



Changes to General Conditions and Universal Service Conditions

Implementing the revised EU Framework

Consultation

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Section 1

Executive Summary

Implementation of the revised EU Framework

- 1.1 We are consulting on the changes we need to make to certain General Conditions ('GCs') and Universal Service Conditions ('USCs') to implement the revised EU electronic communications framework¹ in the UK. These changes need to be made by 25 May 2011 as this is the deadline for transposition into national law.
- 1.2 The Department for Business, Innovation and Skills (BIS) issued a consultation on 13 September 2010 setting out its approach to making legislative amendments to the UK Communications Act 2003 ('the Act'), the Wireless and Telegraphy Act (2006) and the Privacy and Electronic Communications Regulations (2003), in order to implement the new Framework². Some of the changes to the GCs set out in this document depend upon these anticipated alterations to the legal framework. We are working closely with the Government and will take into account any changes to the legal context, which follow its consultation.

The GCs and USCs

- 1.3 The GCs apply in the main to Communications Providers ('CPs'). There are currently 24 GCs and the applicability of particular conditions varies depending on the type of network or service a CP is providing.
- 1.4 The USCs apply only to BT³ and to Kingston Communications⁴. They ensure that basic fixed line telecoms services are available at an affordable price to citizens across the UK.

Changes to the conditions

- 1.5 In all cases, the changes have to be transposed in accordance with the revised Directives. Many of the required modifications to the GCs and USCs are fairly minor, such as small changes to definitions in specific conditions. In these cases we set out the amendment we have to make and describe any likely impacts where we can.
- 1.6 In other cases, the changes are more significant and Ofcom may have discretion as to how the revised requirements in the revised Directives are implemented. Where this is the case, the changes are explained in more detail and, where appropriate, a detailed impact assessment is set out.
- 1.7 There are more substantive proposals relating to the following GCs:

¹ The Framework consists of five Directives: the Framework Directive (2002/21/EC), *Authorisation Directive* (2002/20/EC), *Access Directive* (2002/19/EC), *Universal Service Directive* (2002/22/EC), *Privacy and Electronic Communications* (2002/58/EC); all as amended by the *Better Regulation Directive* (2009/140/EC) and *Citizens' Rights Directive* (2009/136/EC).

² BIS *Implementing the revised EU Electronic Communications Framework – Overall approach and consultation on specific issues* September 2010, <http://www.bis.gov.uk/Consultations/revised-eu-electronic-communications-framework>. The consultation closed in December 2010 and the Government has until 25 May 2011 to implement the legislation.

³ In the UK, excluding the Hull area.

⁴ In the Hull area.

- *GC9 Requirement to offer contracts with minimum terms* – requirements relating to the provision of additional information, the length of contracts and the conditions for termination;
- *GC15 Special Measures for End-Users⁵ with disabilities* – to help promote equivalent access to emergency services we propose a requirement to provide emergency SMS; and
- *GC18 Number portability* – requirement to port numbers within one working day and to put in place a porting compensation scheme.

Number portability

- 1.8 The amended Universal Service Directive requires that, where subscribers have concluded an agreement to port a number to a new undertaking, they shall have their number activated within one working day (Article 30 (4)).
- 1.9 For **fixed** numbers, we propose that port activation should take place within one working day⁶ from when a subscriber's 'new' provider requests *activation* from the subscriber's existing provider. This is in effect when porting can actually take place – in that the necessary consumer protection measures⁷ and any physical line provisioning have been completed. This is likely to require limited changes to the current fixed porting arrangements.
- 1.10 We already set out a one working day requirement on the porting of non-bulk **mobile** numbers in a statement last year⁸. This change will come into effect on 11 April 2011. We now propose that the same requirement apply to *bulk* mobile ports⁹. This will mean the 'one working day' timetable for bulk mobile ports will start when a subscriber gives their PAC to their new provider¹⁰.
- 1.11 Also, CPs must have compensation schemes in place by 25 May which provide reasonable compensation to subscribers following any porting delay or abuse. We propose that CPs are able to design the details of the scheme themselves taking on board the guidance we have set out in this document. Any compensation disputes will be considered either by the ADR Schemes (where it involves consumer and small business ports) or the courts.

⁵ 'end-user' means "a user not providing public communications networks or publicly available electronic communications services". This is a term in the Framework Directive which we use throughout this document in lower case. This term is capitalised in the actual text of our conditions.

⁶ Which we have defined as *one business day* – which as noted in Section 10 of this document – is in line with our statement last year on (non-bulk) mobile number portability.

⁷ The consumer protection measures are explained in paragraph 10.37.

⁸ Ofcom *Changes to the Mobile Number Porting Process* 8 July 2010 - <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf> .

⁹ Bulk means more than 25 mobile phone numbers are processed under one PAC (porting authorisation code).

¹⁰ Consistent with our approach to non-bulk mobile ports, we note that the subscriber for bulk mobile ports may however request an alternative port date that is later than the default date if they so choose. Furthermore, the new provider might also refuse to accept the subscriber as a customer, if the new provider cannot port the numbers within one working day and cannot agree an alternative date with the subscriber.

Equivalent access to emergency services – emergency SMS

- 1.12 The new Framework requires access to emergency services via 112 (and in the UK, 999 as the national emergency call number) for disabled people to be “equivalent to that enjoyed by other end-users”. We believe the provision of an emergency SMS service to 112/999 is appropriate to help promote such equivalence for disabled end-users. Access to emergency SMS is provided currently on a voluntary basis and we propose requiring CPs to provide access to the service to ensure that the service is maintained and that the requirement for equivalence continues to be met.

Contract terms

- 1.13 The key changes to GC9, relating to contracts are:
- CPs will have to provide additional information to consumers¹¹ and also make this information available to other end-users on request;
 - the maximum duration of initial consumer contracts will be 2 years; and users generally must be offered an option to contract for the provision of public electronic communication services¹² for a maximum duration of 12 months;
 - subscribers must be able to withdraw from contracts penalty-free following a notice of contract modifications; and
 - contract termination conditions and procedures for termination must not act as a disincentive to end-users from switching their providers.

Next steps

- 1.14 Our consultation will last for six weeks given that many of our proposals to revise the GCs and USCs involve minor changes and also because in many cases we have little discretion in terms of implementing the Framework requirements.
- 1.15 Following consideration of stakeholder responses, we will issue our statement ahead of the 25 May 2011 deadline for transposition.

¹¹ The definition of *consumer* at Article 2 FD is: “any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession.” For the purposes of this consultation document, any reference to this term is a reference to this FD definition. (The definition of the term ‘Consumer’ in the Act at s405 (5) is wider than the term as defined in the FD because it applies not just to natural persons but also includes businesses).

¹² See Annex 2 – our glossary – which includes a definition of this term.

Section 2

Introduction

2.1 This consultation covers the amendments that we need to make to certain General Conditions ('GCs') and Universal Service Conditions ('USCs') in order to implement the revised electronic communications Framework.

The Electronic Communications Framework

2.2 The Electronic Communications Framework ('the Framework') is the regulatory framework that applies to all communications networks and services (including access) for electronic communications including: telecommunications (fixed and mobile), e-mail and access to the internet. The Framework is intended to ensure more effective competition and better rights for consumers as well as constituting the basis for a supportive and consistent regulatory environment across all 27 European Member States' communications markets. It consists of five Directives¹³:

- Directive 2002/21/EC (the 'Framework Directive' – referred to in the rest of this document as 'FD');
- Directive 2002/19/EC (the 'Access Directive');
- Directive 2002/20/EC (the 'Authorisation Directive' – referred to as 'AuD');
- Directive 2002/22/EC (the 'Universal Services Directive' – referred to as 'USD'); and
- Directive 2002/58/EC (the 'E-Privacy Directive' – referred to as 'EPriv').

2.3 The original Framework was agreed in 2002 and had in-built provision for review. Revisions to the Framework were agreed in late 2009 and were published on 18 December 2009¹⁴. Member States have been given until 25 May 2011 to transpose the changes into national law.

