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## Broadband Speeds Code of Practice

### Proposals to revise the Residential and Business Voluntary Code of Practice on Broadband Speeds

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[Proposals to revise the Voluntary Codes of Practice on Broadband Speeds](#) – Welsh overview

#### **CONSULTATION:**

Publication date: 11 May 2022

Closing date for responses: 22 June 2022

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# 1. Overview

Ofcom has voluntary codes of practice on broadband speeds for residential and business customers, which give customers the right to exit their broadband contract and bundled services, without penalty, if their download speed falls below a minimum guaranteed speed.

We are consulting on updating these codes so that the right to exit applies to broadband and other bundled services are in line with Ofcom's revised General Conditions of Entitlement ('revised GC's) which will be implemented from 17 June 2022.

## What we are proposing

**Updating the Residential Code definition of a bundle.** We are proposing to amend the definition of a bundle in the Residential Broadband Speeds Code of Practice (the 'Residential Code') so that the customer's right to exit will apply to their broadband and bundled services in the same way as their right to exit will apply to their contract and bundled services as set out in the revised GCs.

**Updating, within the Business Code, the definition of a bundle for small businesses.** For small businesses (those with ten or less individuals),<sup>1</sup> as with the Residential Code, we are proposing to amend the definition of a bundle in the Business Broadband Speeds Code of Practice (the 'Business Code'). This will mean that for small businesses, their right to exit will apply to their broadband and bundled services in the same way as their right to exit will apply to their contract and bundled services set out in the revised GCs.

**Retaining, within the Business Code, the existing definition of a bundle for larger businesses.** For larger businesses, we propose to retain the existing Business Code's definition of a bundle to ensure the existing protections continue.

We consider these proposals will help provide a consistent set of regulatory rules (based on the revised GCs) relating to bundles and who they apply to, making them easier for customers to follow and more straightforward for broadband providers to implement. This simplification should reduce the likelihood of misunderstanding or misinterpretation should disputes arise, to the benefit of both customers and broadband providers.

## Next steps

Ofcom invites responses to this consultation by 22 June 2022. We plan to issue a statement setting out our final decision on the updates to the Codes, in autumn 2022-23, alongside the revised Codes. We propose that changes should be implemented within 3 months of the statement being published.

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<sup>1</sup> See Annex 7 for a fuller description of the definition of 'smaller businesses' as used in this document

## 2. Introduction

### The Broadband Speeds Codes of Practice

#### Residential Code

- 2.1 Ofcom first implemented the voluntary Broadband Speeds Code of Practice in 2008 for residential customers. This Code set out a number of commitments from signatory broadband providers to give customers more information at the point of sale on the speeds they could expect from their broadband services.
- 2.2 We updated the Residential Code in 2010. The update included additional requirements for providers to give more accurate speed estimates, and to give consumers the right to exit their contract without penalty within a three-month period of the start of their contract (or longer if the internet service provider, or 'ISP', so chose) if the actual speed was significantly below the estimated speed.<sup>2</sup>
- 2.3 In 2018, the Residential Code was further updated. The updated Code, which is currently in force, sets out that where customers cannot access their minimum guaranteed speed (at any time during their contract) and the problem lies on a signatory provider's network, their provider must endeavour to resolve the issue within thirty days of the customer's initial report. If this is not done, the customer must have the right to exit their contract without penalty, except in the exceptional circumstances as defined by the Code.<sup>3</sup> The process for exercising this right to exit must be clear and easy to follow.
- 2.4 When changes were made to the Residential Code in 2018, it was also recognised that many customers choose to buy a broadband service alongside a landline and/or pay-TV service from the same provider, because they consider this to be more convenient, or because the combined price is less than it would be if they purchased the same services separately.
- 2.5 Switching to a new provider could prove unattractive and costly if these customers only had the right to exit their broadband, but not their landline and pay-TV services. For example, switching only the broadband part of the bundle could lead to a price increase for the remaining landline and /or pay-TV services or, if they decided to switch their bundle of services, this could lead to early termination charges for some services within the bundle.
- 2.6 Therefore, in 2018, we extended the right to exit in the Residential Code to apply to specific bundled products: landline services, any services which rely on the broadband connection and pay-TV services purchased at the same time as the broadband service. We considered that this would prevent customers being released from the broadband but not the landline and pay-TV services in their contract, which could make it harder or unattractive for them to switch to a new provider.

