹⁹⁸
- 7.131 Information from losing providers must be given on a durable medium so that residential customers can refer back to it and fully consider their decision to switch. We recognise that when providing information via text message the format could make it difficult to effectively give the full set of information. In such cases, we would expect the text message itself to at least include information on the total charges and a link to information on the process (items f) and i) in paragraph 7.108 above).¹⁹⁹ We consider the total charge to be the piece of information most likely to draw customers' attention to the implications of switching. The rest of the information set out in paragraph 7.108 above could then be set out elsewhere on an additional durable medium so long as it is easily accessible to the customer and linked to in the text message (for example, in their online account).
- 7.132 When giving information to customers, providers should ensure they do so in a way that complies with all their obligations,²⁰⁰ including to ensure that procedures for terminating a contract do not act as a disincentive to switching.

Impacts

- 7.133 We consider that the proposed general and specific information rules will ensure an appropriate baseline level of information for all customers before and during the switching process. The more specific requirements for residential customers will support them in making informed switching decisions. They will also help address some of the information-related factors that can deter customers from considering switching or going through with a switch.
- 7.134 Providers already have ways of communicating with their customers. They may need to make changes to what information they provide, how they provide it and when to comply with the requirements in this sub-section.
- 7.135 Our proposed amendments are set out in revised GCs C7.11-C7.13.

¹⁹⁸ See discussion on point of sale information requirements in section 4 paragraphs 4.7-4.25.

¹⁹⁹ As noted in paragraph 7.107 we propose losing providers will continue to give information to residential customers largely as specified in the Auto-Switch process except for the small changes discussed in paragraph 7.123.

²⁰⁰ In section 11, we set out a proposal to extend disabled customers rights to request certain information in an accessible format. The proposal includes communications relating to the customer's service which would include information related to switching. See also draft GC C5.13(f).

Consent

EECC requirement

7.136 Article 106(6) requires that providers do not ‘port numbers or switch end-users without the end-users’ explicit consent.’ It also requires Ofcom to ‘take appropriate measures ensuring that end-users are not switched to another provider without their consent.’

How we propose to implement

General rule for all customers

- 7.137 We propose to set general obligations on gaining providers to:
- a) ensure a customer is authorised to request a switch and intends to enter into a contract for the switched services; and
 - b) to take reasonable steps to ensure they do not switch customers without their express consent.
- 7.138 These obligations apply to IASs and NBICSs and for all residential and business customers.
- 7.139 We consider it is only appropriate to place an obligation in relation to consent on the gaining provider as, in leading the process, they will be the only party able to determine whether the customer has consented to the switch. The gaining provider, as part of determining consent, must establish that the person they are communicating with is authorised to make that decision and intends to enter into a contract for those services.
- 7.140 Our proposals are set out in revised GC C7.9.

Specific rule for residential customers

- 7.141 In addition, we propose to set specific obligations in relation to residential customers for IASs and NBICSs. Gaining providers would be required to retain for at least 12 months:
- a) available records regarding the sale of services to residential customers; and
 - b) a record of the customer’s consent to switch.
- This applies to all switching processes already in place or that are developed by industry as part of the implementation of our proposed requirements.
- 7.142 The Notification of Transfer process currently requires providers to maintain records of sales for 6 months and records of consent for 12 months. Our proposal would maintain the record of consent requirement but extend the sales record requirement to 12 months. In relation to switches within the scope of the Notification of Transfer process, our proposed requirements will continue to apply to small business customers as well as residential customers.

- 7.143 When we imposed obligations to retain records of consent as part of the Notification of Transfer process we noted the benefits would include:²⁰¹
- a) acting as a deterrent against sales agents initiating a switch without consent as they would be aware that a clear record of consent was being recorded for each sale;
 - b) enhancing our enforcement capability by improving the ease with which we could identify cases where the key issue was an absence of consent. We have relied on these records in our compliance and enforcement work; and,
 - c) assisting providers to establish whether consent was given for a sale when a complaint is raised by a customer as part of a dispute resolution process.
- 7.144 We think that the same benefits should apply in relation to all switching processes. Therefore, we consider it appropriate to apply similar records retention requirements in relation to residential customers for all switching processes including mobile.
- 7.145 We consider the appropriate length of time that the records should be kept for both sales and consent is 12 months. This is because there may be a delay before a customer complains about a failure to obtain express consent and it would be important to ensure records are retained to refer to. It may also be the case that evidence comes to light during an investigation of a customer complaint that suggests non-compliance with the requirement from a time before the complaint was made. In these cases, it would be important to our enforcement activities that we are able to access past records for a reasonable duration. It is for these reasons we also consider it appropriate to extend the requirement to retain sales records in relation to small business customers as part of the Notification of Transfer process to 12 months.

Impacts

- 7.146 As set out above, the new general and specific consent rules will provide important benefits to customers by helping to protect them from being switched without their consent.
- 7.147 We acknowledge that there will be a cost to creating and storing records of sales and consent, as well as extending the retention duration in relation to sales records for those switches where these records are already kept. However, we anticipate the incremental cost to providers would be low. Providers already store personalised information on their customers and will already have relevant systems and processes in place for keeping certain records for this period of time, given the existing requirements. It is open to providers to determine the format consent will take in their sales process and the related records that need to be retained.
- 7.148 Our proposed amendments are set out in revised GCs C7.9 and C7.15-C7.16.

²⁰¹ Ofcom, December 2013. [A statement on the GPL NoT+ elements](#), paragraphs 3.4 – 3.66.

Compensation

EECC requirement

7.149 Article 106(8) requires Ofcom to set rules regarding the compensation of customers by providers for failures to comply with the obligations of Article 106. It specifies that compensation should be given in an ‘easy and timely manner’ and should include compensation for ‘delays in, or abuses of, porting and switching processes, and missed service and installation appointments.’

How we propose to implement

7.150 In designing our compensation proposals, we have considered our previous work on Automatic Compensation. In our Automatic Compensation Statement we concluded that there was a need for consumer protection on compensation and that there was a basis for us to intervene if providers did not take sufficient steps themselves. To help achieve automatic compensation more quickly for residential customers, we agreed to an industry proposal to launch an Automatic Compensation Voluntary Code of Practice for residential customers (‘the Scheme’).

7.151 The voluntary Automatic Compensation Scheme launched on 1 April 2019 to provide residential broadband and landline customers compensation for delays to the start of a new service, missed appointments and delayed repairs.²⁰² There are currently 6 providers signed up to the Scheme (BT, Hyperoptic, Sky, Talk Talk, Virgin Media and Zen Internet). These providers cover the vast majority of the fixed residential market. However, there is still a minority of residential customers that do not benefit from the Scheme’s automatic compensation.

7.152 There is some overlap between the Scheme and our proposed compensation requirements, particularly in relation to missed appointments and delays to an agreed switch date. Although the Scheme does not cover all the Article 106(8) requirements (e.g. compensation for switching customers without their consent), where there are areas of overlap, we consider the Scheme is consistent with the EECC and our proposed GCs. The Scheme also provides important additional protections for residential customers where there are delays to the service start date, missed appointments and loss of service that are not related to a switch. Therefore, we continue to encourage providers to sign up to the Scheme.

7.153 Below we set out our proposals for:

- a) A general rule on compensation for failure to comply with switching and porting obligations for all customers.

²⁰² Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#) and Ofcom, October 2019. [Communications providers’ voluntary code of practice for an automatic compensation scheme.](#)

- b) A general rule on compensation for missed installation or service appointments for all customers.
- c) A specific rule on the timeframe for paying compensation to residential customers for missed appointments or delays to the switch.
- d) Guidance on how providers can comply with certain compensation requirements related to residential customers.

General rule on compensation for all customers

- 7.154 We propose to require providers to compensate customers in an easy and timely manner for failure to comply with the switching and porting obligations set out in GC C7 and for any missed service and installation appointments. We discuss the general rule related to missed appointments further in paragraphs 7.157-7.161.
- 7.155 These obligations will apply to IASs and NBICSs and for all residential and business customers.
- 7.156 Our proposal does not set out in detail all of the specific circumstances in which providers will need to compensate customers. Providers will need to ensure they put appropriate arrangements in place to provide compensation if they fail to comply with their switching or porting obligations. This would include for example:
- a) failure to ensure the customer is adequately informed about the switch;
 - b) switching or attempting to switch a customer without their express consent;
 - c) delays to the switch or porting of a number; and,
 - d) loss of service.

General rule on compensation for missed appointments for all customers

- 7.157 In our Automatic Compensation Statement, we set out evidence that in a minority of cases providers arrange appointments for an engineer visit and then fail to meet them. When this happens customers can incur significant harm and disruption.²⁰³
- 7.158 Harm from missed appointments for residential customers can include:
- a) the unnecessary cost of having to take additional time off work for the rearranged appointment;
 - b) having to stay at home preventing customers from carrying out other activities; and
 - c) spending time contacting the provider to enquire about and rearrange appointments.
- 7.159 Business customers can also suffer harm from missed appointments. This can include:
- a) unnecessary disruption to employees and their business activities; and
 - b) spending time contacting the provider to enquire about and rearrange appointments.

²⁰³ Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#), paragraphs 5.69-5.76, pages 45-46.

- 7.160 We therefore considered, in our Automatic Compensation Statement, that for any provisioning appointment where an engineer does not attend at the time agreed with the customer the provider should automatically pay compensation, except where:
- a) the appointment is rearranged with more than 24 hours' notice given to the customer; or
 - b) the appointment is rearranged with less than 24 hours' notice, but the provider has obtained the customer's recorded permission to reschedule the appointment for another time on the same day.²⁰⁴
- 7.161 We have used the same considerations in designing our current proposals. We propose that providers pay compensation to residential and business customers for missed appointments unless either of the above exceptions apply. This approach still provides flexibility for providers to agree additional protections and service level agreements including the amounts payable to meet the specific needs of their customers.

Specific rule on the timeframe for paying compensation to residential customers

- 7.162 In addition, we propose to specify the timeframe in which compensation must be paid to residential customers in certain circumstances. We propose that:
- a) where there is a delay to the switch, compensation must be paid no later than 30 calendar days after the completion of the switch or the customer or the gaining provider terminate the new contract; and
 - b) where a service and installation appointment is missed, compensation must be paid no later than 30 calendar days after the date of the missed appointment.
- 7.163 The process for obtaining compensation should be clear and not excessively time consuming for customers. In our Automatic Compensation Statement, we concluded that compensation should be paid to residential customers within 30 calendar days if they experience a delay or a missed appointment.²⁰⁵ We concluded that it was appropriate for providers to apply a credit of the amount due within 30 calendar days, whether or not a bill was issued at that point and did not expect providers to make changes to the way they bill their customers. Given our expectation that providers would apply a credit in the vast majority of cases, we judged that the implementation costs would be limited. We considered a window of 30 calendar days to strike the right balance between a provider processing a claim for missed appointments or delays and delivering timely payment to residential customers.
- 7.164 We applied the same consideration in designing our current proposals. Where a provider misses a service and installation appointment, we propose it should pay any compensation due to residential customers within 30 calendar days from the date of the missed appointment. Where there is a delay to the switch, we propose a provider should pay any

²⁰⁴ Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#), paragraphs 5.82-5.86, pages 46-47.

²⁰⁵ Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#), paragraph 5.132, pages 56.

compensation due within 30 calendar days from the date on which the switch is successfully completed or the customer or the provider cancels the contract.

Guidance for residential customers

7.165 We also propose to give guidance to providers on how we expect them to comply with compensation obligations in relation to residential customers drawing on our Automatic Compensation and enforcement work. The guidance covers:

- a) delays;
- b) compensation levels;
- c) the method of payment; and,
- d) responsibility for payment.

a) Delays

7.166 Our Automatic Compensation Statement showed that where residential customers experience unexpected delays, they can suffer harm including:

- frustration that the installation is taking longer than planned;
- wasted time trying to contact a provider to set a new installation date; and,
- the inability to access cheaper services, or services more suited to their requirements that they are trying to switch to.

7.167 The proposed guidance sets out how we expect providers to compensate residential customers when the provider fails to comply with the obligation to complete a switch on the switch date.

7.168 We expect providers to pay customers compensation for each full calendar day after the date of a switch when the switch does not occur on that day. They should continue to receive compensation for every day until the switch occurs or is cancelled by the customer or the provider.

7.169 For example, if a provider agreed that the switch date was Monday, compensation should be paid if that service has not started by 11:59pm on Monday. If the switch then occurred and the services were activated on the Friday the customer would receive compensation for three days' delay.

7.170 We would also expect providers to pay compensation if a customer informs them that a router has not arrived by the date the service is due to start unless the provider can demonstrate proof of postage.

b) Compensation levels

7.171 Our proposed guidance sets out some of the factors that providers should consider in determining minimum levels of compensation. It includes the principle that compensation

should reflect the length of any delay,²⁰⁶ service disruption and inconvenience caused to the residential customer.²⁰⁷ The guidance also includes, as an example of good practice, the minimum compensation levels that are set out in the Scheme.

- 7.172 In line with Ofcom enforcement decisions, we also set out that providers should consider any direct payments and costs incurred by the customer as a result of the provider failing to comply with their switching or porting responsibilities. For example, compensation should take into account any higher bills a residential customer faced if they were unable to leave their previous provider. If a provider switched a customer without their express consent, the compensation paid by the provider should include any ETC that the customer paid to the losing provider.²⁰⁸

c) Method of payment

- 7.173 In line with our Automatic Compensation Statement, we set out in the proposed guidance our expectation that compensation provided to residential customers should be financial, unless the customer gives their consent for another form of compensation. In such an instance, any form of non-financial compensation should be worth the same or more than the financial offering.

d) Responsibility for making a payment

- 7.174 The provider responsible for a service failure should generally be responsible for paying compensation. It is the gaining or losing provider that should pay compensation to the customer even if the 'fault' lies with the gaining or losing provider's network operator or another third-party provider that they are using.
- 7.175 Our proposed guidance sets out that providers should determine responsibility in accordance with the obligations set out in GC C7 and any relevant industry agreed processes. It should not be left to customers to try to work out whether it is the losing provider or the gaining provider that is responsible.
- 7.176 For example, if the customer experiences a loss of service of more than one working day during the switch, the gaining and losing provider should work out whether this was caused by a failure of the gaining or losing provider to comply with their obligations and for the relevant provider to make the compensation payment to the customer. If something goes wrong at the point of switch and the fault lies with the network operator that both the losing and the gaining provider are using, we would expect the gaining provider to pay the compensation to the customer and resolve any issues with the network operator and losing provider 'behind the scenes'. The customer should not have to go back and forth

²⁰⁶ EECC, Recital 282.

²⁰⁷ Ofcom, May 2011. [Changes to the Universal Service Conditions: Implementing the revised EU framework](#), paragraph 10.112, page 78.

²⁰⁸ Ofcom, September 2013. [Investigation into Supatel Limited](#), paragraph 7.119, page 67;

Ofcom, October 2016. [Investigation into True Telecom](#), paragraph 6.3, p. 55; Ofcom, January 2018. [Confirmation Decision served on GW Telecom Limited trading as Gateway Telecom](#), paragraphs 6.39-6.44, page 42.

between the losing and gaining provider to work out who should provide them compensation.

Impact

- 7.177 The new general and specific compensation rules should help ensure that customers get compensation in a timely and efficient manner if something goes wrong with the switch and providers have failed to comply with their obligations.
- 7.178 Providers already have to provide compensation when things go wrong with the porting process or mobile switching so they should have systems and processes in place to provide compensation to customers and handle any associated customer queries. They may need to update these systems and processes to comply with the new compensation obligations. We expect the required changes will be more limited for providers that are signatories to the Automatic Compensation Scheme.
- 7.179 Our proposals are set out in draft GC C7.43-45. This draft amends and replaces the existing requirement in GC B3.11 and C7.43 for providers to compensate customers for porting failures and mobile switching failures.²⁰⁹ Our draft guidance is set out in [Annex 8](#).

Notice periods

EECC requirement

- 7.180 Article 106(6) requires end-users' contracts with the losing provider to be 'terminated automatically upon conclusion of the switching process'. Article 106(6) also requires Ofcom to 'take appropriate measures ensuring that end-users are adequately...protected throughout the switching and porting process.' The recitals note that the possibility of switching between providers is key for effective competition.²¹⁰ They also emphasise that it is essential to ensure that customers are able to make informed choices and switch providers without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures and charges.²¹¹

How we propose to implement

- 7.181 Our proposed new general switching rules will require the gaining provider to lead and coordinate the switch on behalf of a customer and losing providers to automatically terminate a customer's contract on the day the switch is completed as set out in paragraphs 7.47-7.53 and 7.65-7.68. As a consequence, and in order to ensure customers are adequately protected and not unnecessarily deterred from switching or hindered by

²⁰⁹ The existing GCs specify that customers porting a fixed number, mobile customers porting up to 24 numbers and mobile customers switching provider must be compensated for delays to the port or switch of greater than one working day. Changes that were made to the GCs as part of the Auto-Switch reforms inadvertently removed mobile customers porting more than 24 numbers from the scope of the compensation requirements. Our current proposals address this. There is currently no regulatory requirement to provide compensation for delays to switching fixed provider without a number port. Our current proposals extend compensation protections to these customers.

²¹⁰ EECC, Recital 277

²¹¹ EECC, Recital 273. See also Article 105(1).

contractual conditions and charges, residential customers need protections relating to notice period charges. In particular, we think residential customers should not:

- a) have to pay for a service they no longer receive after the switch date or ‘double pay’ for a service from the losing provider and the gaining provider; or
- b) face unnecessary difficulties trying to coordinate a switch to avoid such charges.

7.182 Under the current Auto-Switch rules, where a customer is switching mobile communications services involving up to 24 numbers, we prohibit losing providers from charging for the provision of any services or for any notice period beyond the date of the switch and the automatic termination of the contract. We propose to extend this prohibition to residential customers switching fixed services. The new consolidated prohibition will apply to all IASs and NBICs. It will also apply, as it currently does, to any business customer when switching mobile communications services involving up to 24 numbers.²¹²

7.183 For the avoidance of doubt, we would expect providers to calculate any final service charges on a pro-rata ‘time period’ basis. This would mean customers would only be charged for the period between day one of their monthly billing cycle and the day of the switch on a pro-rata basis. Providers should take this approach rather than, for example, basing the charges on how much the customer has used of their inclusive monthly allowance at the point of the switch. Providers are still able to require the payment of ETCs.

7.184 Our proposed extension of the prohibition on notice period charges will mean residential fixed customers will also not have to pay, or worry about having to pay, notice period charges or worry about trying to anticipate, time and coordinate the start and end of their contracts. We consider these issues for fixed residential customers in turn below.

Paying for a service no longer received and double paying

7.185 Our proposed general switching rules will mean a customer’s contract will automatically be terminated on completion of the switch. This means that after the switch date a customer will not be able to use the service from the losing provider. However, it is possible providers will require customers to give notice before a contract is terminated and require payment for the full duration of any notice period. This could mean a customer may have to ‘double pay’ both the losing provider for their old services for the duration of the notice period that would have remained after a switch, and the gaining provider for their new services. This would also mean effectively paying the losing provider for a service they can no longer use.

²¹² Ofcom, December 2017. [Consumer Switching: Decision on reforming the switching of mobile communications services](#), paragraphs 4.111 – 4.122.

- 7.186 Our 2018 consumer research showed that 15% of customers that switched their fixed services experienced a contract overlap and therefore were likely to be double paying for their services.²¹³ Of those the majority of customers did not want a contract overlap.²¹⁴
- 7.187 The most likely reasons given by customers for the contract overlap reflect a desire to ensure continuity of service, to switch on a particular date, difficulties in coordinating start and stop dates, cancelling the service, availability of engineer appointments and not to miss out on a deal. Lack of awareness of notice period requirements was also a factor for around one in ten.²¹⁵
- 7.188 Our 2018 consumer research also showed that double paying can deter some customers from switching. Over a third (35%) of fixed customers that considered but decided not to switch said the worry that they might have to pay two providers at the same time was a factor in their decision not to switch.²¹⁶
- 7.189 We think that in order to be adequately protected as part of the switching process residential customers should not have to double pay for services. Taken together our proposals on contract termination and on prohibition of notice period charges beyond the switch date for residential customers would provide this protection. They would ensure a residential customer would not have to pay for a service they cannot use as part of the switching process. It would also help address double paying concerns that can deter certain customers from switching.

Difficulty in coordinating a switch

- 7.190 Without our proposed ban on notice period charges a customer may seek to avoid or minimise double paying by coordinating their switching date. However, residential customers are likely to find this difficult.
- 7.191 A customer would need to have a good understanding of their current provider's notice period policy or normal practice and the interplay with the switching and porting process to plan and coordinate carefully the timing of the switch. It would also take time and effort to discuss and actively manage the co-ordination of these components with providers.

²¹³ Ofcom, [2018 Switching Experience Tracker](#), Q36, table 89, page 602. In this research, fixed services includes triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV.

²¹⁴ Ofcom, [2018 Switching Experience Tracker](#), 10% of fixed switchers (i.e. triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV) had a contract overlap and did not want the overlap. Bespoke analysis suggests the findings are similar for dual play switchers (landline and broadband) with 14% (44 respondents) experiencing a contract overlap. Base size is too low to report on the length of the overlap or whether they wanted this.

²¹⁵ Ofcom, [2018 Switching Experience Tracker](#), fixed: Q41B, table 98, pages 642-649

²¹⁶ Ofcom, [2018 Switching Experience Tracker](#), Q44A/B/C, tables 116-8, pages 815, 842 and 869. One in ten (12%) fixed customers who considered but chose not to switch i.e. triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV, said that concern around paying two providers at the same time was a major factor (12%) in their decision, a further 22% said this was a minor factor - 35% combined due to rounding. Bespoke analysis suggests a broadly comparable combined figure among dual play considerers (landline and broadband – 247 respondents) (30%).

They may also need to defer switching to a new preferred service in order to minimise the impact of double paying.²¹⁷

7.192 Our 2018 switching experience tracker showed that one in five (20%) residential customers that switched their fixed services said they experienced difficulty in arranging not to pay for an old and a new service at the same time.²¹⁸ It also found that more than two in five (43%) residential customers that considered but subsequently decided not to switch their fixed services said concern about arranging for services to start and stop at the same time was a factor in their decision.²¹⁹

7.193 Our prohibition on notice period charges for residential customers would mean these customers would not have to incur the costs required to anticipate, time and coordinate their switch to try to avoid double paying. Neither would they have to accept the cost of failing to coordinate the switch correctly or worry about attempting to do so. This may increase their confidence in switching and make them more willing to engage in the market.

Impacts

7.194 We consider that a prohibition on notice period charges beyond the switch date for residential customers switching their fixed services will help ensure they can switch without double paying and deliver a smoother switching experience. A smooth switching experience is important to fostering consumer confidence and trust which, in turn, will help facilitate effective competition. We anticipate the costs to fixed providers may not be material/significant because:

- a) many fixed providers already reduce or align the notice period with the switch date for certain types of fixed switches. Fixed providers tend to include in their terms and conditions for residential customers a notice period of 30 or 31 days for fixed services. Where residential customers switch through the Notification of Transfer process, most of the largest providers (BT, Sky and Talk Talk) reduce this notice period and the associated charges or align it with the 10-working day transfer period built into the process so customers do not pay notice period charges beyond the switch date. Some of the smaller providers also reduce the notice period they apply when residential customers switch using the Notification of Transfer process.²²⁰ This reduces the number of required systems or process changes; and
- b) the implementation costs for those fixed providers that don't already align are likely to be small. These providers will incur systems or process related costs, or both, e.g. to

²¹⁷ Ofcom, December 2017, [Consumer Switching: Decision on reforming the switching of mobile communications services](#), paragraphs 3.7-3.8.