2.4 The revisions are intended overall to meet the future challenges arising from a rapidly evolving sector and to improve the regulatory framework for business and consumers and where possible to remove regulation. The revisions strengthen consumer protection, through new provisions (mostly in the USD) intended to ensure that

¹³ Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, and Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

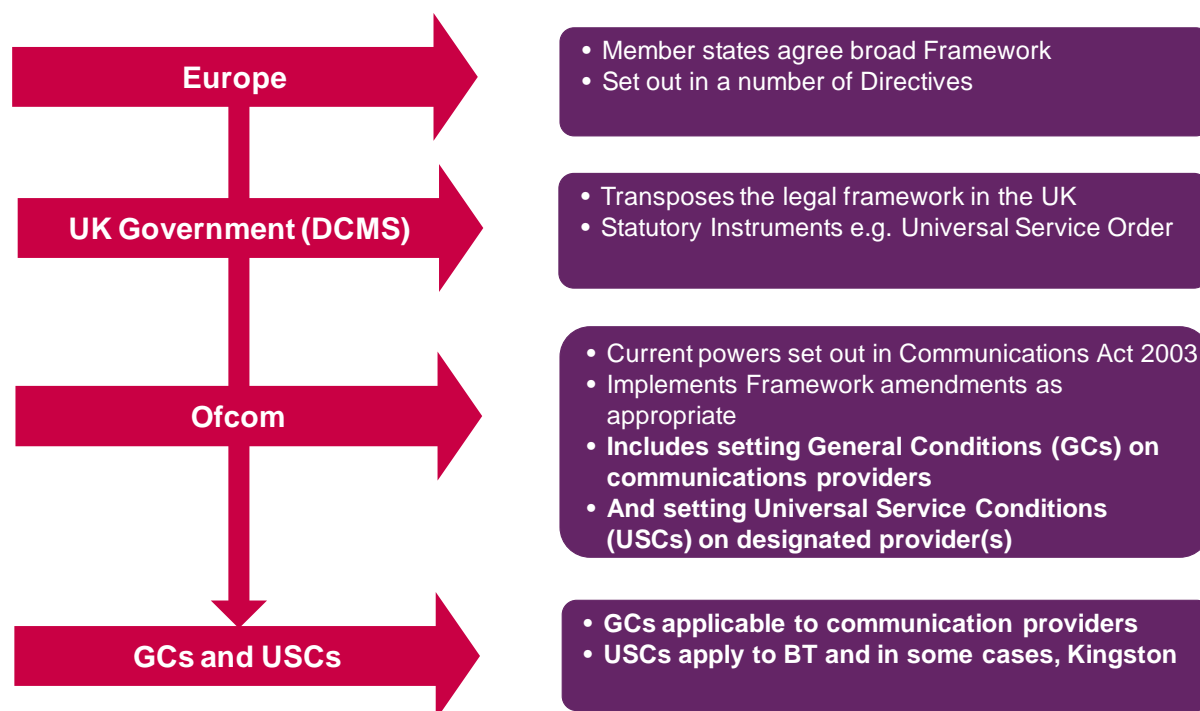
¹⁴ Such revisions were made by the: Better Regulation Directive (2009/140/EC); and, Citizens' Rights Directive (2009/136/EC). The full text of the amended Directives can be found at http://ec.europa.eu/information_society/policy/ecomms/doc/library/regframeforec_dec2009.pdf within the publication European Commission – Information Society and Media *Regulatory framework for electronic communications in the European Union - Situation* December 2009.

consumers are better informed about supply conditions and tariffs and can more easily switch providers, all of which is intended to help promote competition in the electronic communications markets¹⁵.

2.5 Implementation of many of the amendments is mandatory for Member States and, for the most part, the UK has little discretion in terms of making these changes.

2.6 Figure 1 below provides a simplified picture of how the Framework relates to the GCs and USCs in the UK.

Figure 1: The EU Framework and how it relates to UK GCs and USCs



General Conditions

2.7 The 'General Conditions of Entitlement' are the main regulatory regime for undertakings that provide electronic communications networks and services in the UK. Under section 45(1) of the Act Ofcom has the authority to set the GCs which impose obligations on, and require compliance from, these providers.

2.8 In general, the GCs contain requirements that protect consumers, such as ensuring the provision of access to emergency call numbers, operator assistance, directories and the provision of contracts with minimum terms, but they also contain other requirements in respect of interconnection and number portability.

2.9 While we use the term 'CPs' as shorthand for 'communication providers' throughout this document, we note that the applicability of particular GCs (on CPs) depends on

¹⁵ The revised Framework also provides clarification that national regulators (including Ofcom in the UK) are empowered to impose obligations on all operators (not only designated universal service provider(s)) for the provision to disabled users of equivalent access to public electronic communication services, where appropriate.

the types of networks or services that are being provided. Providers should therefore read carefully the *definition of CPs* and the *proposed modifications to the GCs* that we set out in Annex 7.

Universal Service Conditions

- 2.10 The USCs act as a 'safety net' by ensuring basic fixed line telecoms services are available at an affordable price to all citizens and customers across the UK. Amongst other things the conditions cover meeting reasonable requests for connection at a fixed location, a social (low cost) tariff, reasonable access to payphones and access for end-users with a disability (includes provision of a Text Relay service).
- 2.11 The scope of the USCs is defined by the USD. Under the Act, it is the duty of the relevant Secretary of State in the UK Government to make an order, the Universal Service Order, setting out the general requirements which must be provided as Universal Services in the UK. The last Order was laid in 2003¹⁶.
- 2.12 Ofcom gives effect to the obligations set out by Government through specific USCs on BT and Kingston Communications who we have designated as the universal service providers ('USPs') in the UK¹⁷. These are supplemented by GCs.

The UK Government has been consulting on its approach to the revised Framework

- 2.13 Implementation of the revised Framework in the UK will require legislative amendments to the Act. In addition, the Universal Service Order will need to be amended.
- 2.14 BIS issued a consultation on 13 September 2010 setting out its approach to implementing the revised Framework.
- 2.15 BIS¹⁸ set out the government's commitment to reducing the regulatory burden in the UK and to ensuring that the changes are made with minimum impact on business as well as to create the conditions where business and consumers can make the most of the opportunities the Framework provides.
- 2.16 BIS noted that the vast majority of provisions require mainly technical transposition. They also stated that many of the revisions to the Framework already exist or apply in UK legislation and regulation e.g. on spectrum liberalisation. Their consultation document set out the key legislative changes needed to implement the revised Framework (where these are not already captured in UK legislation) including their proposed changes to the Universal Service Order.

¹⁶ The Electronic Communications (Universal Service) Order 2003 available at <http://www.legislation.gov.uk/uksi/2003/1904/contents/made> .

¹⁷ The designations were applied on BT and Kingston by Oftel - Oftel *Designation of BT and Kingston as universal service providers, and the specific universal service conditions - A statement and Notification issued by the Director General of Telecommunications on the implementation of the Universal Service Directive* 22 July 2003 - http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/uso0703.pdf .

¹⁸ In January 2011 the Government announced that responsibility for competition and policy issues relating to media, broadcasting, digital and telecoms sectors would move from the Department for Business, Innovation and Skills (BIS), to the Department of Culture, Media and Sport (DCMS). This includes responsibility for implementation of the EU Framework.

- 2.17 The consultation lasted for 12 weeks and closed on 3 December 2010. The UK Government is due to publish its response to the consultation later in Spring 2011, following their consideration of stakeholders' responses. We have also taken note of these responses where they are relevant to the changes we propose in this document.
- 2.18 A few of our proposed changes to conditions rely on anticipated changes to the Act. Currently, the relevant changes that the Government is proposing to make include the following:
- GCs may include that access to electronic communication services be equivalent for disabled end-users as for non-disabled end-users;
 - initial consumer contracts cannot be for more than 24 months; and, providers must offer users a contract of up to 12 months; and
 - specific provision for Ofcom to compel, through a GC, that service providers must have and maintain a policy statement/procedure for deciding on compensation to be payable in the event that there is delay or abuse in porting.

The purpose of our consultation

- 2.19 Our role in implementing the new Framework is to consult on and make any necessary amendments to the GCs and USCs (including definitions) ahead of the Framework transposition deadline of 25 May 2011.
- 2.20 Most of the changes to the GCs and USCs require fairly minor changes. In these cases we set out the amendment we have to make and describe any likely impacts, where we can.
- 2.21 In other cases, the changes are more significant and Ofcom may have a wider discretion as to how the revised requirements in the revised Directives are implemented. Where this is the case, the changes are explained in more detail and, where appropriate, a more detailed impact assessment is set out in accordance with our approach to better policy making¹⁹.

This document proposes a number of modifications to General Conditions and to Universal Service Conditions

- 2.22 We are proposing modifications to 21 GCs – of which 13 relate to revisions to definitions only (in particular the replacement of “Director” with “Ofcom” and “Public Telephone Network” with “Public Electronic Communications Network”).
- 2.23 In addition, we are proposing to amend individual USCs that apply to BT and Kingston, mainly as a result of the same definitional changes. However, only the ‘disposal of local access network assets notification’ involves a proposed new requirement for the USPs.

¹⁹ Ofcom *Better Policy Making – Ofcom’s approach to Impact Assessment* 21 July 2005
http://stakeholders.intra.ofcom.local/binaries/consultations/better-policy-making/Better_Policy_Making.pdf .

Legal framework and our duties

Section 3 – general duties of Ofcom

- 2.24 When considering the appropriateness of the modifications proposed in this consultation document, Ofcom has had regard to its duties under the Act.
- 2.25 In particular, section 3(1) of the Act sets out the principal duty of Ofcom, in carrying out its functions under the Act:
- 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.
- 2.26 Ofcom has also considered, amongst other things, the requirements in: section 3(2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services; and, section 3(4) of the Act.

Section 4 – European Community requirements for regulation

- 2.27 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation. These should be read in light of the policy objectives and regulatory principles as set out in Article 8 of the amended FD. Those relevant to this review include promoting the interests of the citizen by:
- ensuring all citizens have access to a universal service;
 - ensuring a high level of protection for consumers in their dealings with suppliers;
 - promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using public electronic communication services; and
 - addressing the needs of specific social groups, in particular disabled users, elderly users and users with special needs.