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<sup>2</sup> Ofcom, 2018. [Voluntary Code of Practice: Broadband Speeds](#). [accessed 15 Mar 2022]

<sup>3</sup> Ofcom, 2018. [Better Broadband Speed Information Voluntary Code of Practice \(Residential\)](#), para. 2.67 [accessed 12 Apr 2022]

2.7 Specifically, the right to exit in the Residential Code currently applies:

- to broadband services that the customer receives on a standalone basis;
- where a customer receives phone and broadband services from the same provider over the same line, to both services, irrespective of whether the two services were purchased, or the contract(s) for their provision was renewed at the same time;
- where a customer receives both a broadband service and any other services which rely on the broadband connection in question for their delivery (such as provider-specific pay-TV delivered over broadband) from the same provider, to all such dependent electronic communications services. This applies irrespective of whether such dependent services were purchased, or the contract(s) for their provision was (were) renewed, at the same time as the broadband service; and
- where a customer has purchased or renewed the contract(s) for the provision of a pay-TV service at the same time as purchasing or renewing the contract for the provision of a broadband service, to both services, even if the pay-TV service does not rely on the customer's broadband connection. In these cases, the right to exit also applies to any phone services obtained from the same provider.<sup>4</sup>

## Business Code

2.8 In 2016, we implemented the voluntary Broadband Speeds Code of Practice for business customers (the 'Business Code'),<sup>5</sup> to provide business customers purchasing standard business broadband services with transparent and accurate information on their broadband speeds. Business Code signatories undertook to provide accurate and transparent speed information on standard business broadband services at point of sale, manage business customers' speed related problems, and allow customers to exit the contract without penalty if speeds fell below a minimum threshold.

2.9 In 2018, we revised the Business Code at the same time as updating the Residential Code. As with the Residential Code, this revised Business Code, which is currently in force, requires providers to improve the relevancy of speed estimates by providing a minimum guaranteed speed at the point of sale. We also improved the process of the right to exit by introducing a 30-day time limit by which signatories must resolve speed issues before allowing them to exit their contract without penalty.

2.10 The 2018 Business Code sets out that the right to exit applies to unresolved speed issues that occur at any time during the contract. It also applies not just to individual broadband services, but also to certain types of business-related bundles and dependent services. Specifically, the right to exit applies to the following services:

- To individual standard broadband services;
- To bundles of standard voice and broadband services purchased at the same time. This includes bundles where standard voice and broadband services were bought separately, but where an ISP made a change which means it is not possible to separate out the services again; and

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<sup>4</sup> Ofcom, 2018. [Better Broadband Speed Information Voluntary Code of Practice \(Residential\)](#), para. 2.82-2.87. [accessed 14 April 2022]

<sup>5</sup> Ofcom, 2016. [Voluntary Business Broadband Speeds Code of Practice](#) [accessed 15 Mar 2022]

- To broadband services and their “dependent” services, i.e., services such as Voice over IP (VoIP) and Cloud-based services which are dependent on the affected broadband service and where such services would be ‘stranded’ were the customer to stop purchasing the affected broadband service (we refer to these services as “dependent services”). It is irrelevant whether the dependent service was purchased at the same time or at a different time to the affected broadband service.

2.11 The Business Code also states that where a customer has purchased multiple lines, the right of exit only relates to the specific line with the speed issue (and by extension, cases where there is a broadband and voice bundle, or a dependent service reliant on that specific line). The right of exit does not apply to any other services which are not covered explicitly by the provisions and which can operate independently of the affected broadband service, e.g. mobile services or leased lines.

## Recent updates to the General Conditions<sup>6</sup>

2.12 In 2020, Ofcom made changes to some of the General Conditions of Entitlement (GCs) to put in place a number of new customer protection requirements, as part of Ofcom’s implementation of the European Electronic Communications Code (EECC). Of particular relevance, changes were made to the right to exit contracts for electronic communications services, and changes that extend certain protections to bundles of services.

2.13 From 17 June 2022, when customers are notified of changes to their contractual conditions, they will have a right to exit their contract without incurring additional costs unless the changes are exclusively to the customer’s benefit, of a purely administrative nature (and having no negative effect on the customer), or directly imposed by law. This strengthened right to exit will also apply to other services or equipment bought as part of a bundle with an electronic communications service. It applies to residential consumers and also to small businesses<sup>7</sup>, unless (for small businesses) they waive their rights to any new protections.<sup>8</sup>

2.14 The right to exit in the revised GCs is triggered by contractual changes that are not to the benefit of the customer, so that customers can protect themselves from that change by exiting the contract without penalty, and in the context of bundling, to exit the bundle as a whole. Alternatively, the customer may choose to retain elements of the bundle where the elements are offered by the provider separately to the service that is subject to the contractual modification.