²¹⁸ Bespoke analysis. Ofcom, [2018 Switching Experience Tracker](#), Q19A/B/C, tables 42-44, pages 198, 214 and 230. Fixed switchers who experienced difficulty in arranging not to pay for their old and new services at the same time— major 6% and minor 14%.

²¹⁹ Bespoke analysis. Ofcom, [2018 Switching Experience Tracker](#), Q44A/B/C, tables 116-118, pages 817, 844 and 871. Fixed customers who were concerned about arranging for the old and new services to start and stop at the same time and decided not to switch - major 14% or minor 29%.

²²⁰ Based on desk research of providers residential customer terms and conditions carried out November 2019.

identify switches from other types of contract termination and to recalculate any remaining notice period charge. Such changes could be incorporated into broader systems and process changes that providers will need to make to comply with the new switching requirements we have proposed.

7.195 Our proposed amendments are set out in revised GC C7.8(b).

Changes to the General Conditions related to porting, Notification of Transfer and Auto-Switch

7.196 In this section, we summarise the changes that we are making to the current GCs related to porting and the Notification of Transfer and Auto-Switch processes.

7.197 We consider that these processes are consistent with the requirements of Article 106. Therefore, we do not propose to make extensive changes to these obligations at this stage. We propose to maintain these obligations in relation to the customers and service to which they currently apply so those customers continue to benefit from these protections. However, we are extending certain elements to comply with the new right under Article 106 for customers to be able to port their number for at least a month after they switch (or terminate their contract) and, if something goes wrong with the port, for the losing provider to reactivate the number and related services until the port is successful. We summarise below other changes we are making.

7.198 We will consider whether to retain or make any changes to the Notification of Transfer process in light of the OTA work with industry on processes for residential customers of fixed services (see paragraphs 7.218-7.224).

Changes to GC B3 on porting

7.199 We have explained that our proposed approach in relation to the scope of the EECC requirements is to set out a consolidated set of general switching and porting rules that will apply to both IASs and NBICSs in GC C7. We noted that in order to do this the GCs would refer to 'Communications Provider Migrations' which encompass both the transfer of services and their activation and the porting of numbers and their activation where relevant.

7.200 To give effect to this, we propose moving a number of requirements in GC B3 concerning porting to GC C7 or incorporating into broader requirements in GC C7. This means GC C7 will now contain providers' obligations to customers in relation to all switching and porting. GC B3 will continue to contain providers' existing obligations towards other providers in relation to facilitating porting.

7.201 In particular, we propose that:

- a) the requirement for providers to provide number porting on reasonable terms and conditions when requested by a customer contained in the current GC B3.3 is moved to GC C7.6(a);

- b) the requirements concerning the timeframe in which porting must be provided contained in the current GCs B3.3, B3.4 and B3.9 be incorporated into the obligations on the date the switch in GC C7.3;
- c) the requirement that direct charges for porting should not disincentivise customers from switching contained in GC B3.6 (e) will be replaced with a prohibition on any direct charges for porting in GC C7.6(c).
- d) the requirements on compensation in GCs B3.10 and B3.11 will be replaced by the overall compensation requirements in GC C7.43-C7.45.

7.202 In addition, the requirement in GC B3.5 on the recipient provider to request porting from the donor providers as soon as reasonably practicable after receiving the request to port would be withdrawn entirely. We consider that our proposed overall obligations on the date of the switch are sufficient. This would require providers to complete a switch (which would include porting where relevant) on a date that is as soon as technically possible (unless a customer requested another date). In order to comply with this requirement, providers would need to complete all subsidiary processes as soon as technically possible, including requesting the port from the donor provider.

7.203 We have also addressed an inadvertent narrowing of the scope of B3 as a result of changes we made to the definition of ‘subscriber’ as part of our last GC Review.²²¹ These changes meant that the requirements in B3 no longer applied to all relevant providers in the supply chain e.g. wholesale resellers. We have brought these back into scope as they are important for ensuring that number portability works effectively.

Notification of Transfer

7.204 We propose to largely retain the obligations in relation to the Notification of Transfer process for the time being. However, there will be certain changes to the existing GCs in order to consolidate these obligations with our new proposals (in this and other sections of this document).

7.205 We propose that the obligations regarding mis-selling in GCs C7.3 (b) and (c) and those regarding information at the point of sale in GC C7.4 be incorporated into providers’ obligations on the provision of contract information in GC C1.²²²

7.206 As noted in paragraph 7.141, we propose to make a change to the duration for which providers are required to retain sales records in relation to small business customers from the current six months to 12 months. This is to align this requirement with new records retention requirements for residential customers. We discussed our reasons for this change in paragraph 7.145.

²²¹ We changed the definition of Subscriber from ‘any person’ to ‘any End-User who is party to a contract with a provider of a Public Electronic Communications Services for the supply of such services’. Ofcom, [Consultation and statement on the Review of the General Conditions](#).

²²² See section 4 (paragraph 4.17).

- 7.207 We propose to make some changes to the drafting and layout of the obligations on the losing provider to send information contained in the current GCs C7.10 and C7.11. We propose to refer to items of information in the general switching rules that are required as part of the Notification of Transfer process rather than repeating similar requirements. We think it will help make the GCs easier to understand if the information requirements on the losing provider are listed in a single GC. We propose to retain the elements of current GCs C7.10 and C7.11, as well as GC C7.12, that require this information to be provided in the form of a letter (unless a customer agrees otherwise) in accordance with the industry agreed process.
- 7.208 In aligning these GCs, we propose to make a number of changes to the drafting of the information requirements. In particular we have:
- a) Aligned the drafting of GC C7.10(e) with the new requirement to inform a customer of the impact, whether direct or indirect, that the switch will have on any services provided. This clarifies that the provider should not just list the services impacted but also what those impacts are. As discussed in paragraphs 7.113-7.114 this information is key to enabling customers to make a fully informed choice. As noted in paragraphs 7.115-7.117 this would include providing information on the impact on any additional support services for disabled customers.
 - b) Aligned the drafting of GC C7.10(g) with the requirement to inform the customer of the date of the switch where this is known to the provider. We consider this can still be a reasonable estimate of the date of the switch.
 - c) Added a requirement for the losing provider to give the location of further information on the switching process. This would include information on how customers may continue to use any additional support services for disabled customers. As discussed in paragraphs 7.117 and 7.126 we considered the provision of this general information and an indication of its location necessary to ensure customers have transparent information which should increase their confidence in switching in line with the aims of Article 106. We think that adding the location of this new process information to the existing notification letters would involve only a small cost to providers.
 - d) Added a requirement for the losing provider to inform the customer of the right to compensation. This is to align the information given in the notification letters with the proposed general rule that providers should inform customers about the new rights to compensation as required by Article 106(9). Similar to above, we consider the addition of these pieces of information would involve only a small cost to providers.
 - e) Added a requirement for the losing provider to inform the customer of the process and cost for returning any equipment, or the cost of keeping it. In paragraph 7.125 we noted that our research showed customers experienced difficulties understanding the relevant steps to switch provider. We said we therefore consider this information necessary to ensure customers have transparent information which should increase their confidence in switching in line with the aims of Article 106. This is information

that will be readily available to the provider and we therefore consider that providers would only incur a small cost to add this information to the notification letters.

- f) We have added a requirement that losing providers must inform customers of any credit balances, the right to a refund of that credit balance and the process for claiming a refund. This is to align the information given as part of the Notification of Transfer process with the proposal that providers should inform customers about the right, provided for by Article 106(6), to a refund of any credit balance (as discussed in paragraph 7.125).
- 7.209 We propose to remove entirely GCs C7.17, C7.18 and C7.19. These GCs required providers to ensure any of their agents comply with the requirements of the GC C7, that any staff or agents are trained to comply with it and that they monitor their own and their agent's compliance. We consider that these GCs are not necessary as these requirements are all implicit in providers' obligations to comply with the GCs.
- 7.210 We also propose to remove entirely GC C7.20. This requires providers to publish, or link to, a copy of GC C7 or provide a copy to customers on request. We consider that our new requirement to provide easy to understand guidance on the switching process and to inform residential customers of the location of that information would be more useful to customers.

Auto-Switch

- 7.211 We propose to largely retain the obligations in relation to the Auto-Switch process. However, there will be a number of changes to the existing GCs in order to consolidate these obligations with our new proposals.
- 7.212 We propose the items of information that losing providers are required to give, set out in GC C7.22 and the definition of 'Switching Information,' be consolidated with the similar information requirements in the general switching rules in the same way as those for the Notification of Transfer process.
- 7.213 In consolidating these information requirements, the draft GCs make a number of changes to the drafting of the information requirements. In particular:
- a) We have aligned the drafting under part (e) of the definition of 'Switching Information' with the new requirement to inform a customer of the impact, whether direct or indirect, that the switch will have on any services provided. This clarifies that the provider should not just list the services impacted but also what those impacts are. As discussed in paragraphs 7.118-7.123 this information is key to enabling customers to make a fully informed choice. As noted in paragraphs 7.115-7.117 this would include providing information on the impact on any additional support services for disabled customers.
 - b) We have also clarified that where 'Switching Information' is provided, the financial information should be a single aggregated total charge. As noted in paragraph 7.120, this reflects the position we set out in our Auto-Switch Statement.

- c) Added a requirement for the losing provider to give the location of further information on the switching process. This would include information on how customers may continue to use any additional support services for disabled customers. As discussed in paragraphs 7.117 and 7.126 we considered the provision of this general information and an indication of its location necessary to ensure customers have transparent information which should increase their confidence in switching in line with the aims of Article 106. We think that adding the location of this new process information to the existing communications would involve only a small cost to providers.
 - d) Added a requirement for the losing provider to inform the customer of the right to compensation. This is to align the information given as part of the Auto-Switch process with the proposal that providers should inform customers about the new rights to compensation as required by Article 106(9). Similar to above, we consider the addition of these pieces of information would involve only a small cost to providers.
 - e) We have added a requirement that, in addition to informing a customer of any credit balances, losing providers must also inform customers of the right to a refund of that credit balance and the process for claiming a refund. This is to align the information given as part of the Auto-Switch process with the proposal that providers should inform customers about the right, provided for by Article 106(6), to a refund of any credit balance (as discussed in paragraph 7.125).
- 7.214 We propose to incorporate a number of GCs which previously applied to Auto-Switch into our new general switching rules. Specifically, and for clarity we propose that:
- a) The obligation set out in GC C7.36 to ensure customers are not charged for services after the switching process has been completed be incorporated into the prohibition on notice period charges in GC C7.8.
 - b) The obligation set out in GCs C7.38 and C7.39 to complete the switching process for mobile services within one working day be incorporated into the general obligations on the date of the switch in GC C7.3.
 - c) The obligations to provide guidance on the process for porting and the non-porting switching be incorporated into our new requirement to provide easy to understand guidance on the switching process and to inform residential customers of the location of that information GC C7.11 to C7.13.
 - d) The obligation to provide compensation set out in GC C7.43 and C7.44 be incorporated into the general obligations to provide compensation in revised GC C7.43 to GC 7.45.
- 7.215 We have also updated the GCs to refer to the Service Termination Authorisation Code or STAC rather than Non-Porting Authorisation Code or N-PAC. This reflects the terminology that is used by providers as part of their communications to customers about Auto-Switch.

Impacts

- 7.216 The additional changes to the GCs outlined in this sub-section are largely clarifications and changes to the formatting of the GCs. They are intended to help make the requirements

clearer and the GCs easier to follow by bringing together related requirements. In the small number of cases where we propose changes that could be more substantive, we have discussed the impacts of these in the relevant general and specific switching rules sub-sections above.

7.217 Our proposed amendments are set out in revised GCs C7.6, C7.18-25, and C7.26-42.

New switching and porting processes for fixed residential customers

7.218 Providers will need to take steps to ensure they have appropriate systems and processes in place to comply with the general and specific switching rules outlined in this section.

7.219 Recognising the lead-time involved in developing and implementing new systems and processes, ahead of this consultation, we asked the OTA to establish and coordinate an industry working group to develop detailed process specifications in line with the requirements of Article 106.

7.220 Although the scope of Article 106 addresses both mobile and fixed switches and both residential and business customers we asked the OTA to focus on residential customers switching fixed services. This is where there are the most significant gaps in switching processes that would require extensive industry work. For example, there is currently no existing regulated process that enables customers to switch full-fibre broadband services or between providers that deliver fixed services using different physical networks.

7.221 It is open to industry to consider developing processes in relation to businesses that align with the processes for residential customers.

7.222 We asked the OTA to submit industry's initial proposals on what a new gaining provider led process for switching residential customers fixed services might look like in November 2019. The OTA has advised that industry will be putting forward two proposals and expects to submit these in December 2019. We plan to publish the industry proposals on our website to give stakeholders an opportunity to comment on them.

7.223 Alongside this consultation and taking account of any stakeholder responses, we will be carefully considering the industry proposals with a view to deciding whether we think:

- a) they are in line with the EECC and proposed GC requirements or whether changes may be needed; and
- b) it would be appropriate to mandate more detailed process requirements for residential customers for fixed services based on the industry proposals or an alternative process. If we decided this was appropriate, we would expect to consult on any associated changes to the GCs and guidance in Q1 2020-21. As part of this, we would also consider whether it is appropriate to continue to retain or amend the rules relating to the Notification of Transfer process.

Implementation

7.224 We propose that the requirements will apply to any switch or port a customer requests from 21 December 2020. We expect to issue our decision on the GC changes we are currently consulting on in Q1 2020-21.

Legal tests

7.225 We consider that the changes we are proposing to make to GCs B3 and C7 meet the test for setting or modifying conditions set out in section 47(2) of the Act. We consider that our proposals to introduce general switching rules and general rules on information, consent and compensation are:

- a) **objectively justifiable** as they are required to implement the relevant requirements of the EECC in order to achieve the consumer benefits pursued by it;
- b) **not unduly discriminatory** since the proposed changes to the conditions would ensure that the same regulatory measures apply in respect of providers of relevant electronic communications services, as required by the EECC;
- c) **proportionate** as our provisional view is that to the extent that our proposed changes would introduce any additional regulatory burden on industry, they are limited to what is necessary to ensure compliance with the requirements in the EECC; and
- d) **transparent** as the reasons for the changes that we are proposing to make to the conditions are explained above and the effects of the proposed changes would be clear to communication providers on the face of the revised conditions.

7.226 For the reasons set out in this section, we also consider that our proposals to introduce certain more specific requirements in relation to information, consent, compensation and notice period charges in GC C7 are:

- a) **objectively justifiable** as they are required to give full effect to the provisions and objectives of the EECC, specifically that customers are adequately informed and compensated, that their services are not switched without their consent and that they are adequately protected and do not face deterrents when switching providers;
- b) **not unduly discriminatory** in that our proposed changes would ensure that the same regulatory measures apply in respect of providers of relevant electronic communications services;
- c) **proportionate** as our provisional view is that to the extent that our proposed changes would introduce additional regulatory burden on industry, they go no further than is necessary to give full effect and ensure compliance with the requirements in the EECC; and
- d) **transparent** as the reasons for the changes that we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communication providers on the face of the revised conditions.

7.227 Lastly, we have carefully considered the case for maintaining some of our existing requirements, specifically the obligations on providers relating to the Notification of Transfer and Auto-Switch processes. As set out above, we consider that these rules comply with the EECC and remain objectively necessary and proportionate to what they are intended to achieve. We will consider the Notification of Transfer process requirements again in light of the OTA work with industry to develop new detailed processes for switching residential customers fixed services and responses to this consultation.

Consultation questions

7.228 We welcome stakeholder comments on the following questions in relation to the proposals set out in this section:

Question 7: Do you support our proposals to introduce (a) new general switching requirements for all types of switches for residential and business customers and (b) specific switching requirements on information, consent, compensation and notice period charges for residential customers?

Question 8: Do you support our proposed guidance in [Annex 8](#) on compensation for residential customers?

Please provide evidence to support your response.

8. Disincentives to switch: mobile device locking

- 8.1 As set out in section 6, to ensure that customers are able to change providers without being hindered by legal, technical or practical obstacles, the EECC requires that the conditions and procedures for contract termination should not act as a disincentive to switching provider.²²³
- 8.2 The EECC also makes it explicit that this requirement applies to all elements of bundles of services, and bundles of services and terminal equipment, that include at least one internet access service (IAS) or number-based interpersonal communications service (NBICS).
- 8.3 Our work to implement the EECC has included reviewing our existing rules in light of the purposes of the EECC and particularly the emphasis it places on being able to switch bundles easily, including bundles with terminal equipment (such as mobile devices). In this context, we have considered whether our current general conditions are sufficient to protect customers from any conditions or practices that may act as a disincentive to switch and whether we should address those practices through specific rules.
- 8.4 We have previously set out concerns about device locking as part of our customer engagement work and consider it is appropriate to examine this issue further, including to ensure current practices align with the purposes of the EECC. Specifically, we consider whether the practice of device locking can act as a disincentive to switch and undermine the effectiveness of measures that we have already put in place to make switching easier for customers, and if so, whether we should take any action.
- 8.5 Our provisional conclusion is that, with effect from 12 months following our final statement, providers would be prohibited from selling locked devices to residential customers.
- 8.6 In this section we set out:
- a) the importance the EECC places on ensuring customers can switch provider easily;
 - b) the practice of device locking;
 - c) our concerns with device locking;
 - d) reasons given by providers for locking devices;
 - e) our proposed options for addressing the harms caused by device locking; and
 - f) our assessment of the impact of those options and provisional conclusions.

²²³ This reflects the obligation set out in proposed GC C1.8. This requirement is currently set out in GC C1.3.

The importance the EECC places on ensuring customers can switch provider easily

- 8.7 The EECC considers that the potential for customers to switch between providers is important for enabling effective competition. It is therefore vital that customers are able to change provider when it is in their best interest to do so, without being hindered by unnecessary obstacles.²²⁴
- 8.8 The EECC also emphasises that bundling may make switching more difficult or costly and raise risks of a contractual ‘lock-in’. In doing so, the EECC refers to the potential of contractual commitments regarding the acquisition of terminal equipment to effectively hamper customers in their right to switch to competitive offers.²²⁵
- 8.9 Furthermore, the EECC contains specific provisions to help ensure that switching processes provide a seamless switching experience for customers, including for example that the new provider leads the switch, that there should be continuity of service, unless this is technically not feasible, and that the switch takes place in the shortest possible time. We are consulting on a number of measures to improve the switching process for customers as part of this consultation. Our proposals on switching are set out in section 9.

The practice of mobile device locking

- 8.10 In this section we set out background information on the practice of device locking. This includes which providers sell locked devices, their unlocking policies and the steps involved in unlocking mobile devices.

Currently three of the larger providers sell locked mobile devices, while others sell unlocked devices

- 8.11 At present, EE, Tesco Mobile and Vodafone choose to sell “locked” devices, which means that their customers cannot use those devices to connect to another provider’s network.²²⁶ BT Mobile also started selling locked devices in February 2018, which brought its approach in line with EE’s; prior to that BT Mobile sold unlocked devices.
- 8.12 However, the extent to which these providers sell locked devices varies. All the devices that BT Mobile/EE sell are locked as standard practice.²²⁷ All the devices that Vodafone sells are locked, except for Google, IMO and iPhone 6 and 6S Plus devices. Tesco Mobile though told us that it only locks some of the devices it sells - generally cheaper devices valued at under [£], which tend to be sold with pay-as-you-go (PAYG) SIM cards.

²²⁴ EECC, Recitals 273 and 277.

²²⁵ EECC, Recital 283.

²²⁶ For example, if you were to buy a handset locked to a provider on network A, you would not be able to use it with a SIM from a provider on network B until you have unlocked it.

²²⁷ EE told us that generally speaking, handsets sold through direct channels (i.e. through EE stores or website as opposed to third party shops) are locked, however handsets may occasionally be sold unlocked depending on where the stock came from.

- 8.13 BT Mobile/EE, Vodafone and Tesco Mobile said that they lock devices to protect the subsidy they have invested in the devices. Tesco Mobile argued that device locking was particularly important for PAYG devices because the customer has not signed up to a contract. BT Mobile/EE and Vodafone also told us that device locking helps protect them from fraud. We discuss these arguments in more detail later on in this section.
- 8.14 However other large providers, in particular O2,²²⁸ Sky, Three and Virgin Mobile,²²⁹ choose to sell devices that are unlocked. Three of these providers used to sell locked devices, but then changed their approach: O2 started selling unlocked devices in April 2018, Virgin Mobile in 2015 and Three in 2014. Three said that it changed its approach in part to improve customer experience, in light of the frustration device locking can cause customers. We note that many smaller providers do not sell locked devices.²³⁰
- 8.15 Providers are not clear how many of their customers currently have locked devices. BT Mobile/EE²³¹ and Vodafone told us that this is not something that they can track, record or report on. Similarly, Tesco Mobile was only able to provide us with an estimate of the number of devices that are locked, assuming that devices valued less than [£] were sold locked. Overall, based on the estimates submitted by providers, we estimate that of the order of 20 million customers have locked devices.²³² This is broadly in line with evidence from our own research, which has found that four in ten mobile customers say they have a locked handset.²³³

Providers' unlocking policies vary

- 8.16 The providers that still sell locked devices have different policies for when customers can get their device unlocked, and whether a charge applies. These policies are summarised at Figure 8.1, and can vary depending on the length of time the customer has had the device, as well as whether a customer has a pay monthly contract or is a PAYG customer, and on the device taken.

²²⁸ As of April 2019, 99.75% of O2's handsets are sold unlocked. One Doro and two Alcatel handsets were still sold locked. O2 stated that they are working to ensure that these handsets can also be sold unlocked.

²²⁹ Virgin Mobile told us that some devices may be incorrectly locked by the manufacturer.

²³⁰ We note that in some exceptional circumstances smaller providers may sell locked handsets, for example [iD Mobile](#) locks iPhones made before 2018.

²³¹ EE said there is no business need for them to track how many devices are unlocked, and there are instances where devices may have been supplied unlocked, such as when the stock was obtained outside of their usual suppliers in order to meet an increase in demand.

²³² BT, EE, O2, Tesco, Virgin Mobile and Vodafone response to formal information request dated 12 April 2019. O2 and Vodafone do not track the number of handsets that are locked to their networks and therefore provided estimates. Virgin Mobile assumed that devices without inventory information (i.e. insurance replacements) were unlocked. BT Mobile estimate does not exclude customers that joined BT Mobile since February 2018 and had their handset unlocked before April 2019. EE have provided an estimate based on their customer base with the caveat that they do not know whether handsets sold through indirect channels are sold locked.

²³³ Ofcom, January 2018. [Kantar Omnibus Data](#), Question 14, Table 8, page 41.