Section 47 tests

- 2.28 We also note that under section 47 of the Act, Ofcom can set or modify a GC or USC only where it is satisfied that the test set out in section 47(2) is satisfied. We have set out in each section of this document which proposes changes whether and why we consider this test is fulfilled. The test is that the setting of a new condition or modification of an existing one should be:
- objectively justifiable in relation to the networks, services, facilities, apparatus or directories which Ofcom regulates;
 - not such as to discriminate unduly against particular persons or against a description of persons;
 - proportionate to what the condition or modification is intended to achieve; and
 - in relation to what it is intended to achieve, transparent.

Next Steps

- 2.29 Our consultation will last for six weeks and following consideration of stakeholder responses, we expect to issue our statement in early to mid May and certainly ahead of the 25 May deadline for transposition.
- 2.30 We are working closely with the UK Government especially given that we will need to take cognisance of its statement and relevant changes to the legal context. Relevant statutory instruments are expected before Parliament later in Spring 2011.

The structure of this document

- 2.31 The remainder of this document is laid out as follows:
- **Section 3** sets out our proposed approach to definitions which will affect the GCs and USCs;
 - **Section 4** presents a minor change to GC2 on Standardisation and specified interfaces by adding a new body to the list of relevant standardisation bodies;
 - **Section 5** presents two proposals on GC3 on the Proper and effective functioning of the network;
 - **Section 6** presents our proposals in relation to GC4 on Emergency call numbers, primarily in relation to caller location information;
 - **Section 7** sets out several proposed modifications to GC9 on Contracts including requirements relating to the provision of additional information, the length of contracts and conditions for termination;
 - **Section 8** sets out a proposed change to GC15 on Special measures for end-users with disabilities which is the requirement to provide emergency SMS;
 - **Section 9** presents our proposals on GC17 on Allocation, adoption and use of telephone numbers;
 - **Section 10** sets out our proposals on GC18 on Number portability to implement the one-day requirement for porting and the need for CPs to put in place a porting compensation scheme;
 - **Section 11** presents our proposals on GC20 (newly titled 'Access to numbers and services') including a requirement to ensure users can call the hotline for missing children on 116000;
 - **Section 12** sets out the minor changes to USCs, which includes a requirement for USPs to notify Ofcom in advance on their disposal of local access network assets;
 - **Annex 1** sets out our assessment of the impact of implementing the revised Framework;
 - **Annex 2** provides a glossary of terminology used within this document; and

- Finally, **Annexes 7 and 8** - which are available as standalone documents on our website - set out our notifications and the text of our proposed changes to GCs and USCs.

Section 3

Definition changes affecting GCs and USCs

Introduction

- 3.1 Our definition changes to the GCs and USCs are designed to ensure compatibility with the substantive changes in the revised Directives. While they are not themselves consequential, stakeholders should be aware that we will be making the appropriate changes to ensure the definitions are transposed.
- 3.2 There are a number of definitions in the GCs and USCs that match the definitions set out in the Act. Previously, we considered it appropriate to set out definitions in full in the conditions themselves, even where these were identical to those in the Act, in order to assist those using them.
- 3.3 However, some definitions in the Act may need to change in order to transpose the revised Framework. Although BIS have consulted on their approach to transposition, their response and the appropriate Statutory Instruments have yet to be published. Because of this, and because the GCs and USCs are now more familiar to users, we believe the most appropriate way to proceed is to delete definitions which merely repeat the Act and instead rely on reference to words and expressions having the same meaning as in the Act in order to ensure an effective transposition.

Definitions which are set out in the Act will be deleted from the GCs and USCs

- 3.4 The following definitions in the GCs and USCs are identical in the Act and therefore we propose deleting the definitions and instead relying on the stated rule of interpretation that, except in so far as the context requires, words or expressions shall have the same meaning as in the Act:
 - a) Apparatus;
 - b) Associated Facility;
 - c) Consumer Panel;
 - d) Content Service;
 - e) Electronic Communications Network;
 - f) Electronic Communications Service;
 - g) End-User;
 - h) Framework Directive;
 - i) Interconnection;
 - j) National Telephone Numbering Plan;
 - k) Network Access;

- l) Public Electronic Communications Network;
- m) Public Electronic Communications Service;
- n) Signal; and
- o) Wireless Telegraphy.

3.5 The definition of Telephone Number currently lists purposes which reflect exactly those set out in section 56(5) of the Act. Consistent with the approach to definition by reference to the Act, we propose to amend this definition to refer to “purposes listed in section 56(5) of the Act” rather than repeating the wording.

3.6 At this stage, we do not anticipate that any changes to the actual definitions of most of the above terms will result from BIS’ implementation of the revised Framework. So we consider our new approach to definition i.e. by reference to the Act, will in the majority of cases, be merely a technical and non-material change.

Some definitions in the Act may change as a result of Government’s transposition of the revised Framework

3.7 However, changes to reflect the revised Framework may be expected to occur in relation to the following terms as a result of the UK Government’s implementation work:

- Electronic Communications Network;
- Public Electronic Communications Network;
- Network Access; and
- Associated Facility.

We plan to change four definitions in the GCs and USCs in order to implement the revised Framework and provide clarity

3.8 There are several definitions which have been amended by the revised Framework which do not currently appear in the Act. These are:

- Public Telephone Network;
- Publicly Available Telephone Service; and
- Relevant Data Protection Legislation.

3.9 We also propose to replace the definition of ‘Director’, with a definition of ‘Ofcom’, which is not referred to in the revised Framework but which we consider is useful for clarity. The rest of this Section discusses these proposed changes to the definitions. This should be read with reference to the notifications in Annex 7 and Annex 8 of this document.

Public Telephone Network/Public Electronic Communications Network

3.10 Public Telephone Network concerns the use of an Electronic Communications Network. The current definition is:

“Public Telephone Network” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

- 3.11 This definition requires amendment as Article 2(b) of the USD has been removed and replaced with Article 2(d) which defines a Public Communications Network. This term is currently defined in the Act definition of Public Electronic Communications Network.
- 3.12 We therefore propose to delete the definition of Public Telephone Network and update references throughout the GCs and USCs such that they refer to Public Electronic Communications Network, defined by reference to the Act.
- 3.13 This change broadens the scope of affected GCs and USCs since a Public Electronic Communications Network is a wider concept than a Public Telephone Network. In particular, the definition of Public Telephone Network was limited to Electronic Communications Networks used to provide Publicly Available Telephone Services where this involved the transfer of communications between Network Termination Points. The revised definition is not dependent on the nature of the service carried over the network in the same way. We consider this change is necessary to implement the revised Framework.
- 3.14 This definition is relevant to GC 3, 4, 5, 9, 12, 14, 16, 17, 18, 24 and USC 5 (Kingston) and 6 (BT).

Publicly Available Telephone Service

- 3.15 Publicly Available Telephone Service is a widely used definition that appears across the conditions as well as in other definitions. The current definition is:

“Publicly Available Telephone Service” means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for end-users with disabilities or with special social needs and/or the provision of non-geographic services.

- 3.16 This definition requires amendment as the USD has shortened this definition to remove the examples while the scope has been widened to include *services for originating and receiving, directly or indirectly, national or national and international calls*.
- 3.17 The proposed new definition is:

“Publicly Available Telephone Service” means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan.

- 3.18 This definition is relevant to GC 3, 4, 5, 8, 10, 11, 12, 15 and 18 and USC 2 and 5 (Kingston) and 2, 4, 5 and 6 (BT).
- 3.19 This change reflects the wider increasing of scope for several GCs, discussed in subsequent Sections of this document.

Relevant Data Protection Legislation

- 3.20 Relevant data protection legislation is intended to link to regulations arising from the Privacy and Electronic Communications Directive in addition to the Data Protection Act. Currently this definition is:

“Relevant Data Protection Legislation” means the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

- 3.21 The Privacy and Electronic Communications Directive amendments will be transposed by the Government through amendment to the Privacy and Electronic Communications (EC Directive) Regulations 2003. Therefore the text of this definition will not change. However stakeholders should refer to the regulations when amended.
- 3.22 This definition concerns GC 8, 11, 16 and 19 and BT USC 7.

Director General of Telecommunications/Ofcom

- 3.22 Ofcom has since 2004 exercised all the functions of the Director General of Telecommunications, and we consider it is an opportune time whilst revising the GCs to replace the definition of “Director” and replace it with a definition of “Ofcom” by reference to the Office of Communications Act 2002.
- 3.23 We do not consider this change has any material impact since Ofcom exercises all the functions formerly fulfilled by the Director, but consider it assists clarity. The change from “Director” to “Ofcom” is relevant throughout the GCs, and requires minor connected adjustments (replacement of “he” with “it” as required etc.) The one exception is GC11.7 where the reference to “Director” remains valid and we propose changing this reference to “Director General of Telecommunications” given the loss of the general definition.

National Telephone Numbering Plan

- 3.23 Finally, we note that the definitional changes will have some consequential effects on the National Telephone Numbering Plan. These will involve the deletion of the definitions of “Apparatus” and “Wireless Telegraphy” (and reliance on the Communications Act definitions), the replacement of “Public Telephone Network” with “Public Electronic Communications Network” and its definition by reference to the Communications Act as set out above, and change to the definition of “Publicly Available Telephone Service” as also set out above. These are set out in the notification in Annex 7.