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<sup>6</sup> Ofcom, 2020. [Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code](#), and [Annex 4: Revised General Conditions \(unofficial consolidated version\) with effect from 17 June 2022](#) For full and comprehensive guidance about changes to the GCs, which should be referred to in addition to the sections on the revised GCs set out in this document, are available on our [website](#), [accessed 17 Mar 2022]

<sup>7</sup> Small businesses refer to “microenterprise customers, small enterprise customers (where no more than 10 individuals work, whether as employees or volunteers or otherwise) and not for profit organisations (where no more than 10 individuals work, whether as employees or otherwise but excluding volunteers)” as set out in conditions C1.14 & C1.15 in the revised GCs

<sup>8</sup> Providers have the option to ask small business customers to expressly agree to waive their rights to certain end-user rights provisions (or part of a provision) under the EECC. For example, a small business may choose to waive their rights to the protections afforded to bundles of services under Article 107 of the EECC. See paragraph 7.101 of the [Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code](#) and Article 107(4) of the [EECC](#) [accessed 31 Mar 21]

2.15 The requirements in the revised GCs recognise that bundles have become increasingly widespread and are an important element of competition. The extension of the right to exit to bundles in the revised GCs is to help ensure that bundles do not make switching more difficult and costly for customers or raise risks of contractual lock in.

## Bundle definitions

2.16 In our 2020 statement on the implementation of the EECC, we set out the definition of a bundle in the revised GCs<sup>9</sup>:

*'Bundle' means a contract, or two or more closely related or linked contracts, between the provider of a Public Electronic Communications Service and an End-User, which:*

*(a) relates, or together relate, to the provision of at least one of the following:*

- (i) an Internet Access Service; or*
- (ii) a Number-based Interpersonal Communications Service; and*

*(b) also relates, or together also relate, to the provision of at least one of the following:*

- (iii) another service falling within paragraph (a)(i) or (ii);*
- (iv) any other Public Electronic Communications Service;*
- (v) an Information Society Service;*
- (vi) a Content Service; and/or*
- (vii) Terminal Equipment.*

2.17 We provided additional guidance on defining a bundle, which sets out that in assessing whether a contract, or combination of contracts, falls within the definition of a bundle, we would consider the nature of any links between the services and / or terminal equipment. We consider technical, contractual and financial dependencies to be examples of the most common types of links between services and / or terminal equipment currently in existence.<sup>10</sup> Guidance was also given on optional add-on services, their definition, and the circumstances under which they would be included in the bundle definition as part of a right to exit.<sup>11</sup>

2.18 The guidance on technical, contractual and financial dependencies can be summarised as:

- **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.

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<sup>9</sup> Ofcom, 2020. [Fair treatment and easier switching for broadband and mobile customers: Statement and Consultation](#) para. 4.28 and Section 51(8) of the [Communications Act 2003](#) [accessed 17 Mar 2022]

<sup>10</sup> Guidance on these forms of dependency are set out in [Annex 11: Revised guidance on GC C1 contract requirements June 2022](#), pg. 27. The guidance also includes examples covering the bundling of landlines, broadband, Pay-TV, and mobile services/handsets on pg.14. [accessed 23 Feb 2022]

<sup>11</sup> Ofcom, Annex 10: [Revised guidance on contractual modifications \(non-tracked version\) effective from June 2022](#), paras. A10.20-A10.23 [accessed 23 Feb 2022]

## Impact Assessment

2.19 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 policymaking which in our view also applies when developing voluntary codes. As reflected in section 7 of the Act, 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.<sup>12</sup> To the extent appropriate, we have given consideration to the impact of our amendments to the voluntary Codes.

## Equality Impact Assessment

2.20 We have also considered whether the decision contained in this document will have a particular impact on persons sharing protected characteristics (race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998. We do not envisage that our proposals would have a detrimental impact on any particular group of people.

## Legal Duties

2.21 The policy objectives of the voluntary Codes are consistent with Ofcom's duties under the Communications Act 2003. Ofcom's principal duty under section 3 of that Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate, by promoting competition. Ofcom must do so having regard, amongst other things, to the desirability of promoting effective forms of self-regulation, and to the interests of consumers in relation to choice, price, quality of service, and value for money. A right of exit when providers fail to provide a minimum guaranteed speed facilitates choice and incentivises quality of service, as does the extension of the right to exit to bundles of services.

## Rest of this document

2.22 In Section 3, we set out our rationale and detailed proposals for amending the definition of a bundle in the Codes. Notice of our proposed modification to the Code is summarised in Section 4 and set out in full in Annex 5 (for the Residential Code) and Annex 6 (for the Business Code, which covers both small and large businesses).

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<sup>12</sup> For further information about Ofcom's approach to impact assessments, see the guidelines [Better policy making: Ofcom's approach to impact assessment](#). [accessed 14 April 2022]



## 3. Proposal and rationale

3.1 This section sets out the proposed changes to the Residential and Business Codes to align the definition of a bundle with those set out in the revised GCs. We also set out our rationale and potential impacts.