Figure 8.1: Providers' unlocking policies

Provider	When can customers unlock their mobile device?	Unlocking charges?
BT Mobile	<ul style="list-style-type: none"> Pay monthly customers can unlock their device from 6 months after purchase, but not before. PAYG customers: N/A. In addition, Apple devices are automatically unlocked at 18 months; Google devices are automatically unlocked after 721 days. 	<p>There is an £8.99 charge for unlocking devices between 6 and 24 months after purchase (except where they are unlocked automatically).</p> <p>Thereafter it is free for customers to unlock their device.</p>
EE	<ul style="list-style-type: none"> Pay monthly customers can unlock their device from 6 months after purchase, but not before. PAYG customers can unlock their device at anytime. In addition, Apple devices are automatically unlocked at 18 months; Google devices are automatically unlocked after 721 days. 	<p>Pay monthly customers must pay a charge of £8.99 to unlock their device from 6 months after they purchase it until the end of the commitment period. Thereafter it is free.</p> <p>PAYG customers can unlock their devices free of charge from the date of purchase.</p>
Tesco	<ul style="list-style-type: none"> At any time on request. 	<p>PAYG customers must pay a £10 charge to unlock within first 12 months.</p> <p>Free otherwise.</p>
Vodafone	<ul style="list-style-type: none"> Pay monthly customers can unlock devices from 3 months after purchase. PAYG customer can unlock their device from 30 days after purchase. 	Free

Source: Provider response to formal information request

Some customers need to take steps to manually unlock their mobile device

8.17 The steps customers need to take to unlock a device vary depending on the make of the device. Providers can unlock Apple and Google devices remotely, without the customer needing to take any further action. Customers with devices from other manufacturers however, need to obtain an unlocking code from their provider and enter it manually into their device to unlock it. This process can involve the following steps (which are summarised in Figure 8.2):

- a) Customers need to put in a request to their provider to unlock their device. To do so they may need to find out the IMEI (International Mobile Equipment Identity) number for their device and give this to their provider (so that their provider can identify which device the customer wants to unlock).²³⁴ Customers can obtain their IMEI number by entering *#06# into their device, although many may be unaware of how to do this prior to contacting their provider.

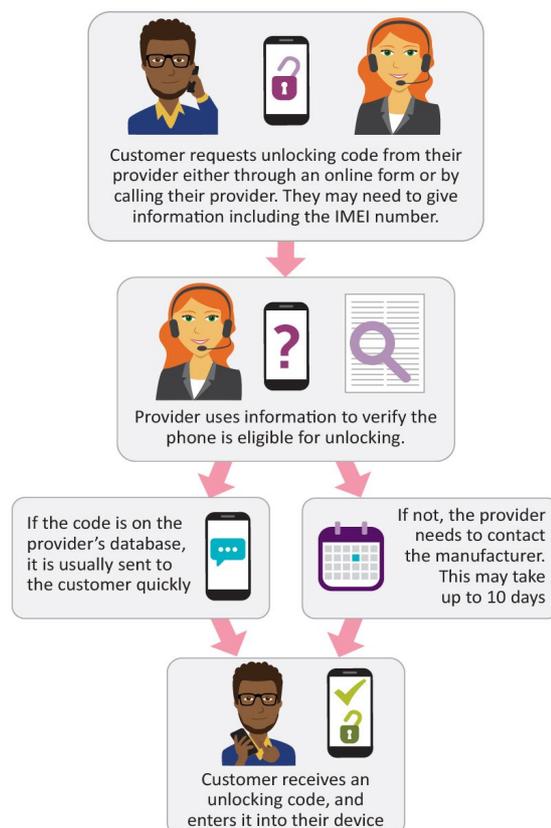
²³⁴ An IMEI is a 15-digit number that is used as a unique identifier for mobile devices.

- b) A validation process occurs, through which providers check that the device is eligible for unlocking. This may involve the provider checking: whether the device has been blacklisted,²³⁵ how long the customer has had the device, that the applicant is the account holder, and that their account is not in arrears.
- c) Once the validation process has been completed, the provider needs to identify the relevant unlocking code and send it to the customer. Where the provider has this in their database, they can do so quickly. However, if they do not hold the code they need to contact the manufacturer to request it, which can take longer.
- d) The customer then needs to enter the code into their device to unlock it. For some devices,²³⁶ the customer needs to insert a SIM from a different provider and restart the phone before they can enter their unlocking code. Once the code has been entered, the device should then be unlocked so that the customer can use it on any network.

²³⁵ In the UK, mobile providers have a shared database of mobile handsets that are registered lost or stolen. If the IMEI code given by the customer is on this list, then the provider will not unlock the device.

²³⁶ We understand that some models of handsets allow you to enter an unlocking code through the settings, without using a new SIM.

Figure 8.2: Steps to manually unlock a mobile device²³⁷



Our concerns with device locking

- 8.18 We have considered the practice of device locking and its impact on customers and switching. Our starting point is that, by its very nature, device locking introduces an additional hurdle that customers need to go through if they want to switch provider and keep using their device.
- 8.19 Second, when we look at how it operates in practice, we find that customers who go through the process of unlocking their device need to spend unnecessary time, can encounter difficulties, and may need to pay additional charges when trying to switch. These are exacerbated by the current variation in practices across providers, making it difficult for customers to understand what to do.
- 8.20 As a result, device locking can create switching costs for customers and disincentivise switching. It risks reducing the effectiveness of recent interventions to make mobile switching quicker and easier for customers, as well as the switching provisions in the EECC, which are intended to ensure a quick, seamless process led by the new provider, without loss of service (where technically possible).

²³⁷ This is for devices other than Apple or Google devices that cannot be unlocked remotely.

- 8.21 Our survey evidence supports the view that device locking creates a disincentive which can deter customers from switching. Customers who are put off switching can be directly harmed because they are less likely to take advantage of cheaper deals or deals that more closely meet their needs.
- 8.22 This can in turn reduce firms' incentives to compete on price and service quality and lead to a reduction in competitive intensity from which all customers would otherwise benefit. Device locking can therefore have a detrimental effect across the entire market.
- 8.23 While our focus is on the harm of device locking in the context of switching, we note that customers may wish to unlock their device in other circumstances, and they may face unnecessary difficulties when doing so.²³⁸
- 8.24 Below we explain in greater detail why device locking can lead to:
- a) customers spending unnecessary time, experiencing difficulties and incurring charges when unlocking devices;
 - b) some customers being deterred from switching, resulting in harm for these customers; and
 - c) an overall reduction in competition.
- 8.25 We then discuss the reasons providers have given for device locking.

Unnecessary time, difficulties and charges for customers who switch

- 8.26 Customers who need to unlock their device when they switch can suffer harm in a number of different ways. This is because device locking can:
- a) cause them to expend unnecessary time and effort unlocking their device;
 - b) create delays in the switching process because of the time taken to obtain the unlocking code;
 - c) lead to a loss of service; and
 - d) subject customers to unlocking charges.
- 8.27 We discuss these in turn below. We then go on to estimate the number of customers who experience a difficulty unlocking a device.

²³⁸ For example, they may wish to pass on the handset to a family member or friend on another network; they may wish to sell the handset; or, they may wish to use multiple SIMs from different networks from one device. Some customers may want to insert a different SIM into their device while they are in another country.

Unnecessary time and effort

8.28 Device locking creates a switching cost for those customers who need to unlock their phone to switch provider because it causes them to expend time and effort unlocking their device.

Some customers need to spend time and effort finding out whether their device is locked

8.29 While providers publish general information about device locking online, currently they do not typically tell customers at the point of sale that the device they are purchasing is locked.²³⁹ However, under the EECC, providers will need to tell customers if their device is locked at the point of sale.²⁴⁰

8.30 As well as the current lack of transparency at the point of sale, customers' awareness and understanding of whether their device is locked is likely to be reduced by the variation in practices across providers and over time. In particular:

- a) some providers sell locked devices while others do not and, for those that do, not all devices are necessarily locked;
- b) some providers have changed from selling locked to selling unlocked devices, and vice versa; and,
- c) some devices are unlocked automatically, while others are not. For example, Apple devices on BT Mobile/EE are automatically unlocked 18 months after purchase. BT Mobile/EE has told us that customers are not proactively informed when their device has been automatically unlocked.

8.31 Overall, this is likely to lead to lower levels of awareness of device locking. Our research suggests that around one in six customers (16%) do not know whether their device is locked or not.²⁴¹

8.32 The lack of transparency and the variations in practice mean that customers may need to take steps to find out whether their device is locked and this will affect both customers who do and customers who do not have locked devices.

8.33 In addition, customers may need to find out when and how they can unlock their device and whether there is a charge to do so. This may not be clear, given the differences in unlocking policies by provider and by contract type.

²³⁹ Vodafone does not tell customers buying a locked device that it is locked. Tesco Mobile and BT Mobile refer to device unlocking in their terms and conditions, however in our view this does not sufficiently draw this to the customer's attention. EE told us that their sales agents tell customers that they cannot unlock their device in the first 6 months when they purchase their device. Source: Provider responses to formal information request dated 21 August 2019.

²⁴⁰ Under Article 102(1), providers have to tell customers about any conditions, including fees, imposed on the use of terminal equipment supplied. This includes whether the device they are selling is locked, (see section 4).

²⁴¹ Ofcom, January 2018. [Kantar Omnibus Data](#), page 41. Question: Is your current mobile handset 'locked'? By locked we mean it can only be used on your current provider's mobile network. These networks are EE, O2, Vodafone and Three, you may have a contract with another company that uses one of these networks such as Virgin or Tesco Mobile. Base: All who have a mobile phone (951).

Customers have to spend time and effort taking steps to unlock their device

- 8.34 The majority of customers that unlock their device do so through their provider.²⁴² Over a six-month period, from July to December 2018, the providers that still sell locked mobile devices received over 590,000 requests from customers for their device to be unlocked.²⁴³ This suggests that, over a full year, around one million customers contact these providers to request device unlocking.
- 8.35 The amount of time these customers spend contacting their provider to request an unlocking code will vary. For example, it will vary depending on whether they do so using an online form or by phone:
- a) **Online form:** Customers of EE, Tesco Mobile and Vodafone can request their unlocking code online.²⁴⁴ Many choose to use this option,²⁴⁵ and evidence suggests it can take anywhere between one and four minutes for the customer to complete the online form, depending on the provider and the online method used.²⁴⁶
 - b) **Phone:** Customers of all providers can request the unlocking code by calling their provider. Data from the three providers that still lock mobile devices found that calls involving an unlocking request can take, on average, between seven and seventeen minutes.²⁴⁷
- 8.36 This suggests that the interactions with providers to request an unlocking code can be relatively short (especially if online). However, this will not represent all the time that customers spend on unlocking their devices nor does it reflect the effort involved. As set out above, as part of the process of obtaining the unlocking code, they may need to locate and provide their IMEI number. If there is a delay in receiving the code (see below) the customer may make further contact with their provider. Once the code arrives the customer will need to enter it into their device to unlock the phone.
- 8.37 Some customers try and get their device unlocked through a third party, for example by paying a shop on the high street to unlock it. This will also involve time and effort on the part of the customer. Some customers may prefer to do this rather than contacting their

²⁴² Ofcom, January 2018. [Kantar Omnibus Data](#), page 57. Just under two thirds (64%) of customers who unlocked their handsets did so through their provider. This finding is only indicative due to the very low base size.

²⁴³ BT Mobile, EE, Tesco Mobile and Vodafone response to formal information request dated 12 April 2019. Total includes customers who may have submitted multiple requests. Data from Vodafone only includes the number of customers that were provided with an unlocking code and not where the customer's device was unlocked over-the-air by Vodafone.

²⁴⁴ BT Mobile customers currently need to request for their handset to be unlocked by telephone. BT Mobile have told us that they plan to introduce digital tools to allow customers to request an unlocking code.

²⁴⁵ Vodafone estimated that around 80% of requests they receive are made online. Source: Vodafone response to formal information request dated 12 April 2019.

²⁴⁶ [S&] responses to formal information request dated 12 April 2019. This range includes provider estimates based on trials and calculated average time spent on the relevant part of the website from when the IMEI is entered to when a request is submitted.

²⁴⁷ We note that these calls may cover other queries before the unlocking request, such as customers asking if their device is locked and what they need to do to unlock it. Source: BT Mobile, EE, Tesco Mobile and Vodafone response to formal information request dated 21 August 2019. Based on calls between January and June 2019. Call times calculated from the time the customer was first connected (i.e. to an IVR greeting message) until the end of the call.

provider, however, in doing so they will incur a charge from the third party and potentially consequential costs, as we understand that doing so may invalidate some customers' device warranty.²⁴⁸

In some cases, the unlocking code does not work, resulting in additional time and effort for customers

- 8.38 For a small minority of customers, the unlocking code they are given by their provider does not work and they need to obtain another code. Not all providers that still sell locked devices were able to provide information on how many customers had been sent more than one code. For those that were, we estimate that on average around 300 customers a month are sent a further unlocking code.^{249, 250} Where it does happen, customers are likely to have to spend significantly more time and effort trying to resolve the situation.
- 8.39 Where it does happen, customers are likely to have to spend significantly more time and effort trying to resolve the situation.

Delays in the switching process because of the time taken to obtain the unlocking code

- 8.40 Providers have told us that where they already hold the relevant unlocking code, they can give it to the customer fairly quickly. However, they also told us that where they do not hold the code, they need to contact the device manufacturer to obtain it, and this can take much longer.
- 8.41 The information providers publish on their websites on the length of time taken to provide unlocking codes is as follows:
- BT Mobile: within 72 hours or 10 days if they need to contact the manufacturer;²⁵¹
 - EE: aim to unlock all devices within 72 hours; but can take up to 10 days if they need to contact the manufacturer;²⁵²
 - Vodafone: unlocking is usually done within 48 hours; but can take up to 10 working days;²⁵³
 - Tesco Mobile: it can take up to seven days.²⁵⁴
- 8.42 In practice, and as set out in Figure 8.3, evidence from providers that still lock devices indicates that:

²⁴⁸ During our discussions with providers, some questioned the legitimacy of some third parties that offer device unlocking.

²⁴⁹ Based on provider responses to a formal information request dated 21 August 2019.

²⁵⁰ This is less than 1% of customers that unlock their device through their provider. Our estimate is based on the information for providers that were able to send information.

²⁵¹ BT, [How do I unlock my mobile phone or tablet?](#). Accessed 4 November 2019.

²⁵² EE, [How do I unlock an EE device to use with another network?](#) Accessed 4 November 2019.

²⁵³ Vodafone, [How to use your Network Unlock Code](#), 'How do I unlock my phone or tablet to use on another network?'. Accessed 4 November 2019.

²⁵⁴ Tesco Mobile, [Unlock your Tesco Mobile phone](#). Accessed 4 November 2019.

- between one quarter and one third of customers are given the unlocking code or have their device unlocked on the day they request it; but
- the majority receive their unlocking code between 2 to 5 days after making their request.²⁵⁵

8.43 Some customers however wait longer than this, including a small minority that have to wait more than 10 days.

Figure 8.3: Time taken to unlock the device or send unlocking code to customers from January – June 2019

	Within 1 day (on the day of the request)	2-5 days	6-10 days	10+ days
BT Mobile/EE	32%	67%*	1%	0%
Tesco	23%	62%	12%	2.8%
Vodafone**	34%**	59%**	For 7% of requests, Vodafone had to contact the device manufacturer to obtain the code. Vodafone does not know how long it took to provide the code in these instances.	

* BT Mobile / EE stated that approximately 95% of these are Google/Apple devices, and are typically unlocked within 24 hours. ** Vodafone was only able to provide data for the period 1 May 2019 – 31 July 2019

Source: Provider response to formal information request dated 21 August 2019.

8.44 The minority of customers for whom the first unlocking code does not work will need to wait for the correct code, which can lead to long delays. For example, Tesco Mobile told us that where this happens, it can take up to twenty days from the original request to provide the customer with the correct code.²⁵⁶

8.45 These delays could have quite a significant impact if they occur during a customer’s switching journey. We have set out above the importance of customers being able to exercise choice and take advantage of competition by being able to switch provider easily. Delays caused by handset unlocking would delay these customers from switching to a better deal, which could save them money or offer them better services. They might miss out on a time limited offer if it expired before they could unlock their phone. They might also experience anxiety, if the delay was long and there was uncertainty about when it was coming to an end.

8.46 The potential for delays in switching is a particular concern because the new Auto-Switch process is intended to make it quicker and easier for mobile customers to switch provider.²⁵⁷ Having a locked device can disrupt this process, particularly if the customer is

²⁵⁵ However, we note that BT Mobile/EE stated that for the vast majority of these cases the device is an Apple or Google device that is unlocked within 24 hours of the request, i.e. on day 2.

²⁵⁶ Tesco Mobile response to formal information request dated 12 April 2019.

²⁵⁷ See Figure 7.2 in section 7 for more detail on the Auto-Switch process.

unaware that their device is locked (see Figure 8.4) and experiences a delay obtaining the unlocking code.

Figure 8.4: How device locking can delay the Auto-Switch process

Under Auto-Switch, the switch takes place when the SIM of the new provider is activated. This will typically be when a customer inserts their new SIM into their device. However, if that device is locked, it is likely the SIM will not be recognised and the switch to the new service not activated. In this situation, the customer will need to unlock their device before the switch can take place. Therefore, device locking can delay the switching process which is designed to take place in one day (as the majority of customers do not receive their unlocking code on the day they request it (see Figure 8.3)). In addition, as outlined above, these customers would face harm from unnecessary time spent getting their device unlocked. They may also encounter further difficulties and incur unlocking charges.

8.47 As a result, device locking could frustrate the switching provisions of the EECC, as described in section 7, which seek to ensure that switching takes place in the shortest possible time.

Loss of service

8.48 Some customers may suffer a loss of service while waiting to receive the unlocking code. This is particularly relevant for those switchers who did not realise their device was locked.²⁵⁸ Such customers would not take steps in advance to acquire an unlocking code prior to cancelling their existing service. They will only discover this when they insert the SIM for their new network into their device.

8.49 There is evidence from complaints to Ofcom that some customers suffer a loss of service when switching (as illustrated from the examples given in Figure 8.5), however it is unclear from this evidence how frequently this occurs.

Figure 8.5: Examples of customers that have suffered loss of service as a result of problems encountered with device unlocking

Date	Customer complaints
12 August 2019	The customer advised she had a mobile phone contract with [provider]. The customer advised she has recently switched to a new mobile provider, but she is not able to use her handset as it is locked. The customer advised she filled out a form online to request an unlocking code and she still hasn't received it. The customer advised she has contacted [old provider] when she will receive it as

²⁵⁸ While Auto-Switch should reduce the risk of a loss of service, it may continue to be an issue for switchers that do not follow the Auto-Switch process and instead take a 'Cease and Re-provide' approach. This is where a customer contacts their old provider to cancel their service, and separately contacts the gaining provider to take out a new service.

on the form it stated 48 hours, but an advisor has advised 14 days which the customer is not happy about.

29 August 2019

I have changed provider away from [provider]. On the day I left I discovered my phone was locked by [provider] They said it would be 7-10 working days to unlock. I am now on day 14 which is 10th working day [...]. This is a ridiculous timescale. I have had to purchase another phone to receive calls and texts as I am a GP doing call duties. Can this timescale be addressed? I am just hoping that today the phone will be unlocked.

29 August 2019

When I gave notice to my provider that I was switching and requested a PAC, they did not advise that I would also need a network unlock code. This only became apparent when I put the new SIM in my phone. Now I will be without a phone for 7-10 days, waiting for the unlock code, as my new provider has switched my number from tomorrow. I think it's ridiculous that when you cancel, you are not advised of all the steps you need to go through before you switch. I was advised by [provider] that a phone shop would be able to help, but I called two shops who won't or can't do it.

8.50 Loss of service is a particular concern given the central importance of mobile services for customers today. While we do not have evidence of the frequency of loss of service in relation to locked handsets, Article 106 of the EECC (discussed in section 7), is clear that providers should ensure continuity of service, unless this is not technically feasible, and that any loss of service should not exceed one working day.²⁵⁹

Unlocking charges

8.51 Many operators charge customers for unlocking their device within an initial period: in the case of pay-monthly customers this charge only applies during the commitment period; for PAYG customers there is usually a point after which unlocking is free. Figure 8.1 above sets out the unlocking charges that are applied by providers that still sell locked devices and when they are applied.²⁶⁰

8.52 These unlocking charges create a switching cost for those customers subjected to them, which may disincentivise switching and impede the competitive process.

²⁵⁹ See section 7, paragraph 7.63 for more detail.

²⁶⁰ Unlocking also imposes a cost when customers choose to take their devices to a vendor on the high street who supplies such services. Customers may choose to do this for a variety of reasons including convenience and speed, but the resulting charge would apply at any time, not just within the customer's minimum contract period. It may also invalidate the handsets warranty.

Proportion who suffer difficulties when unlocking devices

- 8.53 Ofcom regularly asks customers about their experience of switching mobile provider and whether they encountered problems. Our research has found that where customers unlocked their device when switching provider, just under half experienced some sort of difficulty with unlocking their device.²⁶¹
- 8.54 Based on this data we estimate that around 5 million customers switch provider each year and that 700,000 pay-monthly customers experience a problem of some sort related to handset unlocking; in addition to which there will also be PAYG customers who experience problems when unlocking their device.²⁶² Given customers are retaining devices for longer, this may increase the proportion who want to unlock a device in the future and may experience a problem.²⁶³

Device locking can deter switching

- 8.55 As set out above, we consider that device locking is a disincentive to switch as it creates an additional obstacle that customers need to overcome before switching provider. Furthermore, the evidence in the previous section also demonstrates that customers can experience delays and difficulties when going through the process of unlocking their devices.
- 8.56 In our view, device locking may, for these reasons, deter customers who consider switching, and may deter some customers from even engaging with the process of switching providers. Given the lack of transparency of device locking, and variations in provider practices, some customers may also be deterred from switching because they think their devices are locked even though they are not actually locked.
- 8.57 This concern is consistent with our research, which has found that just over one third (35%) of customers who actively considered changing provider but decided not to, said that device locking was one of the factors that put them off. About half of those customers (17% of those who decided not to switch) said that device locking was a major factor in their decision not to switch.²⁶⁴

²⁶¹Ofcom, 2018, [Switching experience tracker](#) asked customers about their experience of switching in the last six months. It found that 15% of mobile switchers unlocked their phone when they switched (Question 14A/B/C, Table 34, page 154). When these switchers were asked about whether they experienced a difficulty with unlocking, just under half (7%) said that they had reported a difficulty when switching (2% reported having a major difficulty when unlocking and 5% a minor difficulty) See Question 19A/B/C, Tables 42, 43, and 44, pages 200, 216, and 232.

²⁶²Bespoke analysis. Estimates are based on data from Ofcom's Switching Experience Tracker and Core Switching Tracker. The range (95% confidence interval) for the figures are as follows: 3.9-5.9 million customers switch each year, 200k-600k found handset unlocking to be a major issue, 100k-500k found it to be a minor issue. Note that PAYG customers are not included in these estimates and they also only represent those who make their own purchasing decisions.

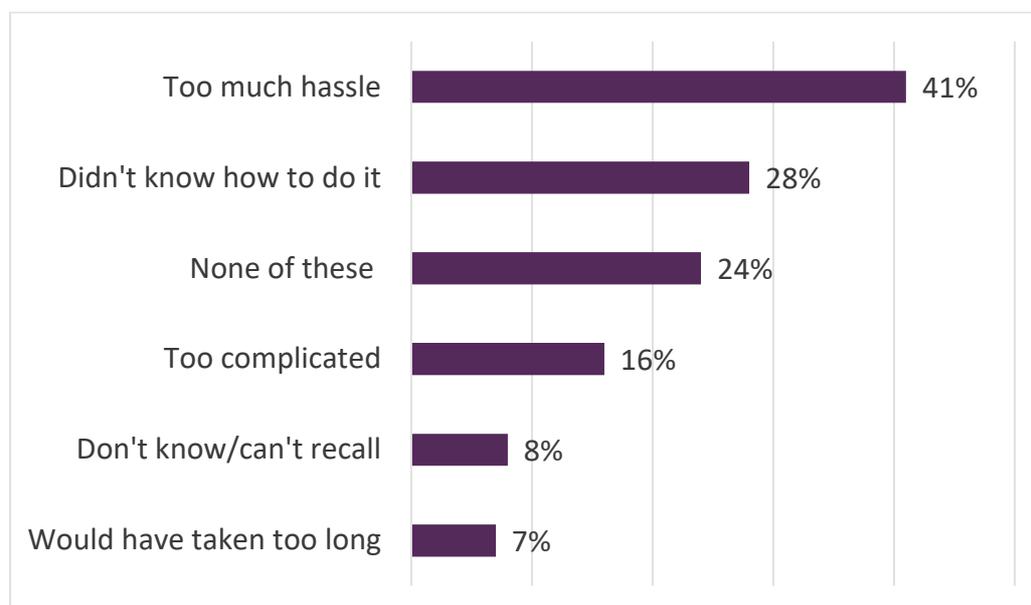
²⁶³Deloitte's 2018 [Global Mobile Consumer Survey](#) found smartphone owners in the UK are holding onto their phones for longer

²⁶⁴Ofcom, 2018, [Switching Experience Tracker](#). 17% of mobile customers who decided not to switch stated '*needing to unlock their handset to take it with them*' as a major factor and 18% said it was a minor factor. See Question 44A/B/C, Tables 116, 117 and 118 (page 816, 843, and 870).

