

**Frequently asked questions (FAQs) by service
providers
about the new regulatory framework**

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Introduction

These FAQs are intended to answer the most common questions asked by service providers about the new regulatory framework that enters into force in July. The list of FAQs is intended to be open-ended - where Oftel answers further questions from service providers that may be of wider interest, it will add them to the list. For example, guidance for Internet Service Providers and Airtime Providers will shortly be available here.

The answers are intended to be as helpful and informative as possible but they need to be read with the understanding that the examples covered represent typical cases; these FAQs cannot be taken as applying to all instances where a particular set of circumstances needs to be taken into account. References to the Communications Bill are references to the print of 6 February 2003. Please also read the disclaimer at the end of this document.

FAQ list

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1. Will service providers be required to offer contracts?

1.1 Yes. Under the new regulations, communications providers who provide public electronic communication services must offer to enter into a contract at the request of an end-user. The contract must include the following information:

- the name and address of the Communications Provider;
- the services provided, and the service quality levels offered, including the time for initial connection;
- the types of maintenance services offered;
- details of prices and tariffs, and how up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- the duration of the contract, the conditions for renewal and termination of services and of the contract, including the end-user's right to terminate the contract without penalty if the provider modifies the contract to the detriment of the end-user;
- any compensation and the refund arrangements which apply if contracted quality service levels are not met, and
- how dispute resolution procedures can be initiated.

1.2 In practice, this means that all service providers will be required to offer end-users a contract which is likely to be in writing. This is likely to have little effect on larger service providers, but may affect some smaller providers whose current procedures are more informal.

1.3 The intention behind this condition is to establish a minimum set of terms that should be included in a contract between an end-user and a communications provider. Oftel sees this as a key consumer right that is not related to a communications provider's size.

1.4 The requirement to offer contracts is set out in article 20 of the Universal Service Directive and is being implemented by General Condition 9.

2. Will service providers need to publish information on their quality of service?

2.1 Under the new framework Oftel/Ofcom will be able to direct communications providers who provide services to the public to publish information on their quality of service – following a consultation on the detail of any information to be required.

This requirement will not cover any communications providers which have been providing services for less than 18 months. This is to reduce the regulatory burden on recent new entrants.

2.2 At present, there are two Oftel-endorsed quality of service publications:

- the mobile networks call success rate survey - www.oftel.gov.uk/publications/research/2002/call_survey/index1202.htm and;
- the fixed operators' Comparable Performance Indicators - <http://www.cpi.org.uk/>.

It should be noted that both of these initiatives are voluntary and that Oftel has not used its powers to enforce quality of service publication.

2.3 Oftel intends to continue this programme of work, and envisages that Ofcom would only use its ability to request further information where that programme was insufficient for some reason. Due to the sample sizes necessary to get statistically significant results it is unlikely – but not impossible – that small service providers would be directed to publish quality of service information.

2.4 The powers to impose quality of service reporting are derived from article 22 of the Universal Service Directive and are being implemented by General Condition 11.

3. Will service providers be required to comply with codes of practice?

3.1 Yes. All providers of electronic communications network and services will be required to publish a basic code of practice for their residential and small business customers. This is a new policy initiative that stems from proposals set out in the Communications White Paper <http://www.communicationswhitepaper.gov.uk/>.

3.2 The codes of practice should set out the service provider's relationship with their customer in easy-to-understand language. Copies of the code will have to be provided on request and free of charge to any customer.

3.3 It is intended that communications providers should establish their own codes of practice, and submit these to Oftel/Ofcom for compliance checks and assessment. However, groups of service providers could develop a common code of practice that they would all agree to follow, rather than each have individual codes of practice. However, if a service provider does not have a code of practice, or is not signed up to another code of practice, they will be in breach of the general conditions.

3.4 Oftel has published guidelines on how it plans to assess codes of practice procedures for compliance checks and assessments under the Communications Act. These are posted at www.oftel.gov.uk/publications/ind_guidelines/2003/copi0203.htm

3.5 The requirement to comply with codes of practice is derived from clauses 48, 49 and 51 of the Communications Bill, and will be implemented by General Condition 15.