### Residential Code: amendment to the definition of a bundle

3.2 We are proposing to amend the definition of a bundle in the Residential Code so that the customer's right to exit (if their broadband speeds fall below the minimum guaranteed speed) will apply to their broadband and bundled services in the same way as their right to exit their contract and bundled services (including terminal equipment), as set out in the revised GCs (see table 3.1 for an overview of the proposed changes).

**Table 3.1: Proposed adoption of the revised GCs definition of a bundle for the Residential Code**

Summary of existing Residential Code definition of a bundle	Summary of proposed new definition of a bundle definition of a bundle within the Residential Code (aligned with the definition in the revised GCs)
Broadband and voice services over the same line (and any other services which rely on the broadband connection in question for their delivery).  Pay-TV, purchased or renewed at the same time as the contract for a broadband service.	Broadband services and any closely related or linked contract(s) for public electronic communications services, information society services, content services and/or terminal equipment. We consider technical, contractual and financial dependencies to be examples of the most common types of links between services and / or terminal equipment.

3.3 The definition of a bundle under the revised GCs is set out in Section 2. Our proposed modification to the Residential Code is set out in full in Annex 5.

### Rationale

3.4 As set out in Section 2, the rationale for strengthening the right to exit in both the Residential Code and the revised GCs was to help ensure that bundles do not make exercising a right to exit more difficult and costly for customers or raise risks of contractual lock in. Given that the objectives of the right to exit provisions in the Codes and the GCs are aligned, we do not consider there is a good reason for the definitions to differ.

3.5 We consider that aligning the definition of a bundle in the Residential Code with the definition of a bundle in the revised GCs will better ensure regulatory consistency. Having a consistent bundle definition applying to both this Code and the GCs will simplify the rules relating to bundles, making them easier for customers to follow and for broadband providers to implement. As a result, we consider this should reduce the likelihood of misunderstanding or misinterpretation, to the benefit of both broadband customers and broadband providers.

3.6 In addition, having a consistent definition is likely to reduce complexity for broadband providers at the point of sale, with potentially less training needed for customer service staff and a reduction in the quantity of detail presented to customers due to a reduced number of bundle definitions that will apply.

## Business Code: new bundle definition for small businesses only

3.7 We are proposing to amend the definition of a bundle in the Business Code so that a small business customer’s right to exit (if their broadband speeds fall below the minimum guaranteed speed) will apply to their broadband and bundled services in the same way as their right to exit their contract and bundled services (including terminal equipment) unless they waive their rights to these protections. This is to align with the definition of a bundle applied to small businesses as set out in the revised GCs. We propose to retain the existing Business Code of Practice definition of a bundle to continue to provide the existing level of protection for larger businesses (see Table 3.2 below for a summary of the proposed changes).

**Table 3.2: Proposed adoption of the revised GCs definition of a bundle for the Business Codes**

Summary of existing Business Code definition of a bundle for both small and larger businesses	Summary of proposed new definition of a bundle for small businesses within the Business Code (aligned with the definition in the revised GCs)
<p><b>For small and larger businesses.</b></p> <p>Broadband and standard voice services purchased at the same time or subsequently (technically linked), and dependent services (such as VoIP and Cloud services) which would be stranded if the broadband line were no longer purchased. It does not apply to any other services which can operate independently of the affected broadband service e.g., mobile or leased lines.</p>	<p><b>For small businesses, we propose <u>to add</u> the revised GCs definition of a bundle:</b></p> <p>Broadband services and any closely related or linked contract(s) for public electronic communications services, information society services, content services and/or terminal equipment. We consider technical, contractual and financial dependencies to be examples of the most common types of links between services and / or terminal equipment. (Applies unless they waive their rights to these protections).</p> <p><b>NB. For larger businesses, we propose <u>to retain</u> the existing definition of a bundle (see left).</b></p>

3.8 The definition of a bundle under the revised GCs which we propose to apply to small businesses is set out in in Section 2 and, for small businesses, is the same as our proposal for the definition that should be used in the Residential Code. We propose to retain the current definition of a bundle in the Business Code for larger businesses. Our proposed modification to the Business Code is set out in full in Annex 6.