8.58 We estimate that around 8.2 million people consider switching each year but do not do so, and that around 3 million pay-monthly customers are deterred from switching in part by a problem (or perceived problem) relating to device unlocking (in addition there will also be PAYG customers who experience problems with device unlocking).²⁶⁵ This figure is based on those who started to engage with the switching process; more customers may be deterred from even engaging with the process because of concerns about their device being locked (or the risk of it being locked).

8.59 In addition, a YouGov survey carried out on behalf of Three suggests that the time, effort and difficulties encountered are factors deterring customers from unlocking their device and being able to use their handset with a new provider. This survey asked people who said they had considered unlocking a handset, but had not actually done so, why they did not unlock. As set out in Figure 8.6, the most common reason (41%) was that it was too much hassle, with the next most common reason being ‘didn’t know how to do it’ (28%).

Figure 8.6 For those who had considered unlocking but decided not to, reason for deciding not to



Source: YouGov market research 2019²⁶⁶ IEH_Q7a. If you have considered unlocking more than one handset, please think about the LAST time you considered it. You previously said you have considered unlocking a

²⁶⁵ Bespoke analysis. Estimates are based on data from Ofcom’s Technology Tracker, Switching Experience Tracker and Core Switching Tracker. The range (95% confidence interval) for the figures are as follows: 7-9.4 million people consider switching each year but do not do so, 0.9-2 million find handset unlocking a major factor in their decision not to switch and 1-2.1 million found it a minor issue. Note that PAYG customers are not included in these estimates and they also only represent those who make their own purchasing decisions.

²⁶⁶ Online panel survey of 4,184 adults (aged 18+) conducted by YouGov on behalf of Headland Consultancy and Three between 30th August and 2nd September 2019. Data were weighted to be representative of the total GB adult (18+) population.

handset but have never unlocked any. Which, if any, of the following are your reasons for this? (Please select all that apply). Base: those who had considered unlocking a handset but had not done so (459).

8.60 Customers that are deterred from switching are likely to face direct harm, as they may be prevented from being on a deal that is better suited to their needs.

Overall reduction in competition

8.61 By deterring customers from switching, device locking can reduce the incentive for providers to reduce prices or increase the quality of their offers. This could have an impact on competition across the whole market, potentially affecting all customers. We have consistently taken the view that the benefits of greater competition are significant.²⁶⁷

8.62 It is difficult to judge the extent to which device locking may restrict the overall competitive process. However, the impact of such a restriction would be felt across the entire market including both engaged customers and relatively disengaged customers.²⁶⁸

Reasons given by providers for locking devices

8.63 As set out above, the practice of device locking is capable of acting as a deterrent to switching. However, device locking might bring benefits to customers, if it allows providers to offer them better deals as a result. The providers that currently lock devices have argued that this is the case. They have told us this is for two main reasons:

- a) device locking helps tackle fraud and bad debt; and
- b) device locking helps protect subsidies for PAYG devices.

Device locking to tackle fraud and bad debt

8.64 BT Mobile/EE and Vodafone told us that device locking was an important tool in reducing fraud, bad debt and device theft. For example, they say that device locking helps to reduce the risk that a pay monthly customer obtains a phone as part of a long-term contract, but then defaults on the monthly payment to that provider and uses the phone on another network. By making this more difficult, they consider device locking may help deter fraud and keep providers' costs down,²⁶⁹ which in turn would feed through to a benefit to customers in terms of lower prices. Without device locking, their costs and potentially prices may rise.

8.65 BT Mobile/EE also said its experience of introducing device locking at BT Mobile suggested device locking was effective in reducing fraud. BT Mobile/EE advised that fraud is most

²⁶⁷ For example, see the discussion in Annex 8 of the mobile switching Statement, in particular paragraphs A8.4 to A8.10: [Consumer Switching Statement Annexes](#).

²⁶⁸ A reduction in switching costs will initially benefit the most active customers who will quickly switch to better offers in the market, but over time even relatively passive customers will move off their outdated tariffs.

²⁶⁹ Vodafone has also noted that this argument also applies to a lesser extent to PAYG devices, where they are subsidised.

likely in the initial months after a device is acquired, and that this is the period when locking would have potential benefits for reducing fraud.

- 8.66 BT Mobile/EE also suggested that device locking reduces the need for fraud checks when making sales and that, if it were not able to lock devices, some customers who are currently able to obtain a locked phone from BT Mobile /EE might not be able to do so if it increased its fraud checks. BT Mobile / EE also said that there could be “a potential increase in up front contribution costs for customers.”
- 8.67 However, mobile operators other than BT Mobile/EE and Vodafone manage fraud and bad debt without locking devices. This includes large operators such as O2 and Three which had previously sold locked devices and moved to selling unlocked devices, as well as the major mobile virtual network operators (MVNOs).²⁷⁰
- 8.68 In addition to the credit check processes that can be used for any other product, for mobile devices there is a ‘blacklisting’ process, by which mobile providers in the UK keep a shared database of devices that are registered as lost or stolen.²⁷¹ Three told us that in light of such blacklisting capabilities, its view was that locking devices to networks would not have any discernible impact in preventing fraud.
- 8.69 Another mobile operator O2 said that locking was of limited use in terms of preventing fraud. This was because fraudsters and thieves can find alternative ways to unlock devices without going through their provider’s official process. That it is possible to unlock some devices without going through the provider’s official process is consistent with some indicative survey evidence that has found a proportion of customers unlock devices in other ways than through their provider.²⁷²
- 8.70 On balance, while we accept that locking mobile devices may help reduce fraud and bad debt, the fact that other providers manage fraud and bad debt without device locking suggests that device locking may not be essential to this.

Device locking to protect subsidies for PAYG devices

- 8.71 Device locking can be used as a tool to protect subsidies for devices sold to PAYG customers. Such customers do not sign a contract for ongoing payments, however the initial device cost may be subsidised by the mobile provider based on expected future PAYG revenues, particularly if that operator can lock the device, making it harder for the customer to move to another provider.

²⁷⁰ Virgin Mobile does not sell locked devices. Tesco Mobile generally does not lock handsets with a value over [£]. As such bad debt and fraud for expensive handsets will be mitigated or managed by other means. Smaller providers such as [Talkmobile](#), [iD mobile](#), [Lycamobile](#) and [Utility Warehouse](#) also sell devices unlocked (Accessed 10 December 2019). Other smaller providers such as Lebara Mobile do not sell devices and Lycamobile only sells devices without a SIM.

²⁷¹ BT Mobile /EE told us that the blacklisting process [£].

²⁷² A survey for Ofcom from January 2018 found that around 2 in 3 customers who unlocked their handsets did so through their provider, leaving around one third who that said they unlocked their device without going through their provider. Please note this finding is only indicative due to the very low base size (49). Source: [Kantar Omnibus Data](#), January 2018, Question 18, Table 12, page 57.

- 8.72 Tesco Mobile has told us this is an important consideration for its PAYG business, which generally only locks devices less than [£] in value that are sold to PAYG customers.²⁷³
- 8.73 In terms of the scale of the device subsidy currently:
- Tesco Mobile told us that between January and June 2019 the average price of subsidised devices sold with a PAYG SIM was around [£] and that there was an average subsidy per device of £[£].
 - Vodafone said the average subsidy per mobile device sold £[£], and the average price of these subsidised mobile devices with a PAYG SIM was £[£].²⁷⁴
 - EE said it was only in limited circumstances that it promoted PAYG devices with a headline price below the cost of the handset. It provided examples, where the subsidy was [£]. EE noted that these subsidies were calculated excluding mandatory top-up airtime payments.
- 8.74 It seems plausible that those providers that subsidise their handsets may reduce their upfront device subsidies if devices could no longer be locked. This is because the reduced switching barrier could mean customers stay with them for a shorter period of time. This could lead to a concern about customers of low-end PAYG devices, who may be credit constrained.
- 8.75 However, the PAYG device subsidies may not be entirely reliant on device locking, as they might partly rely on general customer inertia, and an assumption that few customers would be sophisticated enough to exploit such subsidies.²⁷⁵ The absolute amount of the subsidies is anyway relatively small and a corollary of lower device subsidies may be that there is increased competitive pressure on these providers to lower their airtime prices or make other changes to ensure their offers remain attractive.

Possible interventions to protect customers' interests

- 8.76 In light of our statutory duties, our regulatory policy objective is to ensure that customers do not experience unnecessary difficulties when switching mobile provider, so they can exercise choice and switch provider to take advantage of the competitive deals on offer.
- 8.77 Device locking is a practice that, by its very nature, appears to be designed to make switching provider more difficult. The evidence we have seen suggests that customers need to spend unnecessary time, can encounter unnecessary difficulties and pay additional charges when unlocking their device. This additional time spent and potential problems faced when unlocking devices can, in our view, act as a deterrent to switching provider. This is consistent with our research which shows that device unlocking indeed deters some

²⁷³ It is also consistent with Tesco Mobile charging £10 to unlock a PAYG handset as soon as it is purchased, for all handsets. While £10 can be large in relation to cheap handsets, it would be a small proportion of more expensive handsets.

²⁷⁴ Vodafone response to formal information request dated 21 August 2019.

²⁷⁵ This would be consistent with Tesco Mobile's [£], and with Vodafone subsidising devices despite it unlocking PAYG devices for free after 30 days, and with EE occasionally subsidising devices despite it being free to unlock PAYG devices at any time.

customers from switching. By creating a deterrent to switching, handset unlocking can harm customers and inhibit the competitive process more generally.

- 8.78 We are also concerned that, while the purpose of our recent mobile switching reforms was to make it easier and quicker for customers to switch provider, locked devices may prevent customers from fully benefitting from that quicker process, and so may adversely affect the effectiveness of those reforms.
- 8.79 We have considered the different justifications for this practice put forward by providers. However, for the reasons set out above, our preliminary view is that while we accept there may be some benefits from device locking, we consider the scale of these is limited. We place weight on the fact that a large part of the industry now sells unlocked devices.
- 8.80 Our provisional view is therefore that it is appropriate for us to protect the interests of customers from the deterrent effects of device locking on switching. We consider two main options to address the harm identified; these are outlined below.
- 8.81 We note that in this document we are proposing to impose transparency obligations on providers to give effect to the requirements of the EECC, some of which would apply in relation to handset unlocking. Specifically, we are proposing to require providers to tell customers at the point of sale and in their contracts if the device is locked and when they can or will be unlocked.²⁷⁶ We are also requiring providers to publish clear and comprehensive information on any restrictions they impose on the use of terminal equipment they supply.²⁷⁷
- 8.82 We do not consider that these measures to increase transparency at the point of sale will be sufficient on their own to address the harm caused by device locking. This is because there is a risk that by the time customers come to switch, they may have forgotten what they were told at the point of sale, such as when the device can be unlocked and how to unlock it. Moreover, even if they remember their device is locked, they still need to incur time and effort to unlock it, and are still vulnerable to delays in obtaining the code delaying their switch.
- 8.83 As set out above, our revised GCs will also maintain the prohibition on any conditions and procedures for contract termination acting as disincentives to switch, which will now also explicitly apply to bundles including terminal equipment.
- 8.84 We have considered whether this existing regulation would be sufficient to address our concerns. However, our provisional view is that it would be appropriate to impose specific regulatory obligations on providers in this case. A clear rule in relation to handset locking would bring clear and immediate benefits to customers by directly tackling a potential barrier to switching, as well as increasing regulatory certainty for providers.

²⁷⁶ See section 4 for more detail.

²⁷⁷ See section 5 for more detail.

Option 1: Providers have to sell unlocked devices to their residential customers

- 8.85 This option would prohibit providers from selling locked devices to their residential customers. As a result, all residential customers who bought a device²⁷⁸ after the implementation date would be able to obtain a SIM from another provider and use it in their existing device straight away, without having to spend time and effort unlocking it.
- 8.86 At the time of the implementation date, Ofcom would publicise this change to raise awareness amongst customers that new handsets will not be locked.

Option 2: Providers must either unlock devices or send all residential customers that buy a locked device the code to unlock it at specific points in time

- 8.87 Option 2 would allow providers to continue to sell locked devices if they wish to do so,²⁷⁹ but would require providers that continue to lock devices to:
- automatically unlock devices where possible;
 - help ensure customers remember that they have a locked device and need to unlock it when switching provider; and
 - make it easier for customers to unlock their device. As it is not currently technically possible for providers to unlock all devices remotely and automatically, this option would seek to make the process quicker and easier.
- 8.88 For devices that can be unlocked remotely by the provider, providers would have to ensure that:
- these are automatically unlocked by the end of the commitment period. BT Mobile/EE already unlock Apple and Google devices automatically at 18 months and 271 days respectively; however, Vodafone does not currently automatically unlock Apple devices;²⁸⁰ and
 - they send a text message to customers to notify them that their device has been unlocked. The text message should include a simple explanation of what that means in practice.
- 8.89 For devices that need to be unlocked manually by the customer, this option would require providers to send customers their unlocking code within 24 hours of the customer

²⁷⁸ Either outright or on a contract.

²⁷⁹ They would also still continue to charge to unlock devices, where they currently choose to do so.

²⁸⁰ It sells Google devices unlocked.

requesting it.^{281, 282} This would ensure that providers hold all the unlocking codes they need for their customers, and send them without delay whenever they are requested.

8.90 Where devices cannot be unlocked remotely, we do not consider that this requirement, by itself, would sufficiently address the concerns we have identified. Therefore, Option 2 includes additional requirements that ensure customers are proactively sent appropriate information about their locked device.

8.91 Where devices cannot be unlocked remotely, providers would automatically text customers:²⁸³

- the code for unlocking their mobile device,
- the IMEI number and make of the device for which the code is for;²⁸⁴
- a link to guidance on how to use the code (or a number to call for assistance); and
- advice to retain the code for future reference if they do not wish to make use of it now.

8.92 Providers would be required to send the text message at the following points in time:

- for pay-monthly customers – at the end of the commitment period; and
- for PAYG customers – at the point when the customer can unlock the device free of charge.

8.93 This text message would ensure that customers are proactively given the information they need to unlock their device, when it is free for them to do so, saving them time and effort when unlocking their device.

8.94 In addition, where a customer with a locked device requests a switching code under the Auto-Switch process, providers would need to let that customer know that they need to unlock their device in the switching information they provide and include a link to a guide that explains how to do so. This would be a timely reminder that their handset is locked and the action they need to take to avoid potential delays to switching and any loss of service.

8.95 These rules would only apply to the sale of new locked devices because we recognise that providers would need to gather and retain information at the time they sell devices, to ensure they have the appropriate unlocking information available to send to their customers. Providers would in effect be able to choose to either implement the requirements set out in this option, or to stop selling locked devices altogether.

²⁸¹ The provider would not be required to send the unlocking code if the device has been blacklisted, the person requesting the code failed to pass security checks, or if any other exceptions included in the customer's contract are in effect (for example if their account is in arrears).

²⁸² One provider suggested this requirement as an appropriate response to our device locking concerns.

²⁸³ Again providers would not be required to do this if the device has been blacklisted, the person requesting the code has failed to pass security checks, or if any other exceptions included in the customer's contract are in effect (for example if their account is in arrears).

²⁸⁴ This would enable customers to check whether the code is for the phone they are currently using.

Impact of our proposals on customers and providers

8.96 In this section we set out our assessment of the likely impact of these two proposals. We consider the benefits to customers primarily in the context of when they are switching. This will tend to understate the full benefits that might arise where these options will also help customers who may wish to unlock their devices in other circumstances.

Benefits of Option 1

8.97 This option would deliver significant benefits in terms of reducing the disincentive to switch from device locking.

Removing the time, difficulties and potential charges for customers who switch

8.98 Specifically, it would entirely address the difficulties customers face unlocking their device when they switch. Customers would no longer need to expend time and effort unlocking their phone and would no longer experience any delay or loss of service caused by device locking. It would also remove any unlocking fees that may apply.²⁸⁵

8.99 While there will be a number of existing locked devices that customers already own (and would therefore need to unlock to switch and continue using), going forward we would expect the number of customers per year who would gain from this option to grow so that ultimately an estimated 700,000 pay-monthly customers a year (in addition to PAYG customers who wish to unlock their handset) would avoid the current difficulties they face when switching with a locked device and wanting to take their device with them.

8.100 Moreover, even for those customers who have no difficulty with unlocking their handsets, there would be small benefits in terms of no longer having to spend time and effort unlocking handsets.

Benefits for customers previously deterred from switching

8.101 We estimate there are around 3 million pay-monthly customers a year who actively consider switching but decide not to, for whom unlocking their device was a factor in their decision not to switch. There may also be other customers who are deterred from even considering switching. The number of existing locked devices would reduce overtime so that ultimately this option would be effective at removing any disincentive to switch arising from device locking.

8.102 Customers who are no longer deterred from switching because their handset is locked would benefit from being able to take advantage of deals from other providers, potentially saving money, obtaining a better quality of service or finding an offer that better matches their needs.

²⁸⁵ Charges from either the customer's provider or a third party, such as a shop on the high street.

Effective competition

8.103 By making switching easier for those that are currently discouraged from switching, this option could have a more general effect in terms of strengthening competition amongst providers. Such an effect would bring benefits across the market as a whole.

Costs and implications of Option 1

8.104 We consider any direct implementation costs involved in changing to selling only unlocked devices in the future would be relatively small. The providers affected (BT Mobile/EE, Vodafone and Tesco Mobile) would need to amend their contracts with device manufacturers. They may also need to amend their internal policies along with associated staff training.

8.105 However, the providers who currently lock devices have said there would be wider effects because of the possible increase in fraud and bad debt, and a reduction in device subsidies for PAYG customers. For the reasons set out above, our preliminary view is that the scale of these effects is likely to be limited:

- a) **Device locking to tackle fraud and bad debt:** BT Mobile/EE considered that, without device locking, fraud and bad debt might increase by [~~3~~]%, which would amount to £[~~3~~] a year.²⁸⁶ It also said that this could rise further over time as fraudsters become more aware that its devices were unlocked.

While we accept that locking devices may help reduce fraud and bad debt, the size of the increase in costs estimated by BT Mobile/EE is not large in the context of the number of customers who experience difficulties switching, the number deterred from switching, and the potential seriousness of the harm they can experience. The fact that other providers manage fraud and bad debt without device locking also suggests that the impact of device locking may not be large and/or that there are offsetting benefits to providers from ceasing to lock.

- b) **Device locking to protect subsidies for PAYG devices:** The absolute amount of the subsidies are relatively small (for example, on average for Tesco Mobile the subsidy is £[~~3~~]), and, in our view, these may not be removed entirely or may be offset by other changes to ensure offers remain attractive (e.g. lower call prices).

8.106 While we recognise that there would be some implementation costs, there are also likely to be some operational cost savings to providers from not having to deal with customers' queries about unlocking, requests to unlock and complaints about the process.²⁸⁷

²⁸⁶ BT told us that while it envisaged some cost savings due to less operational resource to unlock devices, this would likely be offset against more resource needed to deal with the impacts of an increase in cases of fraud and bad debt.

²⁸⁷ Some of the providers who lock may currently seek to recover these costs through handset unlocking charges.

Benefits of Option 2

8.107 As set out, Option 2 aims to reduce barriers to switching caused by device locking by helping ensure customers are aware their device is locked, by making the process quicker and easier for customers, and empowering those who are currently discouraged from switching because of device locking.

Removing the time and difficulties for customers who switch

8.108 **For devices that can be unlocked remotely** by the provider (Apple and Google devices), Option 2 would ensure that they are unlocked automatically by the end of the commitment period. While BT Mobile/EE already does this, Vodafone does not automatically unlock Apple devices, (it sells Google devices unlocked). In addition, all customers with devices that can be unlocked remotely would receive the notification telling them that their device is no longer locked by the end of the commitment period. This option would reduce the difficulties experienced by customers with these devices:

- It would save the time and effort these customers might otherwise have spent finding out if their device was locked after the end of their commitment period.
- Vodafone customers with an Apple device switching at the end of their commitment period would also save the time and effort involved in unlocking their phone and would no longer experience any potential delay in switching provider (which could otherwise arise if customers only found out their device was locked when switching), or loss of service caused by device locking.

8.109 We would therefore expect this option to be more effective at removing the harm for customers who have devices that can be unlocked remotely and who choose to switch after the end of their commitment period. Customers with these devices could still face difficulties if they sought to switch before the end of the commitment period. However, customers that use the Auto-Switch process before their device is automatically unlocked, would be given information when a switching code is requested, reminding them of the need to unlock their device and prompting them to unlock (if they had not done so already). This could be expected to mitigate the risk of delaying the switch.

8.110 **For devices that cannot be unlocked remotely**, and so long as the text message is accurate and understood by customers, this option would reduce the difficulties customers can face when unlocking their device:

- a) **Unnecessary time and effort spent:** It would reduce the time and effort in obtaining an unlocking code, as the code would be proactively sent to customers. This means customers who switch after receiving the code would avoid checking if their device is locked, requesting an unlocking code and resolving any delays or problems that arise.
- b) **Delays in switching.** Making sure the customer is aware their device is locked and needs to be unlocked, along with information about how to do so, would help reduce delays in switching (which could otherwise arise if customers only found out their device was locked when switching). The unlocking information provided when a

switching code is requested would also be a timely reminder and would help avoid delays. In addition, because this option would require providers to ensure they have the relevant unlocking information readily available, and provide this to customers within 24 hours (should it still be requested), this option should reduce the incidence of delays.²⁸⁸

- c) **Loss of service:** The text message would inform the customer that their device is locked so that they can take steps to unlock it before they switch. Further, the unlocking information provided when a switching code is requested would remind the customer of the need to unlock their device and prompt them to unlock (if they had not done so already). Again, providers would need to ensure that they hold the necessary codes and provide these to customers within 24 hours if still requested, which would help reduce the length of loss of service should it still occur.

8.111 Option 2 could therefore help customers who have difficulty with unlocking when they switch. As we discuss below, this option would also benefit those who are currently deterred from switching as the device unlocking process would be quicker and easier.

8.112 However, as noted above it relies on customers understanding the text and the information being accurate. In practice there is a risk that:

- a) **Some time and effort would still be required:** Customers would still need to enter the unlocking code when prompted and may find this a difficult process.
- b) **The text message with the unlocking code may be ignored or cause confusion:** The initial text message could contain information that is unfamiliar to some customers (IMEI codes, unlocking codes), which could be skipped over or ignored, or may result in confusion for some customers, and drive calls to providers. We would expect providers to take steps to ensure that the message and guidance provided to customers are clear to minimise this risk. In addition, the unlocking information provided when a switching code is requested may be clearer for these customers, as the information is provided at a relevant time when they are progressing a switch. However, we cannot rule out that in some circumstances, particularly where a customer is not using the Auto-Switch process and does not receive a reminder to unlock, these customers may still contact their provider for information and to request their unlocking code. If they do, providers sending them their unlocking code within 24 hours would at least ensure they receive the code at that point without delay.
- c) **The information in the text message may be incorrect:** Even though providers will take steps to ensure that they hold the correct unlocking information, the unlocking code held by providers may not be correct, and in these cases this option would not address delays or other problems and the time and effort required to resolve them.