Legal Framework

- 3.24 As discussed in paragraph 2.28, we outlined the tests contained in section 47(2) of the Act with which modifications to conditions must comply.

3.25 We consider that our proposal meets the criteria set out in section 47(2) of the Act (and, also in relation to the consequential changes to the National Telephone Numbering Plan, the criteria set out in section 60(2) of the Act). It is:

- **objectively justifiable** as the amendments in definitions directly reflect the wording of the revised Directives, which Ofcom is obliged to implement, while the deletions of certain definitions and reference instead to the Act will ensure that these terms too reflect the revised Directives;
- **not unduly discriminatory** as the revised definitions will apply to all CPs to the extent the definition and its use in the GCs and/or USCs is relevant to them;
- **proportionate** as the changes are the minimum necessary to implement the definitional changes in the revised Directives and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the changes is clear and, to the extent the definitional changes alter the requirements on CPs, the revised requirements will be clear to CPs on the face of the GCs and/or USCs themselves.

Q1. Do you agree with our proposed approach to definitions?

Section 4

Change to General Condition 2

Standardisation and Specified Interfaces

- 4.1 GC 2 requires CPs²⁰ to comply with relevant standards or specifications as listed in the Official Journal and to take full account of voluntary standards and specifications adopted by the European Standards Organisations.
- 4.2 In the absence of such standards or specifications, CPs are required to take full account of international standards or recommendations adopted by the International Telecommunication Union, the International Organisation for Standardisation or the International Electrotechnical Committee.
- 4.3 Article 17(2) of the revised FD now refers to the European Conference of Postal and Telecommunications Administrations (CEPT) alongside other standardisation bodies. Under Article 17(2), Member States are required to encourage the implementation of standards or recommendations by specified standardisation bodies in the absence of compulsory standards published in the Official Journal of the European Communities.

Proposed addition of CEPT to list of relevant standardisation bodies

- 4.4 We propose to implement Article 17(2) by adding CEPT to the existing list in GC2.2 and inserting the words, “*the European Conference of Postal and Telecommunications Administrations (CEPT)*”, between “*the International Telecommunication Union (ITU)*,” and “*the International Organisation for Standardisation (ISO)*”. We also propose to change the word “or” to “and” in GC2.2, again reflecting the wording of Article 17(2) and clarifying that this list is conjunctive.
- 4.5 This amendment will require CPs to take full account of standards or recommendations adopted by CEPT in the absence of standards or a specification referred to in GC2.1.
- 4.6 As discussed in paragraph 2.28, we outlined the tests contained in section 47(2) of the Act with which modifications to conditions must comply.
- 4.7 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:
 - **objectively justifiable** as the amended requirement directly reflects the requirements set out in Article 17(2) of the revised FD, which Ofcom is obliged to implement;
 - **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC2 is relevant to them;

²⁰ In GC2 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

- **proportionate** as the change is the minimum necessary to implement the revision of Article 17(2) and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Q2. Do you agree with our proposal to add CEPT to the list of standardisation bodies?

Section 5

Changes to General Condition 3

The proper and effective functioning of the network

- 5.1 GC3 requires CPs²¹ to take all reasonably practicable steps to maintain, to the greatest extent possible, at fixed locations:
- the proper and effective functioning of its network;
 - in the event of network breakdown or force majeure the availability of its network and publicly available telephone services; and
 - uninterrupted access to emergency organisations.
- 5.2 Article 23 of the revised USD has been amended so that it applies beyond fixed locations and it now requires Member States to *take all necessary measures* to ensure the *fullest possible* availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure.
- 5.3 In addition, Member States must ensure that undertakings providing publicly available telephone services *take all necessary measures* to ensure uninterrupted access to emergency services.

Proposed implementation to apply the requirements beyond networks and services at fixed locations

- 5.4 At the moment GC3 only applies to networks and services at fixed locations. Therefore, we propose to remove references to ‘fixed location’ or ‘fixed locations’ to reflect the revised Article 23.
- 5.5 This change will have an impact on those brought within the scope of the GC, but we believe this will be limited as it is our understanding that commercial pressures already result in these CPs taking appropriate measures (although we are open to feedback which may suggest this is not the case). The change will have no material impact on operators of fixed networks and telephone services already in scope.

Proposed implementation to ensure that CPs take all necessary measures to maintain networks and services and access to emergency services

- 5.6 Currently, GC3 requires CPs to take “all reasonably practicable steps” to maintain their networks and services and access to emergency services. We propose to amend the wording of GC3 to reflect and remain strictly consistent with the updated phraseology of Article 23. The changes involve replacing the words “all reasonably practicable steps” with “all necessary measures”, and also adding the words “fullest

²¹ In GC3 and for the purposes of this section, a CP means a person who provides a Public Electronic Communications Network and/or provides Publicly Available Telephone Services.

possible” with reference to maintaining availability in the event of catastrophic network breakdown or in cases of *force majeure*.

- 5.7 We expect this change to have relatively minor impacts on CPs. To ensure proportionality, any assessment of “all necessary measures” will need to take into account the costs and benefits of maintaining availability in the context of the network or service in question. Again, our understanding is that CPs already have strong commercial incentives to ensure the level of availability they maintain is in line with customer requirements. Taken together, these considerations suggest that the strengthening of these obligations on CPs is likely to have limited implications on their existing availability practices.
- 5.8 However, on the margins there may be some CPs who need to reassess their approach in relation to the measures they take to maintain proper and effective functioning of the network, availability in the event of catastrophic network breakdown or *force majeure* and uninterrupted access to emergency organisations. We currently consider any impacts of the proposed modification will be minor, and proportionate to the aim of implementing the requirement in Article 23, which is very clear in what it requires Ofcom to do.

Legal Framework

- 5.9 In paragraph 2.28, we outlined the tests contained in section 47(2) of the Act with which modifications to conditions must comply.
- 5.10 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:
- **objectively justifiable** as the amended requirement directly reflects the requirements set out in Article 23 of the revised USD, which Ofcom is obliged to implement;
 - **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC3 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Article 23 and there is no less intrusive mechanism to achieve the intended purpose; and
 - **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Q3. Do you agree with our proposals to extend the requirements of GC3 beyond ‘fixed locations’ and to require CPs to ‘take all necessary measures’ to maintain their networks and services and access to emergency services?

Section 6

Changes to General Condition 4

Emergency Call Numbers

- 6.1 This Section outlines the changes introduced in the USD that are relevant to emergency call numbers and sets out our proposals for implementing these changes via GC4 (which sets obligations for CPs²² to ensure access to the emergency services via the 112 and 999 numbers)²³.
- 6.2 Article 26 of the USD introduces several changes to the obligations that apply to the single European emergency call number '112' and specifies that these may be extended to national emergency numbers (which, in the UK, is '999' and hence references to 112 and 999). We propose that all changes outlined in this Section apply equally to both the numbers 112 and 999, as has been the case until now. Article 26(4) of the USD also contains provisions relating to disabled end-users (which are discussed in the Section on GC15).

Obligation to provide access to emergency services

- 6.3 The obligation to provide free access to 112 is extended via USD Article 26(1) and (2) to all undertakings that provide to end-users "an electronic communication service for originating national calls to a number or numbers in a national telephone numbering plan". The previous USD applied this obligation to providers of publicly available telephone services ('PATS') only, which resulted in a circular definition for PATS since access to emergency services was one of the gating criteria for a service to be considered as PATS.
- 6.4 The UK made appropriate adjustments to GC4 to address this issue on 5 December 2007, with effect from 8 September 2008, and hence the obligation to provide access to emergency services already applies to CPs that provide a public electronic communications service which allows calls to numbers in the National Telephone Numbering Plan, except for Click to Call services.
- 6.5 Click to Call ('CTC') services are those which may be selected by the user of a website or other computer application to support a very specific function such as connecting to customer service or sales representatives. USD Article 26(2) could also be interpreted as implying that CTC services should be obliged to provide emergency access if they allow calls to one or more numbers in the National Telephone Numbering Plan.
- 6.6 Some CTC services may allow calls to a predefined number in the National Telephone Numbering Plan but they are, generally, not paid-for commercial services. Mandating provision of access to 112/999 for these services would incur a significant

²² In GC4 and for the purposes of this section, a CP means a person who provides end-users with an Electronic Communications Service, or provides access to such a service by means of a Pay Telephone, for originating calls to a number or numbers in the National Telephone Numbering Plan but shall exclude any Click to Call Service.

²³ GC4 was last amended in 2007 following a consultation on VoIP access to emergency services that set out the policy position concerning GC4 obligations for VoIP service providers - Ofcom *Regulation of VoIP Services: Access to the Emergency Services* 5 Dec. 2007 see <http://stakeholders.ofcom.org.uk/binaries/consultations/voip/statement/voipstatement.pdf> .

cost that could discourage providers from offering such services. We do not believe users of such services would be likely to expect them to offer 112/999 access. Overall, extending this requirement to CTC services does not appear to be proportionate. Therefore, we are proposing there are no further changes justified in this regard.