## Rationale

3.9 The definition of a bundle in the revised GCs also applies to small businesses. The 2020 statement on the implementation of the EECC explains that this is because in many cases,

smaller businesses have a comparable bargaining position to that of consumers.<sup>13</sup> Smaller businesses are also more likely to rely on similar communications services as residential customers, such as PSTN phone lines together with a broadband service.<sup>14</sup>

- 3.10 Given that the objective of this proposal is to align the strengthened right to exit provisions in the Codes with those in the revised GCs, we consider that the protections offered to small businesses in the GCs (with regards to exiting bundles services) should also apply to small businesses under the Business Code.
- 3.11 In contrast to smaller businesses, larger businesses (with 10 or more employees) are more likely to use specialised, higher capacity services such as dedicated internet access and access to corporate networks using leased lines. Larger businesses with more complex communications needs are therefore more likely and more able to negotiate tailor-made contracts and be more engaged in the purchasing process compared to smaller businesses.
- 3.12 We consider that the current bundle definition within the Business Code provides sufficient protection for larger businesses, with regards to exiting bundled services. We therefore propose to maintain the current bundle definition within the Business Code for larger businesses.

## Potential impact of the proposed changes

- 3.13 The definition of a bundle in the revised GCs potentially includes a wider list of services than is currently captured by the Codes, such as mobile services and terminal equipment. However, under the revised GCs, these services or equipment will not automatically be captured by the definition of a bundle, as it depends on the nature of any links between them.
- 3.14 Therefore, in practice, it is unclear which products will be captured within a bundle, and what the impact will be, as that will depend on the technical, financial, or contractual links between them. In relation to financial and contractual links, the question of what products to bundle together will be a commercial decision made by the signatories, which they will be considering as part of revising their contracts to comply with the new GCs. This means that there may also be changes to what is considered to fall within the new definition of a bundle as a result going forwards.
- 3.15 On balance, we are of the view that there is unlikely to be a large increase in products captured within the proposed bundle definition. We also note that, potentially, the number of products captured in the definition of a bundle may be fewer if, for example, certain pay-TV services are no longer sold as part of a bundle with contractual or financial links.<sup>15</sup>
- 3.16 Following preliminary discussions with some signatories ([§< ] ) we are of the view that providers need not incur significant implementation costs to implement the proposed definition change in the Codes. Such implementation costs are likely to include updating sales

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<sup>13</sup> Ofcom, 2020. [Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code](#), para 4.32 to 4.34. [accessed 14 April 2022]

<sup>14</sup> Ofcom, 2020. [Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code](#), para 4.47. [accessed 14 April 2022]

<sup>15</sup> The Codes currently include pay-TV services within a bundle if they are purchased at the same time as the broadband service and no links are necessary.

material made available to customers and used by customer service staff, the identification of small business customers, and updates to training, but we do not think that this will require significant changes to operational systems. Moreover, we expect any changes are likely to be incremental to implementing the revised GC requirements, including the requirements around bundling and the right to exit, which come into force in June 2022.

- 3.17 Overall, we consider the impact on consumers and signatories in relation to the change in scope of products captured under the proposed bundle definition is not likely to be material. In addition, we see that any potential costs of implementing the proposed changes to the Codes are both reasonable and manageable when set against the long-term benefits of simplified rules relating to bundles.<sup>16</sup>

## Implementation timing

- 3.18 We propose that signatories should implement any necessary changes to comply with the proposed amendments to the Codes ***within 3 months of our final decision*** (assuming we decide to make these changes). We propose that this time period should be sufficient for signatories to be able to implement these changes alongside and as an extension of their ongoing work to implement the revised GCs.

## Consultation questions

**Question 1:** Do you agree with the proposal to align the Residential Code definition of a bundle with the revised General Conditions, as set out in this consultation? Please set out your reasons, with supporting evidence, for your response.

**Question 2:** Do you agree with the proposal to align the Business Code definition of a bundle, for small businesses only, with the revised General Conditions, as set out in this consultation? Please set out your reasons, with supporting evidence, for your response.

**Question 3:** Is the proposed timetable for implementing the proposed changes to the Codes within 3 months of the statement reasonable? Please set out your reasons, with supporting evidence, for your response.

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<sup>16</sup> i.e. the benefits of having a common definition of a bundle for both contracts and within the Codes - see para 3.5

# 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 22 June 2022.
- A1.2 You can [download a response form](#) from the Ofcom website. You can return this by email 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 [BBS-VCOP2021@ofcom.org.uk](mailto:BBS-VCOP2021@ofcom.org.uk), as an attachment in Microsoft Word format, together with the [coversheet](#).
- A1.4 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.
- A1.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.6 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.
- A1.7 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.
- A1.8 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 4. 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.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please email [BBS-VCOP2021@ofcom.org.uk](mailto:BBS-VCOP2021@ofcom.org.uk).

## Confidentiality

- A1.10 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.
- A1.11 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.

- A1.12 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.
- A1.13 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

- A1.14 Following this consultation period we plan to issue a decision statement with the updates to the Codes in Q2 2022-23. If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A1.15 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.16 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto: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.
- A1.17 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary: [corporationsecretary@ofcom.org.uk](mailto: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? \_\_\_\_\_

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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)?