²⁸⁸ Delays will, of course, still occur when the source of the fault is the handset manufacturer or where the customer makes a mistake.

- 8.113 We further note that there is a risk under this option that customers with unlocked devices may continue to mistakenly believe it is locked. This option would not help address this or the variation in policies between providers that exacerbate the issue.
- 8.114 In terms of unlocking charges, this option would only require the provider to take steps either to unlock remotely or provide an unlocking code once the device can be unlocked free of charge. This option would not therefore reduce or avoid the charges that are currently paid (since if the customer wished to unlock within the commitment period, a charge would still be levied – see Figure 8.1 above for the charges currently levied).

Benefits for customers previously deterred from switching

- 8.115 Option 2 aims to empower those who might be discouraged from switching because of device locking.²⁸⁹ By being told their device is unlocked (for devices that can be unlocked remotely), being provided with all the information needed as well as a link to further guidance (for other devices), and, in the event they still request a code, being provided it within 24 hours, customers could be reassured that the process is simple. As discussed in paragraphs 8.101 and 8.102, the benefits for customers who may be discouraged from switching by device locking may be substantial.
- 8.116 Again, an important issue is how effectively this option would address our concerns in terms of customers who are deterred from switching. Given there may be some limits to the effectiveness of this option, as set out above, this will have an impact on how effective this option will be at reducing the perceived effort, potential for delay and problems that may deter customers from switching. It is difficult to be certain as to the magnitude of this impact but overall, we believe Option 2 would reduce the extent to which device locking acts as a disincentive to switch.

Effective competition

- 8.117 By making switching easier for those that are currently discouraged from switching, this option could have a more general effect in terms of strengthening competition amongst providers. Such an effect would yield benefits across the market as a whole.
- 8.118 As we have set out some limits to the effectiveness of Option 2, these will limit the beneficial effect across the market.

Costs and implications of Option 2

Additional costs for some customers

- 8.119 Some customers who receive the text message may find the unlocking information confusing, causing them to spend extra time and effort contacting their provider or searching the internet to clarify the information. We also cannot discount the possibility

²⁸⁹ As with Option 1, this option would not benefit those customers who have a device purchased before the implementation date.

that some customers would misunderstand the message and take unnecessary steps, for example they may incorrectly believe they are required to unlock their device to retain service with their existing provider and spend time doing so.

Additional costs for providers

- 8.120 Providers who choose to lock devices would incur costs to implement this option. Implementing Option 2 would require them to change certain systems and processes:
- a) **Ensuring they have all the relevant codes and information in place.** As set out above, at present providers do not have all unlocking information readily available and they would need to gather and retain this information under this option.
 - b) **Developing systems so that information can be sent to customers at the relevant time, and for Vodafone, to ensure that it unlocks Apple devices automatically by the end of the commitment period.** This may involve setting up new internal processes or an automated feed to a third party which operates their unlocking process. They may also need to amend their internal policies with some associated staff training.
- 8.121 We asked providers for estimates of the size of costs for an option broadly similar to Option 2.²⁹⁰ [X] estimated that upfront costs to install these systems processes and changes would range from [X].²⁹¹ [X].
- 8.122 However, that there are potential cost savings to providers in the long term from implementing Option 2, which would mitigate the burden to some degree. By making the unlocking process smoother, we would expect a reduction in customer queries, unlocking requests and complaints and the associated costs of dealing with them (and in addition to cost savings there would be a benefit to brand reputation from fewer complaints).²⁹²
- 8.123 [X] told us that the net ongoing costs of Option 2 would likely be neutral, given the benefits per annum of a reduction in the volume of calls and support needed to resolve customer queries about locked devices. [X] estimated that the ongoing costs would be less than £50,000 a year.
- 8.124 In contrast to Option 1, we would not expect Option 2 to lead to any changes to systems or processes to deal with the risk of an increase in fraud and bad debt.

²⁹⁰ There are some differences between Option 2 and the option on which what we sought cost estimates from providers. We now propose an additional requirement that where a customer with a locked device requests a switching code under the Auto-Switch process, providers would need to let that customer know that they need to unlock their device in the switching information they provide, and include a link to a guide that explains how to do so; providers would need to ensure that they give customers the unlocking codes within 24 hours of a request; and Vodafone would need to ensure that Apple devices are unlocked automatically by the end of the commitment period. However, the option that we sought cost estimates on included a proposal to provide existing customers with their unlocking code if they take a new airtime contract. We now consider that this condition would not be necessary to meet our policy objectives.

²⁹¹ [X]

²⁹² [X]

Provisional conclusion

- 8.125 We consider that device locking is a disincentive to customers switching. We have set out above the evidence that device locking may cause delays and difficulties in practice, which might also act as a barrier to switching. Our provisional view is that this practice results in harm, which we consider is appropriate to address.
- 8.126 We have set out our objective to ensure that customers are not deterred from exercising choice by switching provider and the benefits that this would bring. We have also explained why we consider that it is appropriate and proportionate to intervene by introducing specific regulatory obligations designed to secure the objectives that we are pursuing.
- 8.127 We have identified two main options, set out above, which we consider may be capable of meeting our objective. This section sets out our provisional conclusions.

Effective and least onerous means of achieving our objectives

- 8.128 We consider that Option 1 would fully remove the need for customers to go through the process of unlocking their handset when changing providers and the difficulties customers who switch currently face with device locking. It would also remove the barrier to switching arising from this practice. By making switching easier, this option would allow customers to take advantage of the offers that are available to them, which in turn would strengthen the competitive process. As such, Option 1 would be an effective means of addressing the harms we have identified.
- 8.129 For the reasons set out above, we consider that Option 2 would not be as effective in addressing the harm we have identified. In addition, we do not consider that there are any other options that could effectively address our concerns. We also consider that the costs of implementing Option 1 would be limited. Our provisional view is therefore that Option 1 is the least onerous effective means of achieving our objectives.

No wider adverse effects that are disproportionate to the aims that we are seeking to achieve

- 8.130 Having considered the impact of our proposals on providers and customers, we do not consider that they would produce adverse effects which are disproportionate to our policy objectives. We recognise that Option 2 would avoid the perceived drawback of Option 1 in terms of any risk of increased fraud and would be expected to have a smaller effect on up-front PAYG subsidies. However, the fact that many providers manage fraud and bad debt without device locking suggests that device locking may not be essential to this. We also consider that PAYG device subsidies may not be entirely reliant on device locking.
- 8.131 While there would be some costs involved in implementing Option 1, we consider that they are likely to be sufficiently limited such that they would not outweigh the expected benefits that would be generated.

Proposed option

- 8.132 On the basis of the reasoning in this section, we are minded to implement Option 1, that is, providers should be required to sell unlocked devices to their customers.
- 8.133 We propose to limit this requirement to residential customers. The needs of some small business may be different from residential customers. In particular, we understand that some businesses value the ability to provide staff with locked devices. Small businesses would nonetheless benefit from our proposals to improve transparency as highlighted at paragraph 8.82. We also note that where SMEs purchase residential services, they would also benefit from our proposal to require providers to sell unlocked devices to residential consumers.²⁹³

Proposed amendments to our General Conditions

- 8.134 In order to give effect to our proposals in this section we are proposing to introduce a specific provision in our GCs requiring providers to ensure that no locking restrictions are applied to mobile devices sold or provided to residential customers as part of a bundle with their mobile communications services. Our proposed ban on device locking would be without prejudice to the general requirement that conditions or procedures on contract termination do not act as disincentives to switching.

Implementation

- 8.135 As explained above, providers would need to change their agreements with device manufacturers to make sure the devices they supply are now unlocked. They may also need to amend their internal policies with some associated staff training. We propose to allow providers 12 months from the date of our final statement to implement Option 1.
- 8.136 We have considered that providers may have an existing stock of locked devices and will continue to receive locked devices until they have changed their contractual arrangements. We believe that a 12-month implementation period should be sufficient for providers to change their arrangements with device manufactures and sell any stock of locked devices. To the extent that providers still have a stock of locked devices after the end of the implementation period, we understand that it is technically possible for providers to unlock these devices before selling them in order to comply with our rules.

Legal tests

- 8.137 We consider that the changes we are proposing to make meet the test for setting or modifying conditions set out in section 47(2) of the Act. We consider that our proposals are:

²⁹³ 53% of mobile-using SMEs had a business-specific mobile contract in a January 2017 survey by Jigsaw research for Ofcom. See [SME Experience of Communications Services: Research Report](#), page 95.

- a) **objectively justifiable** and **proportionate** for the reasons set out above;
- b) **not unduly discriminatory** as they apply to all providers of mobile communications services;
- c) **transparent**, in that our reasoning has been explained in this section and the effects of the proposed changes would be clear to communications providers from the revised condition itself.

8.138 Our proposals are set out in proposed GC 1.9. The scope of this provision is set out in proposed GC C1.1(b)(ii).

Consultation questions

Question 9: Do you agree with our assessment that device locking can deter customers from switching and can cause customer harm?

Question 10: Do you agree with our assessment of the effectiveness in reducing the customer harm that can result from device locking and the impact on providers of Options 1 and 2?

Question 11: Do you agree with our proposal to prohibit the sale of locked mobile devices?

Please provide evidence to support your response.

9. Disincentives to switch: non-coterminous linked contracts

- 9.1 As we have set out in section 6, customers buying communications services should be able take-up deals and change provider without encountering unnecessary difficulties. The EECC requires that the conditions for terminating a contract should not act as a disincentive to switching provider.
- 9.2 The EECC makes clear that this applies to all elements of bundles of services, and bundles of services and terminal equipment, that include at least one internet access service (IAS) or number-based interpersonal communications service (NBICS).
- 9.3 As we set out in the previous section, as part of implementing the EECC we have considered our rules in light of the purposes of the EECC and particularly the emphasis it places on being able to switch bundles easily. In doing so, we have considered whether we should specifically address any current practices that may act as a disincentive to switch.
- 9.4 In this section we discuss bundled contracts where:
- the commitment periods for different elements of a bundle, such as different services or equipment provided do not align; and
 - the contracts are linked, i.e. there are dependencies between them, such that terminating one element of the bundle would impact on another.
- 9.5 We refer to these as **non-coterminous linked contracts**.²⁹⁴ Our focus is on bundles where different elements are on separate but linked contracts, because this is the most common form of non-coterminous bundles that we see. However, we would apply the same approach to bundles of services and/or equipment that are on the same contract but where the commitment periods do not align.
- 9.6 We have previously expressed concerns about non-coterminous contracts as part of our work on helping customers to engage in communications markets. We said that such contracts may deter customers from switching due to the potential difficulties and complexities of taking a bundle of services with different commitment periods or expiry dates.²⁹⁵
- 9.7 In the rest of this section, we set out the evidence we have gathered from providers on the main types of non-coterminous linked contracts. We explain our concerns that the link between non-coterminous contracts can make switching difficult and deter some customers from switching. We also explain the potential benefits. We then set out how we would consider whether customers are likely to be adversely affected in practice and our proposal to issue guidance under GC C1.8 to set out our approach to non-coterminous linked contracts.

²⁹⁴ See section 3 for proposed definition of “bundle”.

²⁹⁵ Ofcom, [Call for Inputs on helping consumers to engage in communications markets](#), July 2017, pages 16-17.

Customers often buy a combination of services and/or terminal equipment from their communications provider

- 9.8 Bundling is a common feature of retail communications markets and can take a wide range of forms. Ofcom research shows that 80% of UK households purchased a combination of services from their provider in 2019; with dual-play (landline and fixed broadband) and triple-play (landline, fixed broadband and pay TV) bundles being the most popular, accounting for around three-quarters of communications bundles consumed by UK households. Bundles of fixed line and mobile services are also available although take-up of such bundles is low in comparison.²⁹⁶ Customers also take bundles which include terminal equipment such as a mobile device. Our data suggests that around 60% of pay monthly mobile contracts include a handset.²⁹⁷
- 9.9 Purchasing services in bundles can bring advantages to customers. They may value the convenience of taking a combination of services and/or terminal equipment from the same provider, as they are billed by the same provider and are likely to have one point of contact. Customers who take bundles may also benefit from lower prices, such as price discounts.²⁹⁸ These lower prices might, in part, reflect lower costs for providers when they bundle services, e.g. in relation to billing and/or marketing, or the fact that a lower price for one service expands demand for the other.

Our focus is on bundles with dependencies

- 9.10 Our focus is on bundles where there are dependencies between the different services or between the services and equipment within the bundle, such that terminating one element of the bundle would have an adverse impact on another element.²⁹⁹ If elements within a non-coterminous bundle do not have any dependencies, customers should be able to switch just one part of the bundle without any impact on the other elements of the bundle.
- 9.11 The main types of dependencies we have seen are as follows:
- **A technical dependency** where a customer would lose, or be impaired in using, one element of the bundle if they terminated the contract for another. For example, if a customer has a broadband service which only works if they also take a landline service from the same provider. This would mean that if the customer cancelled their landline service, they would no longer be able to use the broadband service.
 - **A contractual dependency** where there are links between the rights or obligations for the provision of different elements of the bundle. For example, a customer might

²⁹⁶ Our research indicates that 5% of households take a quad-play bundle (landline, fixed broadband, pay TV and mobile), [Ofcom Technology Tracker 2019](#).

²⁹⁷ Ofcom, [Helping consumers to get better deals in communications markets: mobile handsets](#), July 2019. See Figure 3.1 for composition of pay monthly contracts in January 2019.

²⁹⁸ The analysis in our [2018 Pricing Trends report](#) (section 8 on “pricing of bundled services”) suggests that there are significant savings available to those who purchase bundled communications services.

²⁹⁹ More than one dependency might exist in the same bundle.

purchase both airtime and a mobile device at the same time from the same provider under two different contracts but with contract terms that link the contracts.³⁰⁰ We refer to these as 'linked split mobile contracts.'

- **A financial dependency** where any prices, tariffs or charges for the provision of one element of the bundle are contingent on taking another element, e.g. a monthly discount or extra data for mobile customers who also take fixed broadband from the same provider, which is then removed if the broadband contract is cancelled.

The linked elements in a bundle may have commitment periods that do not align

- 9.12 Data obtained from the largest fixed and mobile providers in the UK indicates that a significant number of customers currently purchase a bundle of linked services and/or terminal equipment³⁰¹ with commitment periods that do not align.³⁰² Specifically, we estimate that there are around 8.4m non-coterminous linked contracts³⁰³ out of around 39m bundled subscriptions in the UK.³⁰⁴ These are largely driven by the inclusion of a mobile service in a bundle: around 70% (5.8m) of all non-coterminous linked contracts include at least one mobile service.
- 9.13 We are aware that a large proportion of linked split mobile contracts have commitment periods with different end dates because there are different commitment periods available for the airtime and the handset elements of the bundle. There are also different commitment periods available for combinations of other services, e.g. 18-month contracts are common for landline and broadband services, 12-month contracts are common for mobile SIM-only deals and 24-month contracts are common for mobile deals (with a handset).
- 9.14 The length of the difference between the end of the commitment periods for linked services and/or terminal equipment varies widely, from less than one month to more than a year. Figure 9.1 below shows that for non-coterminous linked contracts as a whole:
- 12% have commitment periods that end less than one month apart;
 - 14% have commitment periods that end more than one but less than six months apart;
 - 19% have commitment periods that end more than six but less than twelve months apart; and

³⁰⁰ These terms may include a requirement that if the customer ends their airtime contract, they must also pay the remaining balance due under their handset contract in full as a lump-sum. There would also be a financial dependency in this case.

³⁰¹ Examples of terminal equipment include mobile handsets, mobile tablets, and wireless routers.

³⁰² BT/EE, O2, Plusnet, Post Office, Sky, TalkTalk, Tesco Mobile, Three, Virgin Media and Vodafone response to formal information request dated 12 April 2019.

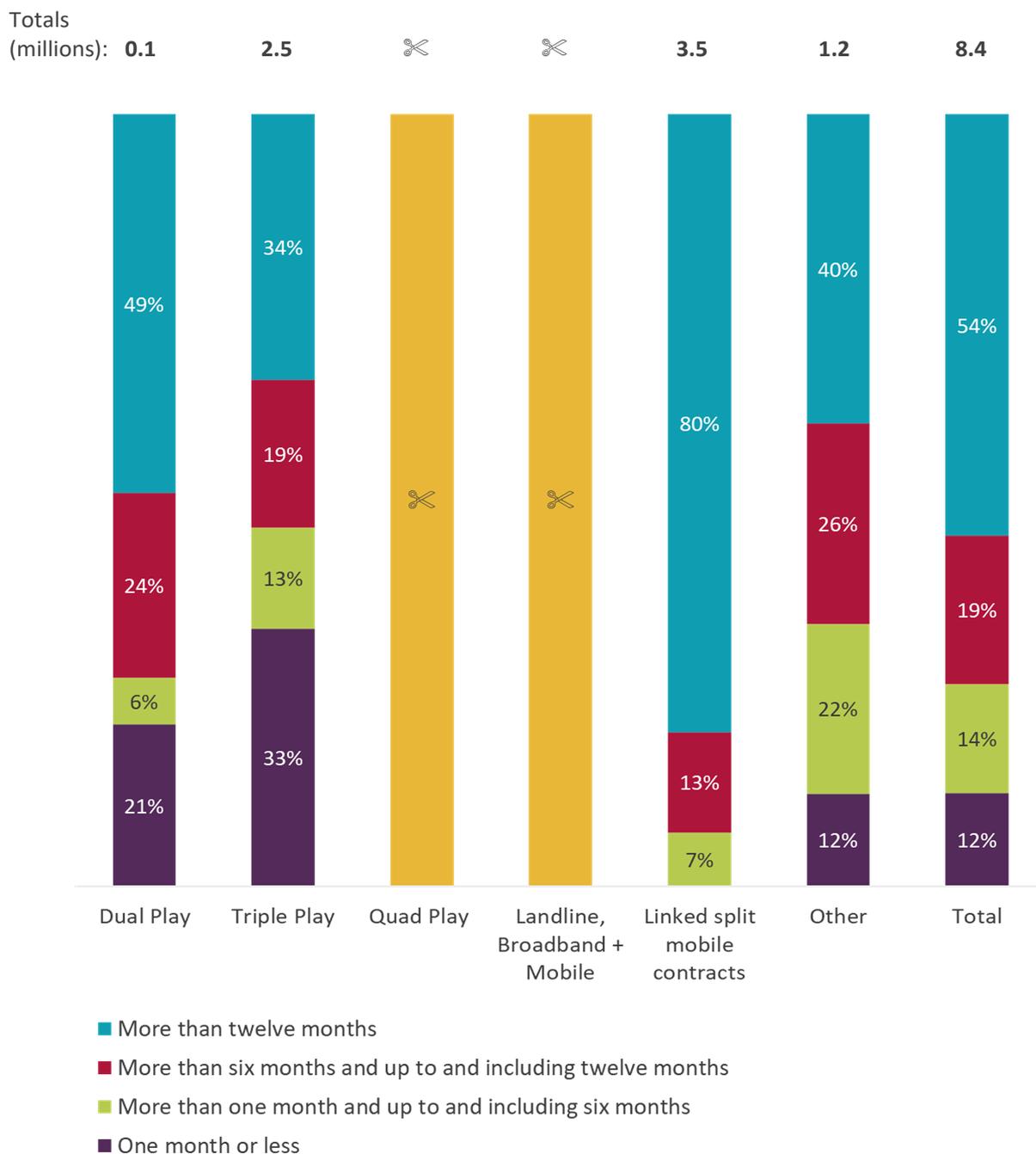
³⁰³ This is based on provider data for bundles with interdependencies where at least one service is in-contract as at April 2019. Plusnet, TalkTalk and Three reported that they had no non-coterminous linked contracts.

³⁰⁴ The total number of bundled subscriptions is a combination of (i) data submitted by the largest fixed and mobile providers in response to formal information requests dated 25 March 2019 and 12 April 2019; and (ii) data on "bundled" mobile contracts (under which the customer receives a handset and airtime and pays a single monthly price) taken from our [Statement and consultation on mobile handsets, July 2019](#). The data represents bundles where at least one element is still in contract. For (ii) the "bundled" mobile data represents contracts that are still in-contract as at 1 November 2018.

- 54% have commitment periods that end more than twelve months apart.

9.15 This does, however, vary by type of bundle. For example, four-fifths (80%) of non-coterminous linked split mobile contracts have commitment periods that end more than twelve months apart, while around one third (34%) of non-coterminous triple-play contracts have commitment periods that end more than twelve months apart.

Figure 9.1: Number of non-coterminous linked contracts (millions) and duration of difference in end of commitment periods for non-coterminous linked contracts, by bundle



Source: Ofcom analysis of provider response to formal information request of 12 April 2019.

Notes: (1) Our analysis focuses on the main types of communications services and/or terminal equipment that can be taken in a bundle. There are many other combinations available and these are captured together in the “Other” category.³⁰⁵ (2) We note that our [Statement and consultation on mobile handsets](#) in July 2019 reported that there are over 5m linked split mobile contracts in total. The 3.5m figure reported in this chart represents the number of these contracts that are non-coterminous.

Potential concerns with non-coterminous linked contracts

- 9.16 We want customers to have a range of communications services and terminal equipment available to them, so that they can buy these services, separately or in a bundle, on whatever basis best meets their needs. However, we are concerned that, in some cases, the dependencies between the linked elements of a bundle might mean that, where there are differences in commitment periods, this can act as a disincentive to switch. This may make it harder for the customers affected to obtain the services that best meet their needs, and may have a more general effect of weakening competition.
- 9.17 We set out our concerns below about how some non-coterminous linked contracts may result in customers facing higher switching costs and make it harder for customers to compare deals, which could deter switching.

Higher switching costs and deterrence from switching

- 9.18 The difference in the commitment periods between the different elements of non-coterminous linked contracts may make switching provider at the end of the first commitment period more difficult or costly, and may deter switching.
- 9.19 For example, if a customer has non-coterminous linked contracts for two services A and B (which were taken at the same point in time), and service A has a 12-month commitment period while there is an 18-month commitment period for service B, they may face **higher switching costs** if they wish to switch. In particular:
- If the customer switched provider for service A at the end of its commitment period, but kept service B with their original provider, they could face a switching cost if there are dependencies between services A and B. For example, they could lose a discount if there are financial and/or contractual dependencies, or they could face a loss of service (or partial loss of service) if there are technical dependencies between services A and B.
 - If the customer decided to switch provider for both services A and B at the end of the commitment period for service A, they could face a switching cost in the form of an

³⁰⁵ These include, for example, bundles of landline and broadband with other services and terminal equipment such as 4G routers and mobile tablets, and bundles where the customer takes more than one of the same service (such as two mobile contracts).

early termination charge³⁰⁶ for exiting the contract for service B before the end of its commitment period.