Obligation to provide access to location information

- 6.7 The revised Article 26(5) places an obligation on “undertakings concerned” to make caller location information available. This is taken to mean the undertakings described earlier in Article 26(2) and therefore applies to all undertakings providing an electronic communications service. This therefore requires a change in GC4.3(b) (renumbered to GC4.4(b)) to a single definition of “Communications Provider” for both GC4.1 and GC4.2.
- 6.8 We propose to amend the definition of “Communication Provider” in GC4.3(b) so that it refers to “A person who provides end-users with an Electronic Communications Service, or provides access to such a Service by means of a Pay Telephone²⁴, for originating calls to a number or numbers in the National Telephone Numbering Plan but shall exclude any Click to Call Service”; and to delete the definition of “Service” in GC4.3(d).
- 6.9 This change in wording is unlikely to require any change to the current provision of location information. Public telephone networks which currently are required to comply with GC4.2 are often not in a position to obtain location information directly from the customers, as the telephone service is provided via a reseller who owns the customer relationship. In such circumstances public telephone networks have put arrangements in place to gather location information from resellers further down the supply chain in order that location information can be provided to the emergency services.
- 6.10 The change in definition of “Communications Provider” in GC4 will ensure that the reseller at the end of that supply chain also has the obligation to collect location information and pass it on to the emergency services either directly or by passing it up through the supply chain.

Providing location information – to the extent technically feasible, free of charge and ‘as soon as’

To the extent technically feasible

- 6.11 The USD previously required caller location information to be made available to emergency organisations “to the extent technically feasible”. This caveat has been removed from the revised USD and replaced with obligations that caller location information is to be provided: to “the authority handling emergency calls” free of charge; “as soon as the call reaches that authority”; and in accordance with criteria laid down by regulatory authorities (in this case, Ofcom) as to the accuracy and reliability of that information.

²⁴ Pay Telephone in GC4 means a telephone for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes. For the avoidance of any doubt, references to a Pay Telephone include references to a Public Pay Telephone (i.e. one available to the general public).

- 6.12 Although the reference to the provision needing to be technically feasible has been removed, it is still implicitly read in to that Article, since provision of location information is not possible if it is not technically feasible to do so. For example, at present in the UK, CPs providing VoIP services from a fixed location are already required to provide location information. Nomadic or mobile VoIP offerings are not currently required to provide location information due to the “technical feasibility” caveat in the current wording of GC4.2.
- 6.13 The current position in the UK would seem to be supported by a recital to the amended Article 26 of the USD which states that services that “may not have control over networks” (“network-independent undertakings”) may be excluded from the obligation to provide location information on the grounds that it would not be technically feasible for them to do so²⁵. While “network-independent undertakings” is not formally defined, the recital wording implies providers of services which do not have their own network over which to provide the service. This would appear to include nomadic or mobile VoIP-based services whose users will be able to use a variety of networks to connect to the VoIP service. For the avoidance of doubt, although many VoIP services may rely on the network infrastructure of other CPs, where the service is being provided at a principally fixed location it is technically feasible for location information to be provided and therefore this recital does not imply providers of such services are exempt from the obligations of Article 26.
- 6.14 For the reasons set out above, we propose retaining the reference to technical feasibility in GC4.2.

Free of charge

- 6.15 Article 26(5) specifies that location information provided must be available free of charge to the authority handling the emergency call.
- 6.16 We propose amending GC4 to require that caller location information be provided to emergency organisations free of charge. Given that this is current practice in the UK, we do not envisage that this amendment will have an impact on CPs.

‘As soon as’

- 6.17 Article 26(5) specifies that location information must be provided “as soon as” the call reaches the authority handling the call. In the UK, there is a two stage call-handling process: at the first stage the call is answered by the Call Handling Agent (‘CHA’) which is a CP contracted by operators that provide access to 112/999 to handle these calls. At the second stage the call is forwarded by the CHA to the emergency organisation based on the location of the caller (i.e. which region of the UK they are in) and which emergency service they have requested.
- 6.18 We understand that many emergency organisations use the service provided by CHAs to access caller location information electronically allowing emergency organisation control room staff to view the location information on their computer screens as they answer the incoming call. For those emergency organisations that choose not to receive this information electronically, if the caller is unable to provide the location of the emergency themselves, the caller location information will be provided verbally by the CHA operators.

²⁵ Recital 40 to Directive 2009/136/EC amending (amongst other things) Directive 2002/22/EC on the universal service and users’ rights relating to electronic communications networks and services.

- 6.19 For the purposes of this obligation we consider that a call reaches the emergency organisation when it is answered by them. Therefore location information should be available at the time the call is answered by the emergency organisation, whether it chooses to receive the information electronically or verbally.
- 6.20 We propose to amend GC4.2 to require that caller location information be provided to emergency organisations at the time the call is answered by those Organisations. For the vast majority of calls, this already occurs and therefore for these calls this will not require any change on the part of the CPs or CHAs.
- 6.21 However, there are certain types of call (for example from overseas mobile customers roaming in the UK) where accurate location information is not usually available as soon as the call reaches the emergency organisation, but some time afterwards. To the extent it is technically feasible, location information will now be required to be available when the call is answered by the emergency organisation. We understand that in the case of international roamers, “as soon as” may currently present significant technical issues and addressing these may require standardisation or international cooperation. We propose addressing this issue when considering detailed accuracy and reliability criteria in the consultation discussed below.

Accuracy & reliability of location information

- 6.22 Article 26(5) also requires that competent regulatory authorities lay down criteria for the ‘accuracy and reliability’ of the caller location information provided.
- 6.23 We are proposing a modification to GC4.2 to include that CPs as defined for the purposes of this GC should make accurate and reliable caller location information available.
- 6.24 We also propose adding (new) GC4.3 to define high-level criteria for fixed and cellular mobile services respectively, in order to ensure the accuracy and reliability of caller location information.
- 6.25 Although not defined in the revised Directive, we understand that in this context, the accuracy of location information refers to the size of the area that is specified. A smaller area corresponds to better accuracy and generally allows emergency organisations to locate the exact position of an emergency incident faster by limiting the area over which they have to search.
- 6.26 Similarly, we understand reliability of location information to refer to the confidence in the location data provided, i.e. the ratio of the number of instances where correct location data is provided to all the instances where location data is provided.
- 6.27 The high level criteria which we propose to include in GC4 are set out within Annex 7. The criteria recognise the different technical challenges that fixed and mobile services present to the provision of accurate and reliable location information.
- 6.28 As such, providers of an electronic communications service at fixed locations will be required to achieve the highest levels of accuracy by provision of the full postal address of the customer’s terminal equipment.
- 6.29 Cellular mobile service providers will be required, in most circumstances, to provide the geographic coordinates of the base station which is hosting the call, and where available, an indication of the radius of coverage of the cell. In exceptional

circumstances where this information is not available, the Zone Code, which is used by emergency organisations to identify the geographic region in which the call was originated, may be provided instead.

- 6.30 The provision of location information for nomadic VoIP services presents a particular set of technical challenges, largely due to the fact that users of such services are able to use a variety of networks to connect to the VoIP service. Mechanisms for providing location information in relation to such services are currently being considered by ESO(European Standards Organisation)/ETSI(European Telecommunications Standards Institute). We feel it is premature to set criteria for these services in the absence of internationally-recognised standards. In line with recital 40 to the USD²⁶, we will revisit this issue when ESO/ETSI have completed their work.
- 6.31 In addition, we intend to consult separately on the creation of a more detailed set of accuracy and reliability criteria. This will take into account the latest technical standards associated with the provision of location information across the range of applicable electronic communication service technologies. Moreover, this further work will also involve reviewing the need for potentially more stringent criteria in light of developments with location technology - for example, taking account of the increasing availability and use of GPS(Global Positioning System)-enabled handsets/devices whereby there may be scope for location information to include GPS co-ordinates in future.
- 6.32 Once we have finalised these additional criteria, we propose to consult on the basis that CPs will be required to comply with these (in addition to the high-level criteria prescribed in GC4) in order to fulfil their requirements under GC4.

Legal Framework

- 6.33 In paragraph 2.28, we outlined the tests contained in section 47(2) of the Act with which modifications to conditions must comply.
- 6.34 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:
- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Article 26 of the revised USD, which Ofcom is obliged to implement, as it applies to the provision of emergency call numbers in the UK context in that it will ensure access to the emergency services is made available to users of all electronic communication services and to the extent technically feasible, that caller location information is available free of charge and as soon as the call is answered by the emergency organisation;
 - **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC4 is relevant to them;

²⁶ The recital states “.....network-independent undertakings may not have control over networks and may not be able to ensure that emergency calls made through their service are routed with the same reliability, as they may not be able to guarantee service availability, given that problems related to infrastructure are not under their control. For network-independent undertakings, caller location information may not always be technically feasible. Once internationally-recognised standards ensuring accurate and reliable routing and connection to the emergency services are in place, network-independent undertakings should also fulfil the obligations related to caller location information at a level comparable to that required of other undertakings”.