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Name

Signed (if hard copy)



## A4. Consultation questions

**Question 1:** Do you agree with the proposal to align the Residential Code definition of a bundle with the revised General Conditions, as set out in this consultation? Please set out your reasons, with supporting evidence, for your response.

**Question 2:** Do you agree with the proposal to align the Business Code definition of a bundle, for small businesses only, with the revised General Conditions, as set out in this consultation? Please set out your reasons, with supporting evidence, for your response.

**Question 3:** Is the proposed timetable for implementing the proposed changes to the Codes within 3 months of the statement reasonable? Please set out your reasons, with supporting evidence, for your response.

## A5. Key changes to bundle definition in the Voluntary Code of Practice (Residential)

This annex illustrates how we propose to amend paragraphs 2.82-2.87 of the Residential Code to align with the definition of a bundle in the revised GCs. We also propose to:

- update the introduction i.e., that this is the 5th version of the Residential Code, since its original implementation in 2008, which has been updated to align with the revised GCs on bundling and right to exit for implementation in June 2022. This replaces the previous version published on 1 March 2018 (implemented from 1 March 2019); and
- update the definitions in Annex 1<sup>17</sup> of the existing Residential Code with respect to the new bundle definitions (see Annex 7 of this consultation for the proposed wording).

<b><i>Current text</i></b> in the existing Residential Code	<b><i>Proposed text</i></b> for an updated Residential Code
<p><b>The right to exit applies to standalone broadband services and some additional services</b></p> <p><b>2.82</b> The right to exit applies to broadband services which a customer receives on a standalone basis.</p> <p><b>2.83</b> Where a customer receives phone and broadband services from the same provider over the same line, the right to exit will apply to both services, irrespective of whether the two services were purchased, or the contract(s) for their provision was renewed, at the same time.<sup>18</sup></p> <p><b>2.84</b> Where a customer receives both a broadband service and any other services which rely on the broadband connection in question for their delivery (such as provider-specific pay-TV delivered over broadband) from the same provider, the right to exit will apply to all such dependent electronic communications services. This will apply irrespective of whether such dependent services were purchased, or the</p>	<p><b>The right to exit applies to standalone broadband services and bundled services.</b></p> <p><b>2.82</b> Where the speed of the broadband service remains below the minimum guaranteed speed, the right to exit enables the customer to terminate their contract for the broadband service either on a standalone basis or also to terminate any contract(s) forming part of a bundle with that contract.</p> <p><b>2.83</b> Here ‘bundle’ means a contract, or two or more closely related or linked contracts between the service provider and the customer, which:</p> <p>(a) relates to the provision of an Internet Access Service and;</p> <p>(b) also relates, or together also relate, to the provision of at least one of the following:</p> <p>(i) another service falling within paragraph (a)</p> <p>(ii) a Number-based Interpersonal Communications Service;</p> <p>(iii) any other Public Electronic Communications Service;</p> <p>(iv) an Information Society Service;</p>

<sup>17</sup> Ofcom, 2018. [Better Broadband Speed Information Voluntary Code of Practice \(Residential\)](#), and [Better Broadband Speed Information Voluntary Code of Practice \(Business\)](#).

<sup>18</sup> ‘At the same time’ refers to products bought together under a single contract, as well as to products bought under separate contracts as part of the same sales process (this is footnote 17 in the Code)

<p>contract(s) for their provision was (were) renewed, at the same time as the broadband service.</p> <p><b>2.85</b> Where a customer has purchased or renewed the contract(s) for the provision of a pay-TV service at the same time as purchasing, or renewing the contract for the provision of a broadband service, the right to exit will apply to both services, even if the pay-TV service does not rely on the customer’s broadband connection. In these cases, the right to exit will also apply to any phone services obtained from the same provider, as set out at paragraph 2.83.</p> <p><b>2.86</b> We note that, although the right to exit is applicable to non-broadband services as per the above conditions, the customer may choose to retain one or more of their other electronic communications services if it would be possible to receive it without a broadband connection from the same provider, e.g. they may wish to exit phone and broadband but retain pay-TV.</p> <p><b>2.87</b> Where a customer has purchased multiple lines at the same premises, the right to exit only relates to the specific line with the speed problem.</p>	<p>(v) a Content Service; and/or (vi) Terminal Equipment.</p> <p>Definitions of the services listed in (a) and (b)(i) to (b)(vi) can be found in Annex A1 of the Residential Codes.<sup>19</sup></p> <p><b>2.84</b> We consider technical, contractual and financial dependencies to be examples of the most common types of links between services and / or terminal equipment currently in existence. Definitions for each dependency can be found in Annex A1 of the Residential Codes.<sup>19</sup></p> <p><b>2.85</b> In assessing whether a contract or combination of contracts, falls within the definition of a bundle, providers should also consider the nature of any links between the services and / or terminal equipment.</p> <p><b>2.86</b> Where a customer has the right to exit a bundle of services, they should have the choice to exit the whole bundle, retain the whole bundle, or exit the contract for the broadband service with the speed problem (and other parts of the bundle if they wish) while retaining the elements that are not dependent on a broadband connection from the same provider, e.g. they may wish to terminate their phone and broadband services but retain mobile phone services (where those elements are already offered by the provider separately to the broadband service with the speed problem).</p> <p><b>2.87</b> Where a customer has purchased multiple broadband lines at the same premises, the right to exit only relates to the specific line with the speed problem and bundled services associated with that line.</p>
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<sup>19</sup> See Annex 7 of this document for the proposed additions to the definitions in the current Codes.