- 9.20 To avoid incurring these switching costs, the customer may decide to remain with the same provider at the end of the commitment period for service A. In which case, the switching costs would have deterred the customer from switching provider. Under these circumstances the customer could either:
- wait until the end of the commitment period for service B before switching provider for both services. In the meantime, the customer may have to pay a higher out-of-contract price for service A while waiting until the end of the commitment period for service B; or alternatively
 - sign up to a new 12-month commitment period for service A with the same provider to avoid higher out-of-contract prices. The customer is then “locked-in” to their current provider beyond the commitment period for service B which will now end before the new commitment period for service A. This situation may persist at the end of the commitment period for service B if the customer signs up to a new contract that does not align with the new commitment period for service A.
- 9.21 Qualitative consumer research has found that some customers on non-coterminous contracts faced switching costs due to having different contract durations for different services from the same provider.³⁰⁷ For example, they:
- experienced a higher than expected bill, due to one or more of the shorter contracts coming to an end, when the customer could not remember being told that this would happen when they took out the contracts; or
 - found out they would have to pay a charge or amount (for example an early termination charge) to switch all services in the bundle or wait until the longest contract expires.

Complexity of decision making with non-coterminous linked contracts may deter switching

- 9.22 The complexity of non-coterminous linked contracts could also make it harder for customers to compare deals as they need to take into account the different commitment periods as well as the dependencies to understand whether and when they should switch. This might deter them from switching.
- 9.23 Using the example in paragraph 9.19 above, at the end of the commitment period for service A, the customer would need to work out if they would save more money by

³⁰⁶ Our proposed definition of early termination charge in the GCs refers to a charge that may be payable by customers for terminating a contract before the end of the commitment period.

³⁰⁷ Futuresight, April 2018, [Consumer engagement with communications services: a qualitative research study -final report](#), pages 42-43. The research included exploring customers’ understanding and awareness of non-coterminous contracts among dual-play and triple-play customers. Fieldwork was conducted between August and October 2017. Non-coterminous contracts were referred to and described as “staggered” contracts taken with the same provider, and not explicitly described as bundled services with interdependencies.

switching their whole bundle to another provider for a lower price even if they have to pay a charge or amount for cancelling their contract for service B before the end of its commitment period, or whether it would be better to wait for the commitment period for service B to end even though they may face higher out-of-contract prices for service A. There are also other options they could consider, such as entering into a new commitment period for service A while they continue service B.

- 9.24 The complexity of non-coterminous linked contracts, when compared to coterminous contracts, may also give rise to concerns with procedural fairness under our draft Fairness Framework.³⁰⁸ The draft framework sets out our initial thinking on the types of questions and factors we would consider in assessing whether customers are being treated fairly. Where relevant, we have taken these into account in our consideration of non-coterminous linked contracts.

Non-coterminous contracts may have benefits for customers

- 9.25 In some circumstances, non-coterminous linked contracts might deliver benefits for customers. For example, introducing a link between two contracts might enable providers to offer lower prices or better services to customers than they would otherwise be able to, due to bundling efficiencies. Linking contracts may also make it easier for some providers to enter what are, for them, new markets or services where they already have an established market position in respect of one of the linked services.
- 9.26 Where such benefits exist, it is relevant to consider whether setting non-coterminous commitment periods for the linked contracts also offers benefits. Setting non coterminous commitment periods in this context could deliver benefits if, for example, in addition to the benefits arising from linking the contracts, it provided meaningful opportunities for customers to vary the terms of (or altogether discontinue) one service earlier than if the commitment periods were aligned.³⁰⁹
- 9.27 Non-coterminous contracts also occur when customers take up a new service whilst they are already under contract for another service from the same provider. Under these circumstances, non-coterminous contracts could deliver benefits compared with coterminous contracts if, in addition to the benefits arising from linking the contracts, aligning the commitment periods would undermine providers' recovery of costs, or would impose costs on providers and/or increase tariff complexity. We would disregard such claimed benefits from contracts that are linked and non-coterminous if they could be achieved in other, less restrictive ways.

³⁰⁸ Ofcom, 2019, [Discussion paper: Making communications markets work well for customers – a framework for assessing fairness](#). See Figure 1 on page 12. Procedural fairness refers to the fairness of the way firms treat customers in the market.

³⁰⁹ That is, earlier than if the commitment period for that service was aligned with the other service which had a longer commitment period. Setting a longer commitment period may enable the provider to smooth cost recovery without imposing high upfront charges for customers.

Assessing the overall impact on customers

9.28 To understand whether, in practice, customers are adversely affected by non-coterminous linked contracts, we need to consider both the scope for harm and any potential mitigating factors, and make an assessment in the round.

Scope for harm

9.29 With non-coterminous linked contracts, an important consideration is the nature and extent of the disincentive to switch which is likely to arise from any switching costs that the customer faces if they were to switch provider when they reach the end of their first commitment period (service A in the example above). If the customer does not face any material switching costs at this point, then they are unlikely to be deterred from switching, and we are unlikely to have concerns about non-coterminous linked contracts.

Strength of dependencies

9.30 We consider that switching costs are more likely to be high if there are strong dependencies between different elements of the bundle. For example, if the customer:

- is not able to use one element of the bundle without the other because of a technical dependency; and/or
- could face a material financial impact, such as losing a discount, if they switched to another provider for one of the elements in their bundle before the end of the commitment period for another element of the bundle.

Difference between the end of the commitment periods

9.31 In addition, we consider that a significant difference between the end of the commitment periods for the different elements of a bundle is more likely to cause harm because it is likely to raise switching costs. Using the previous example, if the customer wanted to switch the bundle at the end of the commitment period for service A, and there was a significant difference in the commitment periods between service A and service B, the customer would face a higher early termination charge for service B compared to a situation where the difference between the end of the commitment periods was minimal. This is because early termination charges are lower the closer a customer is to the end of the commitment period.

There is less likely to be harm if there are neither strong dependencies nor material differences in commitment periods

9.32 If non-coterminous linked contracts did **not** have both of these factors (strong dependencies and a material difference between the end of the commitment periods), there is less likely to be scope for harm. However, if both of these factors are present, we consider that harm is more likely to arise, in which case the following two factors would also need to be considered:

- The conditions the customer would face if they were to remain with their current provider at the end of the first commitment period.
- The extent to which the non-coterminous linked contracts are likely to make it harder for customers to compare deals and deter switching.

The conditions the customer would face at the end of the first commitment period

- 9.33 To understand the scope for material harm, we would consider the conditions facing customers at the end of the first commitment period.
- 9.34 We are more likely to consider that harm will arise if the customer:
- would face financial harm, for example, in the form of higher out of contract prices at the end of the first commitment period, particularly if the difference between the end of the commitment periods for different elements of a bundle is significant (such that they would need to pay the higher out of contract price for a long time until the end of the other commitment periods); or
 - at the end of the first commitment period, they cannot easily sign up to a new commitment period with their current provider that would enable them to align the commitment periods across the bundle. Customers should not be continually “locked-in” to their current provider with commitment period that never align.

Whether the non-coterminous linked contracts make it harder for customers to compare deals

- 9.35 It is also important to consider whether the complexity of the non-coterminous linked contracts is likely to make it harder for customers to compare deals, adding costs to the process of searching for a deal and increasing the risk that customers select a deal that is not good for them.
- 9.36 For example, a customer with a dual-play (landline and broadband) contract who subsequently adds at different points in time (i) a pay TV service that has a technical dependency with the dual-play contract and (ii) a mobile contract that has a contractual dependency with the dual-play contract could be faced with three commitment periods that do not align. If they wanted to switch one or all elements of the bundle, they would have to consider the links between all the contracts and the difference in the minimum contract periods in order to work out the best time to switch.

Potential mitigating factors

- 9.37 Where we have concerns that certain non-coterminous linked contracts could act as a disincentive to switch, we would also consider whether there were any mitigating factors that would lessen our concerns.
- 9.38 Mitigating factors which we consider to be relevant include efficiencies or other countervailing benefits for customers linked to the provision of the relevant services and/or terminal equipment under linked contracts that are non-coterminous. Such benefits might include increased flexibility for the customer to change one contract in a bundle, but where overall the bundle delivers benefits from lower prices or free add-on

services because the contracts are linked. In assessing any specific case of non-coterminous linked contracts, we would need to establish that both the link between the contracts along with the non-coterminous commitment periods produced benefits for customers.

- 9.39 We are also likely to consider whether we could reasonably expect the customer to have made an informed decision in the round, at the time they took out the non-coterminous linked contracts, including taking into account the circumstances they would face when each element of the bundle reaches the end of its commitment period. This will depend upon how complex the non-coterminous linked contracts are and what level of support providers gave consumers to help them understand the implications of entering into these agreements, including what happens at the end of the commitment periods. We would also consider the risk of unintended consequences from intervening.

Other interventions will address some, but not all, of our potential concerns with non-coterminous linked contracts

- 9.40 Other remedies that we have proposed might, in certain circumstances, help reduce some of the potential customer harm and fairness concerns arising from non-coterminous linked contracts. However, we consider that these interventions will not sufficiently address all of our concerns and that harm may still arise for some customers on non-coterminous linked contracts.

End-of-contract notifications

- 9.41 Providers of electronic communications services will be required to send end-of-contract notifications to all customers from February 2020.³¹⁰ Among other things, the notification has to include a list of other electronic communications services that the customer takes from the same provider if there is a financial or other interdependency with the service that is subject to the notification, as well as the end date of the fixed commitment period(s) for those services.³¹¹ This would therefore alert customers that they have another contract with their provider which they need to consider when weighing up their options in response to the notification.
- 9.42 We believe that end-of-contract notifications will help improve customers' awareness about their contractual position when reaching the end of the commitment period for one element of their non-coterminous contracts. However, we consider that the provision of this information alone will not sufficiently address our concerns about the switching costs that customers might incur, or the deterrent effect such contracts may have on switching; neither does it address the complexity of the assessment that a customer on a non-

³¹⁰ Ofcom, May 2019, [Statement on end-of-contract notifications and annual best tariff information](#).

³¹¹ In section 6, we have proposed further changes to the GCs in order to fully implement the bundling provisions in Article 107(1) so that where a provider is sending an end-of-contract or annual best tariff notification for an electronic communications service, from December 2020 these notifications will also need to include details of non-electronic communications services that form part of the bundle.

coterminous linked contract may be faced with when trying to determine whether and when to switch providers.

Contract information for customers at the point of sale and when adding to their bundle

- 9.43 Article 102 of the EECC requires that providers give specific information to customers before they are bound by the contract.³¹² This includes information about the conditions of termination of a bundle comprising at least an IAS or publicly available NBICS, or of elements thereof.³¹³
- 9.44 We have set out our proposals for implementing this provision in section 4 and this includes proposed guidance on how providers might comply with this requirement (in [Annex 6](#)). In particular, our proposed guidance sets an expectation that providers should make clear to customers that they are entering into a bundle with different commitment periods, and of the dependencies between those contracts, this includes when customers are signing up to:
- a) non-coterminous linked contracts at the same point in time; and
 - b) a contract for the provision of an additional service and/or terminal equipment with a different end date to their existing contract with the same provider, such that they become bound by non-coterminous linked contracts.³¹⁴
- 9.45 We believe that this measure should result in more customers being aware that they are taking a bundle of services where the end of the commitment periods do not align, This may help them to make a more informed choice about the contracts they sign up to. However, this increased awareness may not have a significant impact on the existence or operation of these types of contracts, particularly if customers can only take out a bundle with commitment periods that do not align. Insofar as these types of contracts continue to exist, harm would still arise for those customers in the form of switching costs and we would still be concerned where the practice of non-coterminous linked contracts could act as a disincentive to switch.

Provisional conclusions

- 9.46 Many customers are on non-coterminous linked contracts, and these contracts vary widely. We are concerned that, in some cases, non-coterminous linked contracts may deter switching by:

³¹² The information shall be provided in a clear and comprehensible manner on a durable medium.

³¹³ EECC, Annex VIII (B)(3).

³¹⁴ Article 107(3) of the EECC requires that the provider shall not extend the original duration of the contract to which services or terminal equipment are added unless the customer expressly agrees otherwise when subscribing to the additional services or terminal equipment.

- **increasing the costs of switching**, for example, if cancelling one element of the bundle which has reached the end of its commitment period results in a loss of service and/or significant financial impact on the customer; and
- **increasing complexity for customers**, making it harder for them to assess how to get a good deal (including when to switch).

- 9.47 However, we recognise that not all non-coterminous linked contracts would give rise to concerns or warrant intervention. There may also be potential countervailing customer benefits from contracts structured in this way and/or unintended consequences from limiting their availability.
- 9.48 We also recognise that other interventions that are due to take effect or have been proposed might go some way in improving transparency for customers in relation to these contracts but stop short of addressing our potential concerns
- 9.49 In light of these factors, we consider we need to do more to protect customers from the potential harms we have identified but do not consider it appropriate, at this time, to introduce specific regulatory measures for non-coterminous linked contracts.³¹⁵
- 9.50 Instead, we propose to issue guidance to outline how we are likely to assess whether types of non-coterminous linked contracts raise concerns under GC C1.8.

Protecting customers' interests – guidance on non-coterminous linked contracts

- 9.51 Our draft guidance sets out the factors we propose to take into account when considering whether to take enforcement action in relation to non-coterminous linked contracts. The draft guidance can be found at [Annex 9](#).
- 9.52 In line with the requirements of the EECC, our proposed GC C1.8 would apply to contracts with residential customers, as well as microenterprises, small enterprises and not for profit organisations (see section 6). We propose that our guidance on this GC should also apply to all four groups of customers. In our view, micro and small enterprise customers as well as many not for profit organisations are likely to behave in a similar way to residential customers (and can have more limited bargaining positions than some larger businesses). We therefore consider that these customers should have the right to similar protections to residential customers as far as conditions and procedures for termination are concerned.
- 9.53 The guidance sets out our proposed approach to considering whether certain non-coterminous linked contracts are likely to act as a disincentive to switch. Specifically, it proposes to take into account a number of different factors in the round in line with the approach set out in this section, all of which we consider relevant to our assessment of whether intervention is warranted. We propose to assess the scope for material harm by considering a number of factors in combination. These would include the strength of

³¹⁵ We consulted on proposed measures for linked split mobile contracts in July 2019 (see section 5 of [Statement and consultation on mobile handsets](#)). We discuss this in section 6.

dependencies and differences in the end of the commitment periods for different elements of the bundle. If non-coterminous linked contracts do not have both strong dependencies and significant differences between the end of their commitment periods, they are less likely to result in a disincentive to switch.

9.54 However, where these factors apply, we would further consider:

- the conditions that arise when some elements of the bundle reach the end of their commitment period before others, and
- whether the complexity of the non-coterminous linked contracts makes it harder for customers to compare deals adding costs to the process of searching for a deal and increasing the risk that customers select a deal that is not good for them.

9.55 As part of our assessment, we would also consider any mitigating factors which would lessen our concerns. Mitigating factors could include the potential for efficiencies and other benefits from non-coterminous linked contracts as well as the risk of unintended consequences from intervening. They could also include whether we could reasonably expect the customer to have made an informed decision when they took out the non-coterminous linked contracts, (taking into account the circumstances they would face when each element reaches the end of its commitment period).

9.56 We would be more likely to consider opening an investigation where a number of factors suggest that the circumstances relating to the non-coterminous linked contracts are likely to act as a disincentive to switch.

9.57 We propose to continue to monitor non-coterminous linked contracts. If, after a period of time from when we introduce the proposed guidance, we remain concerned with the impact on customers and switching of such contracts then we may consider further regulatory intervention in future.

Consultation questions

9.58 We welcome comments on the following questions:

Question 12: Do you agree that we should protect customers by issuing guidance on our proposed approach when considering the case for enforcement action against non-coterminous linked contracts?

Question 13: Do you agree with our proposed guidance in [Annex 9](#) which sets out our proposed approach to assessing whether certain types of non-coterminous linked contracts are likely to act as a disincentive to switch?

Please provide evidence to support your response.

10. Emergency video relay

- 10.1 Video relay involves a deaf British Sign Language (BSL) user signing via a video link to an interpreter in a location such as a call centre using a connected device such as a smartphone, tablet or PC. The interpreter translates what is signed to the emergency services via a voice call and signs the responses from the emergency services back to the deaf BSL user.
- 10.2 Deaf people in the UK who use BSL to communicate and who may have difficulty with written or spoken English, notwithstanding the availability of text relay and emergency SMS services, do not currently have access to emergency services that is equivalent to that enjoyed by other citizens.
- 10.3 As matters stand, it may not always be possible for requests from BSL users to be properly understood by non-BSL users (via existing services) in time-critical situations and as a result, they are less likely to receive the necessary emergency relief from emergency services in a timely way.
- 10.4 The EECC retains and strengthens requirements for disabled people to have equivalent access to emergency communications with other people. In light of this, we are proposing to require regulated providers to make available a free 24/7 video relay service for BSL users to enable effective communication with the emergency services. The proposed service would allow deaf BSL users to communicate in the way that is clear and effective for them and allows instructions from the emergency services to be more easily understood by the BSL user.

Equivalence of access

- 10.5 The UK regulatory framework for electronic communications already contains the principle that people with disabilities should have access to emergency communications that is equivalent to that experienced by other end-users.
- 10.6 The EECC builds on this principle, particularly in the context of emergency communications, taking into account advancements in communications technology. Article 109(5) of the EECC requires EU Member States to “ensure that access for end-users with disabilities to emergency services is available through emergency communications and is equivalent to that enjoyed by other end-users, in accordance with Union law harmonising accessibility requirements for products and services...”.
- 10.7 Article 2(38) defines an emergency communication as a “communication by means of interpersonal communications services between an end-user and the Public Safety Answering Point with the goal to request and receive emergency relief from emergency services.” Emergency communications include “not only voice communications services, but also SMS, messaging, video or other types of communications, for example real time

text, total conversation and relay services.”³¹⁶ The EECC further says that Member States should take specific measures to ensure that emergency services are equally accessible to end-users with disabilities, in particular, deaf, hearing-impaired, speech-impaired and deafblind end-users.³¹⁷

10.8 The EECC recognises that developments in technology could improve the lives of all end-users. Video communications are now commonplace and more reliable than ever before and acknowledging this, the scope of ‘emergency communications’ has broadened in the EECC to specify the inclusion of video relay.

10.9 It is Ofcom’s principal duty, in carrying out its functions, to further the interests of citizens in relation to communications matters,³¹⁸ and in performing this duty, Ofcom must have regard to, amongst other things, the needs of persons with disabilities.³¹⁹ Should Ofcom seek to impose requirements in respect of video relay for emergency communications, the requirements would be addressed through the General Conditions of Entitlement. Section 51(2)(c) of the Act gives Ofcom the power to impose General Conditions specifying requirements in relation to the provision of services to disabled end-users and accordingly, it may set requirements in relation to equivalence.

Current services and their limitations for BSL users

10.10 Technological advancements, together with the planned transposition of the EECC, have prompted us to examine whether the existing means of access to the emergency services for disabled end-users are as equivalent as they can be to those for other end-users. Our assessment, outlined in this section, indicates that as matters stand access is not equivalent for deaf BSL users.

10.11 Emergency calls are in a different category from other communications given their potentially extremely serious consequences and urgency. Given this, 999 calls are currently privileged over all other calls in a range of ways:

- 999 calls are always free of charge
- Consumers can call 999 even after being disconnected for non-payment
- There is Limited Service State (roaming) for mobile 999 calls³²⁰
- There is location information for 999 calls
- We mandate text relay for all calls including 999, and emergency SMS for emergency communications
- We require resilience solutions such as battery backup to ensure that emergency calls can be made on IP networks in power cuts.

³¹⁶ EECC, recital 285

³¹⁷ EECC, recital 288

³¹⁸ Section 3(1)(a) of the Act

³¹⁹ Section 3(4)(i) of the Act

³²⁰ Limited Service State involves UK callers making emergency call using a network other than to which they subscribe.

- 10.12 There are two existing services, text relay and emergency SMS, which are used by deaf or speech-impaired people who cannot make voice calls, but these have limitations for BSL users.
- 10.13 Text relay allows users to call the emergency services using a textphone or mainstream equipment such as PCs, tablets and smartphones. A relay assistant in a call centre voices over what is typed by the deaf person and types what is said by the hearing person. This relies on the deaf person using written communication and typing in a high-stress situation.
- 10.14 Emergency SMS allows users to send one or more SMS (text) messages to 999, and to receive replies in the same format. This again relies on written communication.
- 10.15 BSL has been recognised in the UK as a language in its own right, with its own vocabulary, grammar and syntax, since 2003.³²¹ Census data indicates that a majority of prelingually deaf BSL users have serious difficulties with English, with limited opportunities to improve their access to a language that they cannot hear.³²² Having to work in written English, under stress, can lead to misunderstandings which could have negative or even fatal consequences in emergency situations. Emergency video relay would allow BSL users to use their first language to call for help and to receive advice in emergency situations. This would be likely to make emergency communications faster and more accurate, delivering a range of benefits. The BSL user will be better able to describe the nature of the emergency and understand potentially life-saving instructions from the emergency services.
- 10.16 It is possible to make a voice call to the police and make as much noise as possible or bang on the handset to attract attention. If location information is available, the police will then attend to assess the situation. They can summon other emergency services if necessary. However, this can of course lead to delay in getting appropriate help.
- 10.17 Stakeholders have explained to us that many deaf BSL users do not feel they have an effective way of contacting the emergency services and of being sufficiently understood through existing means of access. We are aware of real-life examples where deaf people have not had a way to contact the emergency services when an emergency was unfolding in front of them, sometimes with very serious consequences.
- 10.18 Set out below are two examples provided to us by SignHealth:
- “Next door’s house was on fire; I spotted it. Our house alarm then went off so got my partner and child out of the house. Went to several houses to try and get someone to call but most were not in. Finally found a neighbour and he called the fire brigade. Unfortunately, the fire had spread to our house, and it was six months before we could move back in due to extensive damage. I do wonder if things were different if I had been able to call them sooner.”*

³²¹ Department for Work and Pensions (DWP), [Written Ministerial Statement](#), (2003)

³²² Data from the 2011 census suggests that 65% of people for whom BSL is a main language have significant difficulty with spoken English and that 40% of them have no qualifications

“I know a Deaf elderly couple; the husband went out to do some errands and came back to find that his wife had collapsed inside the hallway. He could not open the front door and had to wait for his daughter to come. He did not seek help because of his deafness and did not know how to use the 999 emergency number. Unfortunately, his wife died.”

- 10.19 These examples suggest that existing services are not sufficient to provide deaf BSL users with access to emergency communications at times when they need to use them.
- 10.20 A video relay service would allow BSL users to communicate in their first language when making critical contact with the emergency services and allow the BSL user to receive potentially life-saving instructions.
- 10.21 Clearer, more efficient communication would also help the emergency services. The information taken by the call handler and passed to a response crew allows them to assess a situation before they arrive, which allows for appropriate support to be dispatched. So, for example, if a specialist team or specialist equipment is required, this could be arranged without delay. There could be additional benefits for emergency authorities covering rural areas.
- 10.22 We believe the available evidence suggests there are limitations in the existing methods for deaf BSL users, which mean they are not currently equivalent to the access enjoyed by other end-users.

Our proposal

- 10.23 Given the limitations of the existing methods of emergency communication for deaf BSL users and changes in technology over recent years which has made video calling commonplace, we believe an emergency video relay service should be made available to deaf users who need to contact the emergency services.
- 10.24 Mandating video relay for 999 would be consistent with other measures to ensure access to 999, and with the principle set out in the EECC that disabled people must have equivalence of access to emergency communications. We have considered whether it would be appropriate and proportionate to require this change. ([Annex 10](#) sets out the expected benefits and costs.)
- 10.25 Emergency communications are in a different category from other communications and we are not proposing video relay is made available for non-emergency communications. The strengthened wording in the new Code and its recitals only applies to emergency communications.
- 10.26 The emergency video relay service would be subject to approval by Ofcom. Our proposed approval criteria are detailed in [Annex 10](#).