- **proportionate** as the change is the minimum necessary to implement the revision of Article 26 and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Q4. Do you agree with our proposals for emergency call numbers - which includes amending the definition of CP and requiring that location information is provided free of charge, as soon as the call reaches the emergency organisations and is accurate and reliable (in line with our proposed high level criteria)?

Section 7

Changes to General Condition 9

Requirement to offer contracts with minimum terms

7.1 GC 9 currently relates to contracts between CPs²⁷ and consumers. It sets out the minimum information that CPs should provide in their contracts including such things as: particulars of prices and tariffs; duration of the contract; and any applicable compensation and/or refund arrangements.

Changes to the USD

7.2 There are five key changes to Articles 20 and 30 of the USD:

- there is a wider definition of CP and certain obligations apply in respect of end-users;
- contracts will have to provide additional specific information to consumers²⁸, and such information will also have to be made available to other end-users²⁹ on request (Article 20 (1) of the revised USD);
- subscribers³⁰ must be able to withdraw from contracts penalty-free following a notice of proposed contract modifications. Additionally, Ofcom should be able to specify the format of such notifications (Article 20 (2) of the revised USD);
- the maximum duration of initial consumer contracts will be 24 months or less; and users³¹ (including consumers) shall be offered the possibility to contract for a maximum duration of 12 months (Article 30 (5) of the revised USD); and
- contract termination conditions and procedures should not act as a disincentive against switching providers (Article 30 (6) of the revised USD).

A wider definition of CP

7.3 Currently, GC9 applies to CPs providing public electronic communications services and their contracts with consumers.

7.4 Article 20 extends the scope of contract requirements to apply to providers of public communications networks³², in addition to providers of publicly available electronic

²⁷ In GC9 and for the purposes of this section, a CP means a person who provides Public Electronic Communications Networks and/or Service.

²⁸ 'consumer' is defined in FD as "any natural person who uses or requests such services for purposes which are outside his or her trade, business or profession".

²⁹ 'end-user' is defined in the FD as "a user not providing public communications networks or publicly available electronic communications services".

³⁰ 'subscriber' is defined in the FD as "any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services".

³¹ 'user' is defined in the FD as "a legal entity or natural person using or requesting a publicly available communications service".

³² We discussed the definition of a public communications network in Section 3 of this document, noting how this would replace (and widen) the current definition of public telephone network.

communication services³³. We therefore propose to amend our definition of CP for GC9 so that it reflects more directly the wording in Article 20 (1), in that it applies to the provision of public communications networks and/or publicly (available) electronic communications services. The revised definition of CP can be found in Annex 7³⁴.

Contracts will have to provide specific information to consumers which should also be made available to other end-users on request

7.5 The revisions required by Article 20 (1) of the USD are :

- CPs should also now provide information to end-users on request.

For the avoidance of doubt, this includes *all* business customers.

- CPs should provide particular defined information in a clear, comprehensive and easily accessible form.

How this information is provided will depend on whether CPs already have an agreed method of communication with their customers.

- In addition to the information CPs already provide to consumers (as mandated by the current GC 9.2), CPs should include the additional information set out below in their contracts (both current and new):

- *Details about access to emergency services and caller location information, as well as any limitations to the provision of emergency services;*
- *Whether any other conditions limit access to and/or use of services and applications;*

Some examples include but are not limited to data allowances for mobile internet users and call barring to certain types of numbers in both the fixed and mobile sectors;

- *Minimum service quality levels and other quality of service parameters as directed by Ofcom;*
- *Details of any procedures in place to measure and shape traffic so as to avoid filling or overfilling a network link, and the impact of such procedures on service quality³⁵;*

³³ 'Publicly available electronic communications service' is an EU Framework term which essentially equates to the term 'public electronic communications service' that we use in our conditions.

³⁴ We also note that none of our proposed deletions to GC9 wording have been tracked in the Notification at Annex 7. This is because most of this condition is being modified and to include such tracking would make it difficult to read. However, the current wording of GC9 is set out at page 21 in Ofcom's consolidated version of the General Conditions, which can be found at <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/cvogc300710.pdf>.

³⁵ The changes to GC 9 will require ISPs to provide information on traffic shaping in relation to congestion and network load as part of their contract terms. However, in addition, traffic shaping can potentially be used in other ways e.g. to prioritise services. Ofcom believes that consumers should be aware of the impact of all traffic shaping practices when signing up to contracts and during their service, and that such information should be transparent and easy to understand. Ofcom is working alongside industry and carrying out additional research to determine how information can best be provided to consumers about all forms of traffic shaping to allow them to make informed choices. In

Illustrative examples include any peak hour policies, approaches to dealing with unusual levels of congestion, explaining any usage caps and upload/download limits.

- *Types of maintenance offered and customer support provided, plus their contact details;*
- *Any restrictions imposed by the CP on the use of terminal equipment supplied;*

Some non exhaustive examples include locked handsets and any conditions about whether terminal equipment needs to be returned to the provider at the end of the contract or some other point in time;

- *Options on personal data being included in directories or not;*
- *Payment methods and any difference in price resulting from these;*

For example, the difference in price between paying by direct debit or cash/cheque.

- *Minimum usage or duration required to benefit from promotions;*

Illustrative examples include whether a minimum number of calls need to be made in order to benefit from a specific tariff or whether certain tariffs are only available if customers sign up to their contracts for a certain time.

- *Any charges for porting numbers;*
- *Any charges due on contract termination, including for the recovery of equipment;*

Illustrative examples include, but are not limited to, early termination charges, cease charges or any charges that must be paid by the customer for equipment that was provided free of charge if they remained with their provider for a specified time.

- *Any type of action that might be taken by the CP in reaction to security or integrity incidents or threats and vulnerabilities.*

7.6 We propose to implement these changes by copying out these additional requirements – as they are set out by Article 20 - into GC9. For details of the specific wording, please see the revised GC9 within Annex 7.

7.7 We consider there may be limited impacts arising from CPs providing this additional information in their consumer contracts (which should also be made available to other end-users on request) because it appears from a check of larger CPs' websites that some CPs provide much of this information in their contracts already. However, we do note that information on traffic management and security or integrity incidents are not normally included in CPs' contracts or terms and conditions.

addition some ISPs already provide further information on traffic shaping on their websites as part of the voluntary Broadband Speeds Code of Practice.

- 7.8 We expect CPs to actively communicate this new information to their consumers (and where requested by end-users). For example, CPs may choose to write to, email or even text them notifying them of any new information available in their contracts. Alternatively, they may direct them to their websites where appropriate. We consider that where CPs already have an agreed means of communication with the consumer (or other end-user), they should use this channel to draw their attention to the new information being provided.
- 7.9 This process will involve some costs, depending on whether/how CPs need to update their information and also on the means they use for communicating any changes to their existing subscribers. In addition, some costs may arise for CPs if they receive requests from other end-users for this information, in which case the costs will depend on the number of such requests and the method the CP uses to supply the information to that end-user.

Subscribers can withdraw from contracts penalty-free following a notice of contract modifications

Inclusion of all subscribers

- 7.10 Article 20(2) of the USD sets out that subscribers should be able to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by their CP. Previously, only residential consumers had this right under GC9. The inclusion of subscribers means that the right has been extended to other subscribers, including businesses.
- 7.11 We propose to amend GC9 to apply this provision to subscribers more generally and the revised text can be found at Annex 7.
- 7.12 For the avoidance of doubt, we do not consider that the proposed changes we set out in this Section to the information that needs to be provided to end-users, where applicable, will constitute a material change to end-users' terms and conditions such that they would be able to exit penalty free from their contract with the CP under proposed GC9.6.
- 7.13 In addition to notifying consumers of proposed modifications to contracts, CPs will now also have to notify these other subscribers. This change will provide a 'flexibility' benefit for business customers (who will be able to withdraw penalty free from contracts following a notice of modification). It may also involve some costs for CPs, in relation to those business customers who choose to exercise this new right.

Notifications of modification

- 7.14 Article 20 also requires that Ofcom has the power to specify the form in which such notifications are to be made. Ofcom considers that it already has the power to be able to do this via modifying GC9 if needed. At present, we consider that industry should decide in the first instance how best such notifications should be made. That said, we consider that notifications will have to at least be in a form which subscribers can reasonably be expected to read and expect CPs to actively communicate any proposed modifications to their customers. Notifications should furthermore be expressed in plain, intelligible language and be set out with due prominence.
- 7.15 Letters and emails (if that is the means of communication chosen by the subscriber) are the most obvious examples of notifications. Other printed material, such as

pamphlets or magazines, may be used, but whether this is deemed sufficient will depend on how transparent it is made to the subscriber upfront that such publications may contain important information. Not all customers read pamphlets or magazines sent by their CP. In addition, we do not consider that a notification which asks subscribers to regularly check their CP's website for possible changes to their contract is acceptable.