4. Will service providers be required to have a dispute resolution scheme?

4.1 Yes. Under the new regulations all communications providers that serve residential consumers and small businesses will have to provide them with an out-of-court dispute resolution procedure that is independent, transparent, simple, inexpensive, fair and prompt. Out-of-court settlement procedures are sometimes also known as alternative dispute resolution.

4.2 It should be noted that significant market power is not required to trigger this obligation. The need to comply with a dispute resolution scheme is a consumer protection issue and therefore covers all communications providers that serve residential consumers and small businesses.

4.3 The Telecommunications Ombudsman Scheme, established in June 2002 by an industry working group in consultation with consumer bodies is Oftel's (and the Government's) preferred solution to out-of-court dispute resolution. A current list of communications providers who have signed up to the Scheme is available at <http://www.otelo.org.uk/memberlist.php>

4.4 If a service provider decides not to join the Ombudsman Scheme it is still obliged to have an out-of-court settlement system. This will need to be approved by Ofcom.

4.5 Oftel will shortly be publishing guidance on how dispute resolution procedures will be approved. Not having a satisfactory dispute resolution system will be a breach of the General Condition.

4.6 The requirement to comply with a dispute resolution scheme derives from article 34 of the Universal Service Directive and is being implemented by General Condition 15 and clauses 48, 50 and 51 of the Communications Bill.

5. What is a small business user?

5.1 A small business user is an organisation that has 10 or fewer employees or volunteers, and is not itself a provider of communications services.

6. What obligations apply to PMR (private mobile radio) providers?

6.1 An example of PMR is where a local trades firm such as a plumber or electrician self-provides a PMR system for its on-call staff within a local area served by one base station, typically covering a town centre and suburbs. Because PMR is self-provided, with the end-user owning or leasing the radio equipment, it will only be subject to frequency regulation under the new regulatory framework. This is a change from the present arrangements, where PMR systems are operated under a class licence. A third-party provider may supply some or all of the equipment, installation and maintenance but this is not the same as providing an electronic communication service. As a result, a PMR provider will not be subject to the general conditions and will not be exposed to any new obligations under the new regulatory framework.

6.2 The only exception is where the PMR provider provides a Common Base Station (CBS), sometimes known as a Community Repeater. A CBS is similar to PMR but provided on a commercial basis by a radio specialist company to third parties, such as tradesmen or other end-users. CBS providers are providing a public electronic communication service because they are providing a service that consists in:

- the conveyance of signals;
- by means of an electronic communication network; and
- which is available for use by members of the public.

6.3 In this context, the subscribers to a PMR service which relies on a CBS count as members of the public even though they are likely to be business users. Although the number of subscribers/end-users is limited by the capacity of the base station, this is true, in theory, for any network-based service. It is just that the footprint of a CBS is smaller than most. Providers of CBS services will be subject to the same set of obligations as PAMR providers (see FAQ # 7).

6.4 Where PMR systems currently require to be licensed under the Wireless Telegraphy Act this the expectation is that this will remain the case under the new framework, although this Act may be subject to amendment by virtue of the Communications Bill.

7. What obligations apply to PAMR (public access mobile radio) providers?

7.1 PAMR (Public Access Mobile Radio) is a PMR two-way radio type of service provided by a third-party Network Operator. Because the end-user is buying access into a network that is not self-provided, but provided by a third-party, that third party provider is providing a public electronic communication service. The

end-user is being provided with a service that has as its main feature the conveyance of signals by means of an electronic communications network.

7.2 The actual obligations that will apply to PAMR providers in practice are relatively light as PAMR is not a Publicly Available Telephone Service. They include requirements to offer contracts and to issue bills that do not overcharge end-users. Where directed by Oftel/Ofcom, they will also need to publish information on their quality of service (see FAQ # 2). Additionally if they offer services to small business users (see FAQ # 5) they will also be required to have a dispute resolution scheme (see FAQ # 4) and to produce and comply with codes of practice (see FAQ # 3).