Scope of obligation

- 10.27 Our provisional view is that the obligation should be imposed on regulated firms that provide internet access services or number-based interpersonal communications services (ICS) to give free access to an approved emergency video relay service.
- 10.28 We have also considered whether the obligation should extend to over-the-top (OTT) providers like WhatsApp and FaceTime. Our provisional view is that it is not necessary to include these OTT providers in scope for now, so long as the main connectivity provider is in scope; however, we intend to keep that under review in future.
- 10.29 Following the above assessment, we consider the obligation should apply to all Internet Access Service (IAS) providers, not just those that provide IAS alongside providers of voice communications services. We recognise that that would bring some providers into scope that are not in scope of current 999 requirements. Accordingly, we invite stakeholders to provide their comments on this.
- 10.30 The proposed scope of obligation is summarised in the following table:

	Current voice 999 obligations	Proposed emergency video relay obligations
Fixed and mobile voice providers (i.e. number-based ICS)	Yes	Yes
Internet access providers	No	Yes
Number-independent ICS	No	No

Benefits of video relay for emergency communications

- 10.31 This section explains the benefits of a video relay services for emergency communications and aims to quantify some of the likely benefits.
- 10.32 As well as the quantified benefits related to deaths avoided there are broader benefits, which we have not attempted to quantify, which include:
- Benefits from quicker treatment of injuries, avoided damage to property (e.g. in relation to fire) and quicker responses from the police; and
 - Benefits to the emergency services in the form of faster and more accurate calls.
 - Increased dignity and peace of mind for deaf BSL users from knowing that video relay for emergency calls is available, even if they do not need to make an emergency call;
- 10.33 While we have not quantified these wider benefits, they remain integral to our overall impact assessment.
- 10.34 We have quantified the likely deaths prevented by the measure. Having considered the number of people who may use the video relay service and the incidence of life-

threatening ambulance calls among the general population, we judge it reasonable to consider that, at a minimum, at least two fatalities are likely to be prevented by emergency video relay each year.

- 10.35 It is of course very difficult to put a price on the value of preventing a fatality, but Government considers that it can be appropriate to use the value of a statistically prevented fatality when assessing policy options. For the purpose of considering the impact of our proposal, we have therefore adopted this methodology.
- 10.36 Using a value of a single prevented fatality of around £2m, our provisional conclusion is that the minimum level of benefits from saved lives would be around £4m per year and, in all likelihood, would be considerably larger.³²³ This is further explained in [Annex 10](#).

Costs of emergency video relay

- 10.37 To inform our view of the costs of emergency video relay, we have gathered information on the video relay service provided by Contact SCOTLAND - BSL.³²⁴ Contact SCOTLAND - BSL is a Scottish Government service providing public video relay in Scotland. Originally, it provided video relay for contacting public and third sector bodies in Scotland in the daytime. In June 2019, it was extended to be a 24-hour service providing video relay for any communications made by deaf and deafblind BSL users in Scotland.³²⁵ We have focused on this service, as it is now 24 hours, and thus seems a relevant comparator in terms of costs for the emergency video relay service we are considering.³²⁶
- 10.38 The cost of the 24-hour service that Contact SCOTLAND - BSL now provides is around £400,000 per year.³²⁷ We would not expect the costs of an emergency video relay service to be materially higher than Contact Scotland due to it covering the whole of the UK rather than just Scotland. This is because we would anticipate the number of calls being lower for a UK-wide emergency service compared to Contact SCOTLAND - BSL, which handles a much wider range of calls.³²⁸ But we would expect the costs of an emergency video relay service to be higher due to the need for it to have high resilience, with the capability to answer calls very quickly and handle occasional peaks in the number of calls. Even if it costs more than Contact SCOTLAND - BSL, we consider it unlikely that the costs would be ten times

³²³ For the monetary value of a prevented fatality, we have used a figure produced by the Department for Transport. See [Annex 10](#) for more details.

³²⁴ [Contact SCOTLAND – BSL](#)

³²⁵ www.deafcouncil.org.uk/wp/wp-content/uploads/2019/06/contactSCOTLAND-BSL-VRS-for-all-24-7-31May2019.pdf

³²⁶ We have also gathered information on the costs of the video relay service provided by NHS England for non-emergency 111 calls. This service is available for 16 hours a day (from 8am to midnight) rather than 24 hours. Because of this, it is not as good a comparator for the service we are considering. Notwithstanding this, we consider that the cost information for this service that we have gathered confidentially is broadly consistent with our conclusions based on the costs of Contact SCOTLAND - BSL.

³²⁷ This information was provided to Ofcom by the Scottish Government and by the contracted provider of the service, Sign Language Interactions.

³²⁸ The number of calls connected to the emergency services per person per year for the general population is about 0.31 (that is, 20.5 million 999 calls connected divided by a UK population of 66.4 million people). Applying this ratio to the 11,200 individuals who will have difficulty using the existing text relay system for 999 calls, would imply 3,500 calls per year, or 290 per month. This is much lower than the number of video relay calls now handled by Contact Scotland.

higher than the cost of Contact SCOTLAND - BSL, which is what it would need to be to outweigh the estimated benefits of only two prevented fatalities per year (which as noted above is a conservative estimate of the value of fatalities avoided and is before considering other reduced harm to persons and property).

Provisional conclusion

10.39 We conclude that it is proportionate to mandate emergency video relay and have set out above and in [Annex 10](#) the evidence for this.

Effective and least onerous means of achieving our objectives

10.40 We consider that emergency video relay would be an effective way of achieving our policy objective of equivalence of access to the emergency services for deaf BSL users.

No wider adverse effects that are disproportionate to the aims that we are seeking to achieve

10.41 Having considered the impact of our proposals on providers and customers, we do not consider that they would produce adverse effects which are disproportionate to our policy objectives. While there would be costs involved in implementing the proposal, we consider that these would be proportionate given the benefits of emergency video relay to users and the emergency services. The requirement would be imposed on all internet access services or number-based interpersonal communications services equally.

10.42 We also consider that this proposal would produce a fairer outcome for deaf BSL users, consistent with our strategic priority of ensuring fairness for customers.

10.43 We propose to amend General Condition C5 by inserting a new obligation on regulated providers that provide internet access services or number-based interpersonal communications services to provide emergency video relay for emergency communications. Regulated providers will also have a requirement to publicise this new service to their subscribers, as is the case with existing services for disabled users of communications services. (See [Annex 14](#) for the proposed new General Condition text.)

Implementation

10.44 This section outlines some of the important issues around implementation, including operational issues that we have considered, the Ofcom approval process for emergency video relay services and the timeline for implementation.

Operational issues with providing the service

10.45 We have been considering a number of important practical issues around providing the service to disabled end-users and our approach to many of these issues are set out in our proposed approval criteria (see our draft approval criteria at [Annex 10](#)).

- 10.46 We envisage that the service would work in a similar way to video relay for NHS 111.³²⁹ A data connection (fixed internet, Wi-Fi or mobile data (3/4/5G)) will be needed.
- 10.47 There are several commercial video relay providers in the UK currently operating. Most are daytime only, but at least one is open 24/7. Other providers might be prepared to offer a 24/7 service if contracted to do so.
- 10.48 The EECC also refers to disabled end-users being able to access emergency services whilst travelling in other Member States. Sign language is not universal. However, visitors to the UK who can use BSL will be able to use the service. We propose to require only calls from the UK to be handled by the emergency video relay service.

Requirement for the service to be free to the user

- 10.49 Our proposal is that video relay for emergency communications will be free to the End-user and will be paid for by regulated firms that provide internet access services or number-based interpersonal communications services.
- 10.50 For emergency SMS, the share of voice 999 calls was used by BT as a proxy for share of the set-up costs of the emergency SMS service, reflecting the benefits of the scheme to each mobile network operator's customer base.³³⁰ If a telecoms provider were willing to commission emergency video relay and make it available on a wholesale basis to other providers, this may be one approach that could be used.

Promotion of video relay for emergency communications

- 10.51 Telecoms providers have an existing duty to publicise the services for disabled end-users that are required by regulatory obligation. We will engage with providers about the best way of promoting emergency video relay, including engaging with charities who are in contact with people most likely to benefit from the service

Timetable for implementation

- 10.52 We propose to allow an implementation period of one year from the time of our final statement. Given that more than one commercial video relay service provider operates in the UK, we consider that this allows sufficient time for one or more services to be approved and for communications providers to contract with an approved service.
- 10.53 We are consulting on approval criteria for emergency video relay as part of this consultation, and these are set out at the end of this chapter. They cover issues common to voice and text relay emergency communications, for example location information and call answering time, and issues particular to emergency video relay, such as interpreter qualifications and experience.

³²⁹ There is more information about video relay for NHS 111 here: <https://interpreternow.co.uk/nhs111>

³³⁰ Mobile Network Operators with spectrum contract this service on behalf of the Mobile Virtual Network Operators using their spectrum

- 10.54 After we publish the finalised approval criteria, we propose firstly to invite expressions of interest from potential providers of emergency video relay services. After the period for expressions of interest closes, we will then invite formal applications. This will help to give certainty to regulated providers that there will be at least one approved emergency video relay service in existence for them to contract with. It will also enable Ofcom to allocate resources effectively, as if there is more than one application, we can consider them concurrently. If more than one application meets our criteria, we can approve more than one service.
- 10.55 Applicants for approval of a service do not need to be communications providers regulated by Ofcom for other purposes.
- 10.56 Any applications for approval of an emergency video relay service will be assessed against the published approval criteria. Ofcom will consult on any proposal to approve a video relay service for emergency communications.
- 10.57 To summarise, the expected sequence will be:

Expected timing	Action
Month 0	Publication of final approval criteria
Month 3	Expressions of interest received
Month 4	Formal applications for approval received
Month 5	Consideration of applications against published approval criteria
Month 6	Consultation on any proposal to approve services
Month 7	Publication of a decision by Ofcom to approve one or more services
Months 7-12	Regulated providers contract with a provider of an approved service, either via a wholesaler or direct

Legal tests

- 10.58 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:
- objectively justifiable** in relation to the services to which it relates - existing voice, SMS and text relay services are not sufficient for deaf BSL users who need to contact the emergency services. Providing an emergency video relay service for deaf BSL users to contact police, fire, ambulance and coastguard services in the event of an emergency helps to ensure all end-users have access to emergency communications and delivers greater equivalence of access to people with disabilities.
 - not unduly discriminatory** in that all regulated providers who provide internet access services or number-based interpersonal communications services (i.e. fixed and mobile providers) will be subject to this obligation.
 - proportionate** to what it is intended to achieve in that the measures we propose are necessary to provide access to emergency communications by BSL users and the estimated benefits of an Emergency Video Relay Service are likely to be higher than the expected costs).

- d) **transparent** as the reasons for the changes we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communications providers in the revised condition itself.

Consultation questions

Question 14: Do you agree with our proposal to mandate emergency video relay for emergency communications to be accessed by end-users who use BSL?

Question 15: Do you agree with our proposal that the obligation to provide emergency video relay free to end-users should be imposed on regulated firms that provide internet access services or number-based interpersonal communications services?

Question 16: Do you have any comments on our proposed approval criteria for emergency video relay services, or the proposed approval process?

Please provide evidence to support your response.

11. The provision of communications in accessible formats for disabled customers

- 11.1 The existing EU regulatory framework provides for equivalent access to electronic communications services for disabled people and the EECC builds on this in several ways including equivalent access to *information* in respect of electronic communications services.
- 11.2 Alongside assessing what action is required to give full effect to the protections and rights enshrined in the EECC, we have been considering the measures necessary to ensure equivalent access for disabled people. In particular, we have considered the current general condition (GC) which relates to the provision of communications in accessible formats.
- 11.3 In this section we discuss our proposal to require correspondence relating to communication services (e.g. bills, contracts, complaints) to be provided in a format that is accessible to the customer, i.e. if they cannot access standard electronic (e.g. email) or print communications due to their disability.³³¹ In this chapter we refer to such correspondence as: the provision of communications in an accessible format. The provision of pre-contractual information in accessible formats is discussed in section 4.
- 11.4 The revised GC text that we propose to put in place for the obligations we are proposing in this section is set out in [Annex 14](#).

Equivalence of access

- 11.5 The EECC contains accessible format information requirements and imposes an obligation on EU member states to ensure that a competent authority specifies requirements to secure access for disabled people to electronic communications services.³³²
- 11.6 Article 111 of the EECC sets out that access to electronic communications services for disabled people must be equivalent to access provided for other people including access to contractual information in respect of those services. Article 102 of the EECC provides in respect of contracts that: “The information shall, upon request, be provided in an accessible format for end-users with disabilities in accordance with Union law harmonising accessibility requirements for products and services.”
- 11.7 As set out on Chapter 2, section 51(2)(c) of the Act gives Ofcom the power to impose GCs specifying requirements in relation to the provision of services to disabled people. The Act

³³¹ When we refer to a ‘customer’, we are referring to a ‘Subscriber’ as defined in Ofcom’s General Conditions of Entitlement. A Subscriber is defined as any End-User who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services.

³³² Electronic communications services are defined at Article 2(4) of the EECC.

also provides that it is Ofcom's principal duty, in carrying out its functions, to further the interests of citizens in relation to communications matters³³³. In performing this duty, Ofcom must have regard to, amongst other things, the needs of persons with disabilities³³⁴.

- 11.8 Taking Ofcom's duties under the Act and the equivalent access EECC provisions into account, we consider that safeguarding the interests of disabled customers of communications services is particularly important.
- 11.9 We want to ensure disabled people have access to any correspondence about their electronic communication service (e.g. bills, contracts, complaints) in a format that it is both accessible to them and equivalent to that enjoyed by other people. This aligns with the approach set out in the EECC in relation to equivalence of access for disabled people.

Current requirements

- 11.10 Currently we have GCs which require providers to adopt certain measures for disabled people. The aim of these requirements is to ensure that disabled people can obtain equivalent access to electronic communication services to that of non-disabled people, that their needs are considered by providers and that their access to such services is facilitated when they have a genuine need.
- 11.11 One of those GCs requires providers to make available, free of charge, contracts (or any subsequent variation), bills, (and from February 2020, end-of-contract notifications and annual best tariff notifications)³³⁵ in accessible formats (i.e. braille, large print) reasonably acceptable to a blind or vision impaired customer who requests it.³³⁶ Therefore, once a blind or vision impaired customer has requested it, the communications specified in the GC would thereafter automatically be provided in the agreed accessible format.
- 11.12 The current GC relates to the medium used to convey a message, rather than the content of the message itself and means that blind and vision impaired customers can read and understand important information about their contract and bills without assistance from a third party.
- 11.13 This requirement promotes independence and privacy, ensuring equivalence with non-disabled people who can read regular print contracts, bills and correspondence without assistance.
- 11.14 We have reassessed the existing requirements. Our view is that there are two limitations.
- First, we consider it is important for customers to be able to read all correspondence relating to their communication service. However, there are various communications beyond bills and contracts, such as price rise notifications, missed payment notifications, information related to switching, responses to complaints or enquiries,

³³³ Section 3(1)(a) the Act.

³³⁴ Section 3(4)(i) the Act.

³³⁵ Ofcom, May 2019, [Helping consumers get better deals. Statement on end-of-contract notifications and annual best tariff information](#)

³³⁶ General Condition C5.13.

that are not currently covered by the GC and would not be automatically provided to a customer in a format reasonably accessible to them. For example, we know from information from several providers that their customers must specifically request a response to a complaint in an accessible format e.g. braille at the time of the complaint, even if they are already registered to receive their bills and contracts in a format such as braille.

- Second, Article 111 of the EECC does not specify types of disability. We consider that the GC should not be restricted to blind or vision impaired customers as there may be individuals with other types of disability, such as dyslexia, who may not be able to access important information via standard electronic (e.g. email) or print communications due to their disability.

11.15 Therefore, our view is that the current GC does not sufficiently ensure equivalence of access for disabled people and consequently limits a disabled person's independence and privacy in relation to communication services.

Our proposal

11.16 We are proposing to modify the current GC C5.13 in two ways to:

- a) Broaden the types of communication to be provided in an accessible format. So, in addition to bills, contracts (and subsequent variations), end-of-contract notifications or annual best tariff notifications, all communications (except marketing) relating to their electronic communication service would also be provided; and ³³⁷
- b) Broaden the types of disability in relation to which a customer may make a request for an accessible format, so that any customer who cannot access standard communications due to their disability is covered.

11.17 The proposal aims to ensure that any customer who needs written communications in alternative formats due to their disability can have equivalent access to all correspondence about their electronic communication service. For example, communications such as explaining price rises, welcome letters, payment reminders, order confirmations, mandatory information related to switching, responses to complaints, debt and disconnection letters, privacy and cookie policies, change of service/payment method, package information, and service messages. Under our proposal, once a disabled customer has requested communications in an accessible format, communications would thereafter automatically be provided in a reasonably acceptable format.

11.18 We acknowledge that some providers may enclose or send marketing material, which is not in an accessible format, to those customers who have requested their communications in an accessible format. Providers will be aware that such customers won't be able to access this marketing material unless it is in an accessible format. Therefore, we would encourage providers sending any marketing communications to such customers to only do

³³⁷ See proposed GC wording in [Annex 14](#). Requirement for end-of-contract notifications and annual best tariff notifications comes into effect in February 2020.

so if it is in the requested accessible format. However, this would not be a formal requirement.

- 11.19 The proposed modification to GC C5.13 is also consistent with our strategic priority to ensure fairness for customers.³³⁸ We strongly believe that all customers should be able to make informed choices about their communications services and get a fair deal. Our draft fairness framework³³⁹ and Fairness for Customers commitments³⁴⁰ also highlight that the way providers treat their customers is critical to this. Fair treatment means, for example, that customers are provided with information that is clear and easy to understand and that they are supported in making well-informed decisions. For a disabled customer, meeting 'fair treatment' criteria and ensuring good outcomes for them may require that their correspondence is provided in an accessible format.
- 11.20 The amendments we are proposing to the GCs in relation to this section are set out in revised GC C5.15 in [Annex 14](#). The provision of pre-contractual information in accessible formats is discussed in section 4.

Impact of extending the types of communications which must be provided in an accessible format

- 11.21 As set out in 9.16 – 9.17 we are proposing to a) broaden the types of communication to be provided in an accessible format and b) broaden the types of disability in relation to which a customer may make a request for an accessible format so that anyone who cannot access standard communications due to their disability is covered. We assess the potential effects of (a) and (b) below.

Benefits of extending the types of communications provided in an accessible format to blind and vision impaired customers

- 11.22 As set out at paragraph 9.17, ensuring all types of communication are provided in an accessible format (other than marketing), which would include change of service or payment method, responses to complaints, mandatory information related to switching and package information, would allow blind or vision impaired customers to directly access important information about their communication services. This is likely to be particularly important for blind and vision impaired customers who are the sole decision maker for their communications services.³⁴¹

³³⁸ Ofcom, March 2019, [Ofcom's annual plan 2019/20](#), page 1.

³³⁹ Ofcom, June 2019, [Making communications work well for consumers](#)

³⁴⁰ Ofcom, June 2019, [Britain's biggest broadband and phone firms to put fairness first](#)

³⁴¹ Ofcom's 2019 Access and Inclusion research reveals that people with a visual impairment are more likely than non-disabled people to be the sole decision maker for choice of service provider for landline (46% vs 35%) and TV services (54% vs 36%). They are also likely to be the sole decision maker for choice of mobile (62% vs 58%) and internet service provider (39% vs 35%). Ofcom, January 2019, [Disabled users access to and use of communications devices and services. Research summary: Vision-impaired people](#).

- 11.23 While they may be able to rely on others to help them, being able to access the communications directly should result in greater independence, privacy and dignity for these customers.³⁴²
- 11.24 The additional communications may also allow blind or vision impaired customers to become aware of any problems arising with their account at an earlier stage. The additional communications would include those relating to payment reminders, and debt and disconnection letters. This might improve the ability of blind or vision impaired customers to deal with these problems promptly, reducing the likelihood of additional charges or being disconnected. It may also mean reduced levels of anxiety and/or frustration/distress.
- 11.25 We have gathered information on the number of people who would benefit from this requirement. We issued information requests to the eleven electronic communications providers with the largest number of customers, asking for details about the accessible formats that they provide.³⁴³ They reported that around 77,000³⁴⁴ of their customers were registered for bills and contracts in accessible formats (at end December 2018). However, five of these eleven providers already supply all communications covered by our proposal in an accessible format to those blind or visually impaired customers who have requested them. Around half (51%) of the 77,000 customers, i.e. around 39,000, were with providers who do not send all the material covered by our proposal in an accessible format currently.³⁴⁵ Hence, on current estimates around 39,000 customers would be likely to benefit from our proposal.
- 11.26 Of the six providers who do not provide all communications covered by our proposal in an accessible format, four of them provide some of the extra communications, but not all. Two providers meet the current GC C5.13 requirement but do not go beyond the requirement by providing any additional communications in an accessible format.
- 11.27 The number of blind or vision impaired customers who may want different formats may change in the future. The RNIB has forecast that the number of people who are blind or vision impaired will increase over time, as visual impairments rise alongside the ageing population.³⁴⁶ However, younger people who are blind or vision impaired are more likely

³⁴² Campaigns led by RNIB and Sense support the importance of independence and privacy. [RNIB's Lost for Words campaign](#) includes findings from a TNS-RI Omnibus survey, 6-8 August 2010 on how comfortable people would feel relying on a neighbour to read out their bank statements for them. Sense's report on [Equal](#) access to healthcare indicates that 'Relying on somebody else to read your letters was identified as leading to a loss of independence and control over healthcare as well as encroaching on people's privacy' (page 14).

³⁴³ The providers we sought information from were BT, EE, O2, Post Office, Plusnet, Sky, TalkTalk, Tesco, Three, Virgin Media and Vodafone.

³⁴⁴ Some blind or vision impaired customers may be with providers we didn't seek information from, but this is likely to be a very small number as we sent information requests to providers with the largest numbers of customers.

³⁴⁵ In response to an earlier information request dated 12 April 2019 some providers said they provided some extra communications in accessible formats, but this ranged from just one extra communication and did not include all communications about a customer's communication service.

³⁴⁶ RNIB figures suggest that in 2017 around 350,000 people in the UK were registered blind or partially sighted, half of which were registered blind and half of which were registered partially sighted. Larger numbers report problems with their sight. In 2015, more than 2 million people said that they were living with sight loss severe enough to have a significant

to be familiar with using technological options (e.g. accessing the internet through screen readers or refreshable Braille displays) to help their communications needs, so may have less need for the provision of communications in an accessible format as they age. The balance of these offsetting effects on the number of people who may benefit in the future is unclear.

- 11.28 Finally, as noted above, many blind or vision impaired customers may rely on their friends and relatives to help them deal with communications from their providers. These third parties will also benefit if the proposal increases blind and vision impaired customers' ability to manage their electronic communication services independently.

Costs of extending the types of communications provided in an accessible format to blind and vision impaired customers

- 11.29 We sought information from the eleven largest providers in the UK³⁴⁷ on the costs of providing current communications in accessible formats, and for estimates of the likely number of communications sent to customers both in standard formats and accessible formats.
- 11.30 As noted in paragraph 11.25 above, five of the eleven providers already provide all non-marketing communications in accessible formats to those blind or vision impaired customers who have requested communications in accessible formats. These providers would face no additional costs from this aspect of our proposal.
- 11.31 Based on information from the other six providers, we have estimated the potential increase in costs. Some providers were able to provide an estimate of the number of extra communications in an accessible format that was likely to be required. For providers who did not provide an estimate, we assumed an extra seven items of communication a year per blind or vision impaired customer. This was the highest number of extra communications from those providers who did provide estimates of the increase. To estimate the total cost increase we multiplied the assumed additional communications required by the average cost currently per communication for each provider in an accessible format.³⁴⁸
- 11.32 Our calculations suggest that the six providers' costs might rise by under £200,000 per annum in total. We recognise that this reflects the cost increase only for the largest

effect on their daily lives and this was forecast to double to over 4 million by 2050. [RNIB, April 2018, Eye health and sight loss facts.](#)

³⁴⁷ The providers we sought information from were BT, EE, O2, Post Office, Plusnet, Sky, TalkTalk, Tesco, Three, Virgin Media and Vodafone.