Material Detriment

- 7.16 The USD does not refer to a requirement for likely material detriment to the subscriber of any proposed modification before that subscriber can terminate the contract. Nonetheless, when it first introduced this obligation through making GC9, Oftel read into the then Article 20 (4) USD the words 'materially detrimental'³⁶. (In that any modifications to the contract had likely to be of material detriment to the Consumer before s/he could withdraw from that contract as a consequence of the modification.) As Oftel explained at the time, this reflected the test Oftel used in Unfair Terms in Consumer Contracts Regulation 1999 ('UTCCRs') cases to decide whether contractual terms were fair or not.
- 7.17 Ofcom considers that such a threshold is still relevant and likely generally to reflect current consumer protection in this area³⁷. That is, under the UTCCRs contract terms are unfair if, amongst other things, they create a "significant imbalance" in the consumer's (subscriber's) and supplier's (CP's) rights and obligations under the contract. Contract terms which could allow a supplier to change the contract in a significant way could well unbalance the contract and are under strong suspicion of unfairness. This is reflected in the provisions of paragraphs 1 (j), (k) and (l) of Schedule 2 of the UTCCRs, which say that various terms providing for contractual variation may be unfair. Retaining a "material detriment" requirement would therefore generally reflect the "significant imbalance" requirement used to determine the unfairness of relevant contract terms³⁸.
- 7.18 We note that the UTCCRs apply to residential consumer contracts only. That said, we consider it appropriate to read in the material detriment wording in relation to wider subscriber contracts as well. If this were not the case, we would end up with a stricter test for residential consumers than for businesses which would not be appropriate.
- 7.19 This approach is also in line with the requirement for Framework obligations to be exercised in a proportionate manner; whereby, in this case, any proposed contract modifications must materially affect the subscriber before that subscriber can choose to exit from the contract.

The maximum term of initial contracts will be 2 years for consumers and all users must be offered an option to contract for a maximum duration of 12 months

- 7.20 Article 30 (5) USD requires CPs to ensure that an *initial* contract concluded with a residential consumer shall not be for a duration of more than 24 months.

³⁶ See for example Oftel's Statement on The General Conditions of Entitlement, 9 July 2003, at - <http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/cond0703.pdf> .

³⁷ See Article 1(4) of the revised USD.

³⁸ Although this is not indicative of any view on Ofcom's part that a contract term must meet a "material detriment" requirement to be unfair under the UTCCRs, and is without prejudice to any approach Ofcom may take to the unfairness of any term in a particular case.

- 7.21 In addition, Article 30 requires that CPs must ensure that a user - which includes residential consumers and small businesses - can subscribe to a contract with a maximum duration of no more than 12 months. We have interpreted this requirement to mean that CPs need a single entry level contract to ensure that users have access to public electronic communication services.
- 7.22 We propose to amend GC9 by inserting these two requirements, and they are included in the revised GC 9 text at Annex 7.
- 7.23 As far as we are aware, contracts of no more than 12 months are already available in most communications sectors. Such contracts are important in promoting competition and in enabling customers to switch providers more easily to benefit from better prices and services.
- 7.24 In the mobile sector, our initial review suggests some contracts are longer (generally 18 to 24 months) especially where they include high-end handsets for example. However, our application of Article 30 is that providers are not required to provide 12 month contracts which include such handsets. Rather, as we say above, 12 month (or less) contracts need to be available *as an option* for users. We consider that SIM-only contracts - where contracts can be obtained for between 1 to 12 months and which are already widely provided by many operators - would satisfy the requirements of this new provision.
- 7.25 On this basis, any impacts on providers across sectors may be minimal from this new requirement. Nevertheless, if some CPs currently do not have a 12 months (or less) contract available, they will need to ensure that they have one in place by 25 May 2011.
- 7.26 In terms of the proposed 24 month limit for contracts, the impacts should only affect a very small number of providers, given our understanding that the majority of CPs do not have consumer contracts in excess of this duration. For clarification, Ofcom considers that such an obligation will still apply where the consumer, while remaining with the same provider, enters in to a new initial contract because they have a new phone or have changed their price plan³⁹.

Contract termination conditions and procedures must not act as disincentives for end-users against switching their providers

- 7.27 Article 30 (6) of the revised USD provides that CPs shall ensure that conditions or procedures for contract termination do not act as disincentives for end-users against switching their CP.
- 7.28 In order to implement the amendments to the USD, we are proposing that GC9 reflects that Article. We propose to amend GC9 by inserting this requirement, and it is included in the revised GC 9 text at Annex 7. We consider that disincentives could be contractual conditions or may result from any industry procedures currently in place which result in disincentives for consumers to switch their providers.
- 7.29 Given that impacts should only arise for CPs with conditions and procedures in place which are acting as disincentives to switching provider, it is unclear at present whether this provision will require changes to current practices.

³⁹ When this obligation comes in to force, Ofcom expects that existing or new "initial" contracts cannot be longer than 2 years in duration for consumers. This may mean that Communications Providers have to amend their terms and conditions to reflect this new obligation.

7.30 Ofcom is already considering certain types of such disincentives as part of existing projects, (for example, Early Termination Charges, Automatically Renewable Contracts, and Consumer Switching⁴⁰). It is possible that outcomes from these ongoing projects may add further requirements to GC9 to ensure that there are no disincentives to switching.

Legal Framework

7.31 In paragraph 2.28, we outlined the tests contained within section 47(2) of the Act which modifications to conditions must comply.

7.32 We consider that our proposals meet the criteria set out in section 47(2) of the Act. They are:

- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Articles 20, 30(5) and 30(6) of the revised USD, which Ofcom is obliged to implement;
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC9 is relevant to them;
- **proportionate** as the change is the minimum necessary to implement the revision of Articles 20, 30(5) and 30(6) and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Q5. Do you agree with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination?

⁴⁰ See Ofcom *Strategic Review of Consumer Switching – A consultation on Switching Processes in the UK Communications Sector* 10 September 2010, <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf> .

Section 8

Change to General Condition 15

8.1 In this Section we discuss:

- our proposed approach to equivalence and choice for disabled end-users;
- mandating the provision of an emergency SMS service - in order to help promote equivalent access for disabled end-users; and
- the issue of access to 116 numbers for disabled end-users although we are not setting out any proposals in this regard.

The revised Framework requires Member States to ensure equivalent access to the emergency services for disabled end-users

Relevant changes to the USD

8.2 The new Article 26(4) of the USD requires Member States to ensure that access to 112 (and in this context the national emergency number 999) for disabled people is “equivalent to that enjoyed by other end-users” and based on European standards⁴¹.

Current provisions for contacting the emergency services for deaf and speech-impaired people

Textphone access away from home

8.3 End-users without hearing or speech impairments can use public payphones and mobiles to call the emergency services while away from home. Around 60% of voice 999 calls are made from mobiles⁴². However, deaf and speech-impaired people may have difficulty making emergency calls, particularly when away from home. Although mobile access to text relay is possible, it requires additional hardware and/or software, and take-up of mobile access to text relay in the UK is very low. There are a few public textphones in locations such as airports but access to these is limited.

Access to the emergency services via SMS (emergency SMS)

8.4 Since late 2009 it has, however, been possible to contact the emergency services in the UK via SMS as a consequence of a voluntary scheme. This is run by a steering group comprising Government, the emergency services, the mobile network operators, BT, RNID and Ofcom. The voluntary trial of emergency SMS has proved to be a valuable service, and feedback from users and from the emergency services has been overwhelmingly positive. We expect the scheme to become permanent, although only on a voluntary basis, in 2011.

⁴¹ We are not currently aware of any European standards specifically around access to the emergency services by disabled citizens. If in future such standards are developed, we would take appropriate measures to ensure compliance where appropriate to do so.

⁴² Source: Department for Communities and Local Government.

- 8.5 Although SMS has limitations, including limited reliability and lack of immediacy, the UK scheme has addressed these so far as is possible. Messages are routed via the Text Relay call centre, which is open 24/7, and users receive a reply within two minutes so that they know their message has been received, and the registration process means that they can be informed of the scheme's limitations and given advice about how best to use it. Registration also helps to protect the scheme: between 300 and 500 messages that are either blank or clearly not intended for the emergency services are sent every day from unregistered numbers and trying to deal with these would divert resources from registered users in genuine need⁴³.

We believe that emergency SMS can help ensure equivalent access to the emergency services for disabled end-users

- 8.6 We consider that by providing emergency SMS access for disabled end-users to the emergency services, CPs⁴⁴ would be giving their customers as equivalent access as is currently possible to that enjoyed by other end-users. Although emergency SMS does not offer 100% equivalence with making a voice call, it is far more equivalent than existing alternatives, which can be summed up as no access or mobile access using additional hardware and/or software. Emergency SMS gives disabled end-users the ability to contact the emergency services urgently when away from home using mainstream technology and a 24/7 relay service.
- 8.7 Being able to access IP relay from a smartphone would probably deliver greater functional equivalence than emergency SMS as it would enable a conversation that is closer to real-time. However, not all mobile handsets are smartphones, and IP relay is not currently mandated. If the current Ofcom review of relay services were to find that the mandating of IP relay was a proportionate measure, this could be introduced alongside emergency SMS at a future date without any detriment to it.