## A6. Key changes to bundle definition in the Voluntary Code of Practice (Business)

This annex illustrates how we propose to amend paragraphs 2.84-2.87 of the Business code where we propose to:

1. Add additional text to align the Business code with the definition of a bundle in the revised GCs on for small businesses only; and
2. Retain the current text in the existing Business Code for larger businesses only.

We also propose to:

- update the introduction i.e., that this is the 2nd version of the Business Code, since its original implementation in 20016, which has been updated to align with the revised GCs on bundling and right to exit for implementation in June 2022. This replaces the previous version published on 1 March 2018 (implemented from 1 March 2019).
- update the definitions in Annex 1 of the existing Business Code<sup>20</sup> with respect to the new bundle definitions and the definitions of smaller and larger businesses (see Annex 7 of this consultation for the proposed wording).

<b><i>Current text</i> in the existing Business Code</b>	<b><i>Proposed text</i> for an updated Business Code</b>
<p><b>The right to exit applies to individual broadband services and some additional services</b></p> <p><b>2.84</b> The right to exit applies to broadband services which a customer receives on a standalone basis.</p> <p><b>2.85</b> It also applies to the following services and bundles:</p> <p>a) To bundles of standard voice and broadband services purchased at the same time. This includes bundles where standard voice and broadband services were bought separately, but where an ISP made a technical change that would prevent the products from being separated again.</p>	<p><b>The right to exit applies to standalone broadband services and bundled services</b></p> <p><b>Small business customers</b></p> <p><b>2.84</b> For small business customers<sup>21</sup>, where the speed of the broadband service remains below the minimum guaranteed speed, the right to exit enables the customer to terminate their contract for the broadband service either on a standalone basis or also to terminate any contract(s) forming part of a bundle with that contract, unless they expressly waive their rights to the protections afforded to bundles of services.<sup>22</sup></p>

<sup>20</sup> Ofcom, 2018. [Better Broadband Speed Information Voluntary Code of Practice \(Residential\)](#), and [Better Broadband Speed Information Voluntary Code of Practice \(Business\)](#). [accessed 6 May 2022]

<sup>21</sup> Small business customers as set out in the definitions part of this document

<sup>22</sup> Providers have the option to ask small business customers to expressly agree to waive their rights to certain end-user rights provisions (or part of a provision) under the EECC. For example, a small business may choose to waive their rights to the protections afforded to bundles of services under Article 107 of the EECC. See paragraph 7.101 of the [Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code](#) and Article 107(4) of the [EECC](#) [accessed 31 Mar 21]

<p>b) To broadband services and their 'dependent' services i.e. services such as Voice over IP (VoIP) and Cloud-based services which are dependent on the affected broadband service and where such services would be 'stranded' were the customer to stop purchasing the affected broadband service. It is irrelevant whether the dependent service was purchased at the same time or a different time to the affected broadband service.</p> <p><b>2.86</b> Where a customer has purchased multiple lines, the right to exit only relates to the specific line with the speed problem (and by extension, cases where there is a broadband and voice bundle, or a dependent service reliant on that specific line).</p> <p><b>2.87</b> The right to exit does not apply to any other services which are not covered above and which can operate independently of the affected broadband service. For instance, where broadband service is bundled with mobile services or leased lines, the right to exit penalty free only applies to the broadband service where the speed remains below the minimum guaranteed speed.</p>	<p><b>2.85</b> Here 'bundle' means a contract, or two or more closely related or linked contracts between the service provider and the customer, which:</p> <p>(a) relates to the provision of an Internet Access Service and;</p> <p>(b) also relates, or together also relate, to the provision of at least one of the following:</p> <ul style="list-style-type: none"> <li>(i) another service falling within paragraph (a);</li> <li>(ii) a Number-based Interpersonal Communications Service;</li> <li>(iii) any other Public Electronic Communications Service;</li> <li>(iv) an Information Society Service;</li> <li>(v) a Content Service; and/or</li> <li>(vi) Terminal Equipment.</li> </ul> <p>Definitions of the services listed in (a) and (b)(i) to (b)(vi) can be found in Annex A1 of the Business Codes.<sup>23</sup></p> <p><b>2.86</b> We consider technical, contractual and financial dependencies to be examples of the most common types of links between services and / or terminal equipment currently in existence. Definitions for each dependency can be found in Annex A1 of the Business Codes.<sup>23</sup></p> <p><b>2.87</b> In assessing whether a contract or combination of contracts, fall within the definition of a bundle, providers should also consider the nature of any links between the services and / or terminal equipment.</p> <p><b>2.88</b> Where a customer has the right to exit a bundle of services, they should have the choice to exit the whole bundle, retain the whole bundle, or exit the contract for the broadband service with the speed problem (and other parts of the bundle if they wish) while retaining the elements that are not dependent on a broadband connection from the same provider e.g. they may wish to terminate their phone and broadband services but retain mobile phone services (where those elements</p>
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<sup>23</sup> See Annex 7 of this document for the proposed additions to the definitions in the current Codes.