7.3 Where PMR systems currently require to be licensed under the Wireless Telegraphy Act the expectation is this will remain the case under the new framework although the Act may be subject to amendment by virtue of the Communications Bill.

8. What obligations apply to providers of Wi-Fi access?

8.1 Wi-Fi is a term used to describe a Radio Local Area Network (RLAN) offering broadband wireless access to the Internet. Providers of Wi-Fi access are clearly offering a conveyance service, hence an electronic communication service. However, depending on the terms by which potential customers gain access to the service it may or may not be a publicly available service.

8.2 Where access is provided on the internet café model, typically with a time-based pricing structure and a service open to anyone, the provider of Wi-Fi access will be providing a public electronic communication service. However there are other circumstances in which Wi-Fi access is provided in a way which does not make it available to members of the public; where, for example, access is restricted to members of an academic community or to the customers of a particular hotel. As the WiFi market is still in an early stage of development, with a variety of business models being tried out, it is not practicable to give more guidance at this stage.

8.3 For Wi-Fi providers who are providing a public electronic communication service, there will be an obligation to offer contracts (see FAQ # 1) and providers may be directed to publish information on the quality of their service (see FAQ # 2)

9. Is a supplier of terminal equipment providing an 'associated facility'?

9.1 Some service providers have expressed concern that the Communication Bill's definition of an "associated facility" is broad enough to catch terminal equipment such as a mobile telephone and so bring the suppliers of such equipment within the sphere of regulation as providers of associated facilities. However this is not the case. Terminal equipment within the scope of the Radio Equipment and

Telecommunications Terminal Equipment Directive (99/5/EC), such as mobile phones, is explicitly excluded from the new regulatory framework.

9.2 Although it is not possible to itemise every conceivable facility that would count as an associated facility (which in many cases is likely to depend on a particular set of circumstances) Oftel's understanding is that it refers to wholesale inputs into the provision of electronic communications networks and services that are not themselves networks or services but which support their provision. Frequently cited examples are electronic programme guides and conditional access systems. Facilities, which are used in conjunction with networks to provide electronic communications services, such as Domain Name Servers (DNS) and Intelligent Network (IN) databases, are also associated facilities.

10. Can non-SMP providers be obliged to provide access?

10.1. Some service providers have queried the circumstances in which Oftel/Ofcom would exercise the powers conferred by Communications Bill that enable access-related conditions to be imposed on providers that do not have SMP in a particular market.

10.2 Although it is not possible to specify all the scenarios in which the exercise of these powers would be exercised, a point of departure is suggested by recital 6 of the Access Directive, which recognises that there may be large differences in negotiating power between providers and that some providers depend on infrastructure provided by other providers to deliver their services. In these circumstances national regulatory authorities should be able to ensure end-to-end connectivity by imposing proportionate access obligations on providers that control access to end-users.

10.3 It is worth noting that the exercise of these powers is hedged around with the onerous procedural requirements of consultation with interested parties as well as notification to the European Commission and the national regulatory authorities of other member states. So the use of these powers would not be entered into lightly.

Disclaimer

The FAQs posted here are intended to be helpful and informative but they need to be read with the understanding that the answers are general in nature and apply to typical examples. They cannot be taken as applying absolutely to individual cases where a particular set of circumstances needs to be taken into account. Nor can they act as a substitute for specific legal advice. These FAQs do not fetter the discretion of the Director General of Telecommunications to resolve any dispute or investigate any matter to which this guide relates. Where terms defined by the Communications Bill are explained in the FAQs, the explanations cannot replace the formal Bill definitions but are written so as to make those definitions more

comprehensible to people with a non-legal background. References to the Communications Bill in this set of FAQs are references to the print of 6 February 2003 which may be subject to change as it passes through Parliament.