³⁴⁸ We recognise that in general there are likely to be economies to scale in the provision of such communications. This will tend to mean using the average cost per communication will result in too high an estimate. On the other hand, some of the additional communications required (for example, a response to a complaint) will need relatively bespoke arrangements, and so will have a higher cost per item than a standard communication sent to all customers. The net effect of these two effects is unclear.

providers from whom we gathered information, and that the total industry costs for all providers would be expected to be slightly higher.

- 11.33 Two of the six providers not currently providing all such communications automatically have told us they are planning to automatically provide all relevant communications in a customers' requested format in the future. We have not taken account of this in our cost estimates, as we have assessed costs based on their current policies. It would lower our overall cost estimate if we were to deduct the costs of these two providers.
- 11.34 We acknowledge that the increased costs to providers could, at least in part, feed through to higher prices for all customers. The low level of costs involved would mean that any effect on general prices would be extremely small.³⁴⁹

Impact of extending the current requirement beyond blind or vision impaired customers

Benefits of extending the requirement to cover anyone who needs communications in an accessible format due to their disability

- 11.35 This component of our proposal aims to ensure equivalence of access for all disabled people, and not just blind or vision impaired customers. It would allow any disabled customer who needs communications in an accessible format due to their disability to request and receive such communications. This would cover bills and contracts (the current GC requirement) and any other (non-marketing) correspondence relating to a communication service (as proposed). It may involve, for example, providing hard copy formats such as large print, specific fonts or coloured paper.
- 11.36 For disabled people who cannot access standard written communications, we consider that being able to receive and interpret information about their communications services in an accessible way will increase their independence, privacy and dignity. If they could not otherwise rely on someone else to read their correspondence in a timely way, they should be able to make more informed decisions about their communications services. They would also become aware of any problems arising at an earlier stage e.g. an unpaid bill, potentially reducing the likelihood of additional charges or being disconnected. It may also mean reduced levels of anxiety and/or frustration/distress.
- 11.37 Some of these customers may currently be able to rely on others (such as friends and relatives) to help them understand communications from their provider. The proposal should enable them to act for themselves, gaining more independence. Such friends or relatives would also benefit.

³⁴⁹ If the £200,000 costs were evenly spread over the adult UK population of around 54 million (on the assumption that the large majority of people have some telecommunication service), it would amount to less than one pence per person per year. While the accessible formats are provided free of charge, if we consider the costs on a per beneficiary basis, they would be around £5 per year per customer.

- 11.38 One specific group of customers who might benefit from this proposal, are those with dyslexia. They may benefit from a particular form of printed material (e.g. coloured paper or large print).³⁵⁰ The British Dyslexia Association estimate that around 4% of the UK population are seriously affected by dyslexia³⁵¹ but that experience of the condition and so a person's needs, can vary widely, as can the scope for a different format to be of benefit to the individual. Hence, we would not expect everyone with dyslexia, even if it were relatively severe, to request their communications in accessible formats. We welcome views in responses on other groups who may benefit from this proposal.
- 11.39 The costs set out in the section below are based on the provision of accessible formats to severely dyslexic people.

Costs of extending the requirement to cover anyone who needs communications in an accessible format due to their disability

- 11.40 As noted in paragraph 11.38, severely dyslexic people may need or request communications in accessible formats. Data from the ONS suggests that in 2018 the UK population over 15 years of age was around 54m.³⁵² If 4% of this population were severely dyslexic this might suggest that around 2.2 million people could benefit from receiving communications in accessible formats (e.g. coloured paper or larger print).
- 11.41 However, the number of severely dyslexic people requesting communications in an accessible format is likely to be less than this as experience of the condition and so a person's needs, can vary widely. Not all these people will have communications contracts, some will not need any adjustments to their communications, and not all will request an alternative format.³⁵³
- 11.42 Some providers already provide communications in a coloured paper format and we know from one provider that this costs £0.03 per sheet more than white paper. If the additional costs per sheet are this small, the additional costs per customer are likely to be very small, probably less than two pounds per person per year.³⁵⁴ Even if there were a sizeable number of requests for this, the total costs may not be large. For example, if there were 200,000 people requesting coloured paper, the total additional paper costs would probably be less than £400,000 per year.

³⁵⁰ The British Dyslexia Association suggests there is not a standard design for accessible communication for people with dyslexia as indicated by their style guide. [‘Creating a dyslexia friendly workplace’](#)

³⁵¹ British Dyslexia Association, 2012, [Adults and Dyslexia](#), GOV.UK, October 2017, [Simone: dyslexic user](#)

³⁵² Office for National Statistics, October 2019, [National population projections: 2018-based](#)

³⁵³ We note that while 350,000 people are registered as blind/visually disabled, only around 77,000 people (around 22%) request communications in an accessible format. If we were to use the same ratio for take up of accessible formats for severely dyslexic people, this would imply around 480,000 people.

³⁵⁴ For example, if there were bills each month and each communication had three pages, this would imply just over £1 per customer per year. If there were a small number of additional communications in addition to the monthly bills, the cost would likely be less than £2 per customer per year.

Provisional conclusion

11.43 Article 111 of the EECC requires that disabled people have access to electronic communication services, equivalent to that enjoyed by the majority of people. It does not specify types of disability. Our provisional view is that in this context, GC C5.13 (provision of communications in accessible formats) should be extended as it does not cover a) all correspondence relating to an electronic communication service for blind or vision impaired customers or b) any other customer who may need an accessible format due to their disability. We have set out above that not being able to read communications without assistance can increase reliance on third parties, lead to loss of independence, privacy, and dignity – a harm which we consider is appropriate to address. We are therefore proposing to extend the current GC to cover all communications (except marketing) relating to an electronic communications service and to any customer who needs an accessible format due to their disability.

Effective and least onerous means of achieving our objectives

11.44 Our objective is to ensure disabled customers can have equivalent access to information about their electronic communication services (equivalent to that enjoyed by the majority of people). We consider it is appropriate and proportionate to intervene by introducing targeted regulatory obligations, given the benefits are likely to increase disabled customers' independence, privacy, and dignity, by allowing them to more easily manage their communications services in an effective way themselves.

11.45 We also consider that this proposal would produce a fairer outcome for disabled customers, consistent with our strategic priority of ensuring fairness for customers.

11.46 We consider that our proposal is the least onerous means to effectively meet our objective.

No wider adverse effects that are disproportionate to the aims that we are seeking to achieve

11.47 Having considered the impact of our proposals on providers and customers, we do not consider that they would produce adverse effects which are disproportionate to our policy objectives. While there are costs involved in implementing the proposal and these are perhaps more readily identifiable for a) than b), as set out in paragraph 11.43, we consider that the costs of providing equivalent access to information for disabled people about their electronic communication services are likely to be relatively low and not disproportionate. The requirement will be imposed on all providers of public electronic communications service equally and can be relied on by all disabled customers requiring an alternative format due to their disability.

Implementation of our proposals

11.48 We note that six of the eleven largest providers do not currently provide all their communications in an accessible format to blind or vision impaired customers and two of these do not provide more than the current GC requirement. We acknowledge that these providers are likely to need time to amend processes and systems to meet the new requirements. We therefore propose that the new requirements would apply to any customer requests from 21 December 2020.

Legal tests

- 11.49 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:
- **objectively justifiable** as it is aimed at providing equivalence of access for disabled people in relation to electronic communications services, who due to their disability need their communications to be in an alternative format;
 - **not unduly discriminatory** as the requirement will be imposed on all providers of public electronic communications service equally and can be relied on by all disabled customers requiring an alternative format due to their disability;
 - **proportionate** as the intended objective of ensuring equivalent access for disabled people to electronic communication services (equivalent to that enjoyed by the majority of people) is an important objective and the costs are likely to be relatively low; and
 - **transparent** as the reasons for the changes we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communications providers in the revised condition itself.
- 11.50 The amendments we are proposing to the GCs in relation to this section are set out in GC C5.13 in [Annex 14](#).

Consultation questions

Question 17: Do you agree with our proposal to a) extend the current requirement to cover the other specified communications i.e. any communication (except marketing) that relates to a customer's communication service, and b) extend the GC so that any customer who cannot access communications due to their disability should also benefit from accessible formats? When answering please provide evidence of any benefits or costs.

Question 18: Do you agree that implementation by December 2020 is reasonable?

Please provide evidence to support your response.

12. Availability of services and access to emergency services

- 12.1 The EECC includes measures to ensure the fullest possible availability of public communications services at all times, including in the event of a disaster or catastrophic network failure, as well as uninterrupted access to emergency organisations. It also includes measures to ensure that calls can be made to emergency organisations free of charge and to make caller location information available to emergency organisations where technically feasible.
- 12.2 This section sets out our proposals for implementing the requirements in Article 108 and Article 109 to reflect the differences between these EECC provisions and their predecessors in the Universal Service Directive. The changes that we are proposing to make to the relevant GC, GC A3 are the minimum required to implement the relevant requirements of the EECC.
- 12.3 The proposed changes to the GCs discussed in this section are set out in [Annex 14](#). This also includes the current text of the GCs that we are proposing to amend and a short description of the changes we are proposing to make.

Availability of services

Current GC requirement

- 12.4 The current CG A3 aims to ensure the fullest possible availability of public communications services at all times, including in the event of a disaster or catastrophic network failure, as well as uninterrupted access to emergency organisations. It requires that calls can be made to emergency organisations free of charge and to make caller location information available to emergency organisations where technically feasible. It also includes specific rules relating to providers of VoIP outbound call services which aim to ensure that users of those services are aware of any potential limitations on making calls to emergency organisations and that accurate and up-to-date caller location information can be provided to the emergency organisations where possible.

EECC requirement

- 12.5 Article 108 concerns the availability of services.³⁵⁵ It requires that:
- a) all necessary measures are taken to ensure the fullest possible availability of voice communications services and internet access services provided over public electronic communications networks in the event of catastrophic network breakdown or in cases of force majeure;

³⁵⁵ This replaces Article 23 of the Universal Service Directive.

- b) that providers of voice communication services take all necessary measures to ensure uninterrupted access to emergency services; and
- c) that providers of voice communication services ensure uninterrupted transmission of public warnings.

How we propose to implement

Scope

- 12.6 Article 108 extends the scope of the services covered by the obligation to ensure fullest possible availability of services in the event of a catastrophe to internet access services as well as voice communications services/publicly available telephone services.³⁵⁶ To implement this Article, we need to similarly extend the scope of the equivalent requirement in GC A3.1 and GC A3.2 by replacing the defined term ‘publicly available telephone services’ with ‘voice communication services’ and/or ‘internet access services’, where appropriate.
- 12.7 The scope of the obligation to provide uninterrupted access to the emergency services remains the same, but we are proposing to replace the term ‘publicly available telephone services’ with ‘voice communication services’ in line with the terminology used in the EECC.
- 12.8 We are also proposing to make some other minor drafting changes to GC A3.2 so that the text is more closely aligned with the wording of Article 108. The re-drafting clarifies that the obligation applies to all voice communications and internet access services are provided over public electronic communications networks.
- 12.9 We are not proposing to make any changes to the GCs in relation to the requirement for voice communications providers to ensure uninterrupted transmission of public warnings at this time. This is because the suitability of such a public warning system for the UK is still under consideration³⁵⁷. However, we may revisit this issue in future, should matters change.
- 12.10 We consider that our proposals will have limited impact on providers and are the minimum necessary to implement Article 108 which is designed to benefit all consumers and ensure wider public safety.
- 12.11 The detail of the proposed changes to the GCs are set out at [Annex 14](#). The scope of our proposed requirements is set out in GC A3.1.

³⁵⁶ The term ‘voice communications services’ used in the EECC is synonymous with the term ‘publicly available telephone services’ used in earlier Directives.

³⁵⁷ DCMS, July 2016, [Implementing the European Electronic Communications Code](#), pages 10 and 11.

Access to emergency services

EECC requirement

- 12.12 Article 109 of the EECC concerns access to emergency services³⁵⁸ and replaces Article 26 of the Universal Service Directive. While the text in the Directive has been revised and clarified, for the most part, it has not departed significantly from the principles and requirements set out in the Article it replaces.
- 12.13 We have identified specific textual changes it has introduced which necessitate drafting revisions to GC A.3, these are set out below:
- Article 109(2) includes a reference to both the National and International Telephone Numbering Plans.
 - Article 109(6) provides that caller location information (network-based location information and, where available, handset-derived caller location information) is made available to the most appropriate emergency call handling authority without delay.
 - Article 109(6) further provides that the establishment and transmission of caller location information must be free of charge not only for the emergency organisations handling the calls but also for the end-user of emergency communications to the European emergency number '112'.
- 12.14 There are a number of other textual changes in Article 109 of the EECC, which do not require drafting changes to be made to the current GC A.3. For example, Article 109(1) and (2) of the EECC requires that publicly available number-based interpersonal communications services, where those services allow end-users to originate calls to a number in a national or international numbering plan, provide access to emergency services through emergency communications. The requirement in GC A3.4 already includes these services in its obligation and therefore no additional revisions to the text are required.
- 12.15 Article 109(5) further requires the European Commission and national regulatory authorities to take appropriate measures to ensure that end-users with disabilities have equivalent access to emergency services as other users when travelling abroad. We are not proposing to make any changes to the GCs in relation to this requirement at this stage, but may return to this matter if and when any such appropriate measures, standards or specifications are agreed at the international level.

How we propose to implement

- 12.16 The current GC A.3 already includes requirements relating to access to emergency services, as described above.

³⁵⁸ Article 109 of the EECC replaces Article 26 of the Universal Service Directive.

- 12.17 We propose to make a minor addition to the text of GC A3.1(c) as Article 109(2) makes reference to the ‘international’ telephone numbering plan as well as the ‘national’ telephone numbering plan.
- 12.18 We have addressed the Article 109(5) requirement that equivalent access for end-users with disabilities to emergency services is available through emergency communications in a new GC. This is explained in the section about emergency video relay (see section 10).
- 12.19 To ensure that the establishment and transmission of caller location information is free of charge to end-users in addition to the emergency organisations handling the calls as provided for by Article 109(6), we need to make a minor insertion into GC A3.5.
- 12.20 To implement the requirement in Article 109(6) that where available, handset derived caller location information is provided, we are proposing to add text to the current GC A3.6 which requires that in all circumstances where available, regulated providers are required to provide this information.
- 12.21 We consider that our proposals will have limited impact on providers and are the minimum necessary to implement Article 109 which is designed to benefit all consumers and ensure wider public safety.
- 12.22 The detail of the proposed changes to the GCs are set out at [Annex 14](#). The scope of our proposed requirements is set out in GC A3.1.

Implementation

- 12.23 We propose that all the requirements discussed in this section should apply from 21 December 2020.

Legal tests

- 12.24 We consider that the changes we are proposing to make meet the test for setting or modifying conditions set out in section 47(2) of the Act. Our proposed changes are:
- **objectively justifiable**, in that they are required to implement the relevant requirements of the EECC;
 - **not unduly discriminatory** since the proposed changes to this condition would ensure that the same regulatory measures apply to the same type of provider, as required by the EECC;
 - **proportionate** as our provisional view is that to the extent that our proposed changes would introduce any additional regulatory burden on industry, they are limited to the minimum necessary to fulfil the requirements in the EECC; and
 - **transparent** as the reasons for the changes that we are proposing to make to this condition are explained above and the effects of the proposed changes would be clear to communications providers from the revised condition itself.
- 12.25 For the reasons set out above, we consider that these rules remain objectively necessary and proportionate to what they are intended to achieve.

Consultation question

Question 19: Do you agree with our proposed changes for implementing the requirements in Article 108 and Article 109 to reflect the differences between these EEC provisions and their predecessors in the Universal Service Directive?

Please provide evidence to support your response.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 3 March 2020.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/proposals-to-implement-new-eecc>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ECCenduserights@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after 3 March 2020.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Matt Hall
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
 - We have created a separate email address for the emergency video relay proposal: emergencyBSL@ofcom.org.uk. You are welcome to use either this email or the email above.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex A4. It would also help if you

could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Matt Hall on 020 7783 4079, or by email to EECCenduserrights@ofcom.org.uk. You can also [contact us in British Sign Language](#).

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement in Q1 2020/21.
- A1.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

Questions by section

Section 3: Changes to the defined terms used in the General Conditions

Question 1: Do you agree with our proposed changes and additions to the defined terms used in the GCs in order to align with the EECC, as set out in Annex 11?

Section 4: Provision of information to customers about their services

Question 2: Do you agree with our proposed changes to the GCs to implement Article 102, as set out at Annexes 11 and 16?

Question 3: Do you agree with our proposed guidance in Annex 6 on our expectations for how providers should comply with the provision of contract information and the contract summary?

Section 5: Publication of information and provision of data to third parties

Question 4: Do you agree with our proposed changes to the GCs to implement Article 103 and our proposed approach to implementing Article 104, as set out in Annex 11?

Section 6: Contract duration and termination

Question 5: Do you agree with our proposed changes to the GCs to implement the requirements in Article 105, as set out in Annex 12?

Question 6: Do you agree with our proposed changes to the existing guidance as summarised here and set out in Annex 7?

Section 7: Switching and porting

Question 7: Do you support our proposals to introduce (a) new general switching requirements for all types of switches for residential and business customers and (b) specific switching requirements on information, consent, compensation and notice period charges for residential customers?

Question 8: Do you support our proposed guidance in Annex 8 on compensation for residential customers?

Section 8: Disincentives to switch: mobile device locking

Question 9: Do you agree with our assessment that device locking can deter customers from switching and cause customer harm?

Question 10: Do you agree with our assessment of the effectiveness of Options 1 and 2 in reducing the consumer harm that can result from device locking and the impact on providers of Options 1 and 2?

Question 11: Do you agree with our proposal to prohibit the sale of locked mobile devices?

Section 9: Disincentives to switch: non-coterminous linked contracts

Question 12: Do you agree that we should protect customers by issuing guidance on our proposed approach when considering the case for enforcement action against non-coterminous linked contracts?

Question 13: Do you agree with our proposed guidance in Annex 9 which sets out our proposed approach to assessing whether certain types of non-coterminous linked contracts are likely to act as a disincentive to switch?

Section 10: Emergency video relay

Question 14: Do you agree with our proposal to mandate emergency video relay for emergency communications to be accessed by end-users who use BSL?

Question 15: Do you agree with our proposal that the obligation to provide emergency video relay free to end-users should be imposed on regulated firms that provide internet access services or number-based interpersonal communications services?

Question 16: Do you have any comments on our proposed approval criteria for emergency video relay services, or the proposed approval process?

Section 11: Communications in accessible formats for disabled customers

Question 17: Do you agree with our proposal to a) extend the current requirement to cover the other specified communications i.e. any communication (except marketing) that relates to a customer's communication service, and b) extend the GC so that any customer who cannot access communications due to their disability should also benefit from accessible formats? When answering please provide evidence of any benefits or costs.

Question 18: Do you agree that implementation by December 2020 is reasonable?

Section 12: Availability of services and access to emergency services

Question 19: Do you agree with our proposed changes for implementing the requirements in Article 108 and Article 109 to reflect the differences between these EECC provisions and their predecessors in the Universal Service Directive?

Please provide evidence to support your response.

A5. Glossary and abbreviations

Auto-Switch: the regulated process for switching mobile provider, including if the customer wants to retain 24 numbers or fewer.

Commitment period: 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. This definition derives from the General Conditions.

Communications provider (provider, CP): a person who provides an electronic communications network or provides an electronic communications service, as defined in the Communications Act 2003. The terms ‘communications provider’ and ‘provider’ are used interchangeably throughout this document.

Consumer Contract Regulations (CCRs): the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 which requires traders to provide information to consumers in relation to contracts concluded between them.

Contract information: before a customer is bound by a contract all providers of electronic communication services must provide specified information about the service they will be providing. This will include information on: the main characteristics of the service; pricing; duration, renewal and termination; compensation and security protection. This is the information listed in Annex VIII of the EECC, and included in our proposed new guidance in Annex 6.

Dual play: landline and broadband services provided by a single communications provider.

Durable medium: this means paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored. This definition derives from the General Conditions.

Early termination charge: a charge that may be payable by the Subscriber for terminating a contract before the end of the Commitment period. This definition derives from the General Conditions.

European Electronic Communications Code (EECC): a new EU Directive, which updates and replaces the four Directives that currently make up the EU regulatory framework for electronic communications. It entered into force on 20 December 2018 and EU member states have until 21 December 2020 to transpose it into national law.

Full-fibre broadband: a form of broadband that uses fibre cables all the way from the exchange to people’s homes or property.

Gaining provider: the new provider to whom the customer is switching their service(s).

General Condition (‘GC’): a general condition set by Ofcom under section 45(2)(a) of the Act.

In-contract: refers to customers who are within the commitment period for any service and/or terminal equipment provided by the communications provider.

Linked split mobile contracts: where a Subscriber enters into two contracts for the provision of a Mobile Communications Service and a Mobile Device (with the Mobile Device being provided under a Mobile Device Loan Agreement) and where the monthly cost to the Subscriber is separated into the cost of the Mobile Communications Service and the Mobile Device, provided there is a technical, financial or contractual link between the two contracts. This definition derives from the General Conditions.

Losing provider: the provider from whom the customer is switching their service(s).

Mobile: a mobile telephony subscription, i.e. a service including the provision of a SIM, which enables a customer to make and receive mobile voice calls and SMS, and/or use data services through a mobile handset.

Mobile Virtual Network Operator (MVNO): an MVNO provides mobile service using the infrastructure of an MNO.

Notification of Transfer: the regulated process for residential and small business customers to switch fixed landline or broadband services within the Openreach and KCOM copper networks.

Open Internet Regulation: this regulation is intended to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights and guarantee the continued functioning of the internet ecosystem as an engine of innovation.

Out-of-contract: refers to customers who are outside of the commitment period but are still paying for a service (e.g. broadband, mobile, landline) provided by the provider (e.g. via a rolling monthly contract).

Porting: where a consumer keeps their telephone number when they switch providers.

Porting Authorisation Code (PAC): a unique code that allows customers to keep 24 mobile numbers or fewer when switching provider using the Auto-Switch.

Pay TV: a subscription-based television service, usually charged at a monthly fee, offering multichannel television channels beyond those available free-to-air. It can be delivered through cable, satellite, digital terrestrial and/or the internet (IPTV).

Quad Play: landline, broadband, pay TV and mobile provided by a single communications provider.

Residential contract: a contract for services predominantly targeted towards residential customers (rather than businesses).

SIM-only: a contract between a mobile network provider and a customer whereby the customer is only paying for the monthly network service and not a handset.

Service Termination Authorisation Code (STAC): a unique code allowing customers to switch provider without retaining their phone number through the Auto-Switch process.

Terminal Equipment: This is (a) equipment directly or indirectly connected to the interface of a Public Electronic Communications Network to send, process or receive information; in either case (direct or indirect), the connection may be made by wire, optical fibre or electromagnetically; a

connection is indirect if equipment is placed between the terminal and the interface of the network; and (b) satellite earth station equipment. This definition derives from the General Conditions.

Triple play: landline, broadband and pay TV services provided by a single communications provider.

Ultrafast broadband: A broadband service with a download speed of at least 300Mbit/s.