are already offered by the provider separately to the broadband service with the speed problem).

**2.89** Where a customer has purchased multiple broadband lines at the same premises, the right to exit only relates to the specific line with the speed problem and bundled services associated with that line.

### **Larger business customers**

**2.90** For larger business customers, the right to exit applies to broadband services which a customer receives on a standalone basis.

**2.91** It also applies to the following services and bundles:

- a) To bundles of standard voice and broadband services purchased at the same time. This includes bundles where standard voice and broadband services were bought separately, but where an ISP made a technical change that would prevent the products from being separated again.
- b) To broadband services and their 'dependent' services i.e., services such as Voice over IP (VoIP) and Cloud-based services which are dependent on the affected broadband service and where such services would be 'stranded' were the customer to stop purchasing the affected broadband service. It is irrelevant whether the dependent service was purchased at the same time or a different time to the affected broadband service.

**2.92** Where a customer has purchased multiple lines, the right to exit only relates to the specific line with the speed problem (and by extension, cases where there is a broadband and voice bundle, or a dependent service reliant on that specific line).

**2.93** The right to exit does not apply to any other services which are not covered above and which can operate independently of the affected

	<p>broadband service. For instance, where broadband service is bundled with mobile services or leased lines, the right to exit penalty free only applies to the broadband service where the speed remains below the minimum guaranteed speed.</p>
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## A7. Proposed additions to definitions<sup>24</sup>

**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 Service** means a service which enables direct interpersonal and interactive exchange of information by means of Electronic Communications Networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient.

**Number-based Interpersonal Communications Service** means an Interpersonal Communications Service made available to the public which: (a) connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan; or (b) enables communication with a number or numbers in a national or international numbering plan.

**Information Society Service** is to be read in accordance with Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification)". This is consistent with the definition of 'information society service' included at section 51(9) of the Act.

**Content Service** - so much of any service as consists in one or both of the following: (a) the provision of material with a view to its being comprised in Signals conveyed by means of an Electronic Communications Network; (b) the exercise of editorial control over the content of Signals conveyed by means of such a network.

**Terminal Equipment** means: (a) equipment directly or indirectly connected to the interface of a Public Electronic Communications Network to send, process or receive information, with the direct or indirect connection being made by a wire or optical fibre or electromagnetically; or (b) equipment which is capable of being used for the transmission or reception, or both, of radio communication signals by means of satellites or other space-based systems.

**Technical dependency** - where a customer would lose, or be impaired in using, one element of the bundle if they terminated the contract for another element of the bundle. For example, if a customer has a broadband service which only works if they also take a landline service from the same provider, and the customer cancelled their landline service, they would no longer be able to use the broadband service.

**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 purchase both airtime and a mobile device at the same time from the same provider under two different contracts but with contractual terms that link the contracts.

**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

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<sup>24</sup> Ofcom, [Fair treatment and easier switching for broadband and mobile customers: Implementation of the new European Electronic Communications Code](#), section 4 and section 11. [accessed 31 Mar 2022]



customers who also take fixed broadband from the same provider, which is then removed if the broadband contract is cancelled.

**Small business customer** – for this document, small business customers are comprised of ‘Microenterprise or small enterprise customers’ and ‘Not-for-profit customers’. ***‘Microenterprise or small enterprise customers’*** means customers acting in the course of a business carried on by that customer and for which no more than 10 individuals work, whether as employees or volunteers or otherwise ***‘Not for profit customers’*** means customers which are a body for which no more than 10 individuals work, whether as employees or otherwise but excluding volunteers, and which, by virtue of its constitute 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).”