We believe mandating access to emergency SMS is necessary to maintain equivalent access to 112/999 and to ensure the Framework requirement is met

- 8.8 There is significant consumer benefit in making the scheme compulsory. It guarantees the continued existence of emergency SMS, which is a valuable and potentially life-saving service. At the moment any MNO could switch off access for its customers (including customers of MVNOs using its network) at any time. This would clearly be very undesirable, and would be against the objectives of the revised Directive. Given the importance of emergency SMS to deaf and speech-impaired users, we want to ensure it remains available. The revised Directive also says (in Article 23a (1) (b) USD) that disabled people should benefit from the choice of services available to the majority of end-users. If emergency SMS were not available from one or more MNOs, this would greatly restrict equivalent consumer choice for deaf and speech-impaired people.
- 8.9 In order for disabled end-users to benefit from emergency SMS it is necessary for them to be aware of it. CPs already have a duty to publicise the other services for disabled people that are mandated in GC15 and we propose to add emergency SMS to this list. Given the extremely high level of awareness among the hearing population of the availability of 112/999 for voice calls, raising awareness of the

⁴³ Registration is extremely quick and simple and there have been more than 14,500 registrations to date.

⁴⁴ In GC15 and for the purposes of this section, a CP means a person who provides Publicly Available Telephone Services.

availability of emergency SMS will help to promote equivalent access by deaf and speech-impaired people to this service.

- 8.10 The USD also refers to disabled end-users being able to access emergency services whilst travelling in other Member States and the need for awareness of 112 as the single European emergency call number. We therefore propose to mandate the service on 112 as well as 999. Although visitors to the UK will need a UK SIM to register for the service, as it is not available through international roaming arrangements, prepaid SIMs are readily available from vending machines at airports and more cheaply from retailers such as newsagents⁴⁵.
- 8.11 Unlike emergency voice calls, emergency SMS does not allow subscribers to use other networks in the UK (apart from the network to which they subscribe) when they are out of coverage of their own network. Roaming for emergency SMS would require a national roaming agreement. Voice 112/999 calls do not require a roaming agreement but are based on the 'Limited Service State' ('LSS') specification. This specification is part of the original mobile network and handset standards that are intended to enable access to all available networks for the purpose of making emergency calls. Such a specification for SMS does not exist in the standards. However, SMS is much more successful in areas of patchy signal than voice calls are, as it only requires an 'instance of coverage'.
- 8.12 It might be technically feasible to design something equivalent to LSS for SMS. However that would require significant changes to mobile networks and potentially to handsets, since there is no provision in the standards for such a feature. Unlike LSS, which has been a global standard incorporated in mobile handsets since they were brought to market, emergency SMS is a UK-only scheme, and developing new standards just for the UK would be likely to have a disproportionately high cost. It is therefore not considered proportionate to mandate something equivalent to LSS for emergency SMS.
- 8.13 The caller location information provided to the emergency services for emergency SMS is the same as for 999 voice calls, although there are technical differences in the way it is obtained.

The costs and benefits of mandating emergency SMS

Assessing benefits and costs

- 8.14 This Section assesses the benefits and costs of making the trial scheme permanent, and considers whether such a measure should be mandated through GC15.

Benefits of the scheme

- 8.15 Ofcom has obtained the following information about usage of the trial scheme (the source of the information being BT, unless otherwise stated):
- During the trial period, emergency SMS has been used to call an ambulance for people with a wide range of conditions, including childbirth, stroke and heart attack. For each condition, and for the emergency services in general, there is an overwhelming benefit from a rapid and accurate response to the emergency call.

⁴⁵ It is worth noting that the relay service is only provided in English.

- Usage of the scheme during the trial period has been, on average, five emergency SMS calls a day (this has risen slightly and is currently 5.7 as reported by BT at January 2011), of which three were passed to the emergency services and one required attendance by the relevant emergency service. (“SMS call” refers to a series of messages exchanged between the person using the SMS service and the relevant emergency service, with the assistance of a Text Relay assistant.)
- Around 40% of emergency SMS messages were filtered out, and therefore not passed to the emergency services. This is very similar to the proportion of voice 999 calls (43%) which are filtered out, suggesting that the pattern of calls made in error is similar between the two access methods.
- The distribution of calls between the different emergency services has been similar between SMS and voice calls. (For voice calls, 53% require police attention, 41% ambulance, 6% fire service and 1% coastguard)⁴⁶.
- Registration to the scheme has continued to rise steadily, and there are now 14,500 people registered to use emergency SMS. However, although the reach of the scheme has risen, actual usage volumes have been fairly steady over the trial period.

8.16 In 2007, the Department for Transport estimated the value of preventing a fatality to be over £1.6 million. It also estimated the value of preventing a serious injury to be £185,000 and the value of preventing a slight injury to be £14,000⁴⁷. Ofcom does not have sufficiently detailed information to assess exactly how frequently the emergency SMS scheme will prevent fatalities, or limit serious injury to a less harmful condition. However, information from the trial scheme suggests that usage has been sufficiently steady, and the nature of SMS calls sufficiently serious, that the benefit delivered to users and to society has been substantial.

Costs of the scheme

8.17 The estimated costs of the permanent scheme fall into categories of initial capital costs, ongoing support costs and Text Relay costs; these are set out in Figure 2 below.

⁴⁶ Source: Statistics prepared for 999 Liaison Committee.

⁴⁷ Source: DfT: ‘The Accidents Sub-Objective’, Table 1, at www.dft.gov.uk/webtag/documents/expert/pdf/unit3.4.1.pdf.

Figure 2: Summary of Costs of Scheme

Type of cost	Explanation of cost	Estimate of size of cost
Initial capital costs for phase II ^a	One-off capital cost over and above £60,000 committed for trial scheme. Covers costs of installing a back-up system, and will be recharged to MNOs	£80,000
Ongoing support and maintenance costs ^a	BT's annual cost for running the scheme, which will be recharged to MNOs	£60,000 per annum
Text Relay costs ^b	Cost of BT's text relay for emergency SMS calls, which will be recharged to MNOs	£11,500 per annum

Notes

^a Each MNO's share of costs would vary according to its share of 999 calls, but would be in the range £8,000-£25,000 (capital costs) and £6,000-£19,000 per annum (ongoing costs). The share of 999 calls is used by BT as a proxy for share of market, reflecting the benefits of the scheme to each MNO's customer base.

^b This estimate of text relay costs is based on BT's text relay charge of 0.6879 pounds per minute; it assumes that emergency SMS calls last an average of eight minutes and that there are 5.7 such calls per day. [£0.6879 * 8 * 5.7 * 365 = £11,449]

- 8.18 As the scheme beds in, users are likely to come to view the service as their default option for contacting the emergency services. This provides the imperative for a back-up system to be provided, the investment costs for which are covered by the one-off capital costs in the table above. We understand that the emergency services have previously needed to call upon back-up systems in relation to voice calls.
- 8.19 We expect that the costs of the scheme will be divided between MNOs in proportion to the number of *voice* 112/999 calls made by their customers. We have no reason to expect this proportion to be notably different from the proportion of emergency SMS calls from each operator. MVNOs will not be billed directly, which mirrors the arrangements for voice 112/999 calls. The bill for voice 112/999 calls made by customers of MVNOs is paid by the relevant MNO. We do not consider that the scheme will place a material additional burden on small providers.
- 8.20 As Ofcom understands, mandating the service on 112 as well as 999 will not impose any additional financial burden on MNOs.
- 8.21 As CPs already have a duty to take all reasonable steps to publicise other, related services for disabled people that are mandated in GC15, we believe that adding emergency SMS to this list will not impose any significant additional burden on MNOs.

Weighing benefits and costs

- 8.22 We consider that the voluntary emergency SMS scheme has delivered significant benefits to users and to society during the trial. These benefits would continue to be felt through making the scheme permanent, and would increase as registration in the scheme continued to grow. While data are not available to draw definitive

conclusions, we consider it highly likely that the benefits of making the trial scheme permanent outweigh the one-off and ongoing costs involved.

- 8.23 The MNOs have verbally committed to the cost of making the scheme permanent. We have considered whether, in light of this, Ofcom should allow the scheme to continue on a voluntary basis, or should mandate the scheme through GC15. Our view is that the trial scheme, and the nature of calls made through it, has demonstrated the importance of a service which is robust, consistent and entirely dependable. Even a small risk of a MNO withdrawing from the service could bear a grave cost for vulnerable users who have come to depend on the service. For this reason, we consider that mandating the scheme is necessary.
- 8.24 Proposing mandating the scheme imposes no financial burden over and above what the MNOs have verbally committed to. An additional financial burden would only be imposed on any MNO that now or in the future intends to withdraw the service. However we believe the benefits of greater certainty for disabled end-users outweighs this nominal extra burden.

Proposal on emergency SMS

- 8.25 While emergency SMS does not provide disabled end-users with 100% equivalence with voice calls, we consider it offers a significant improvement to other available options particularly when away from home.
- 8.26 We therefore consider it important to propose mandating the voluntary service to secure the benefits of the service for disabled end-users, in line with requirements of the revised USD, at minimal regulatory burden. We propose to modify GC15 by inserting an additional paragraph imposing a requirement on mobile network operators to provide SMS access to the emergency services as well as voice call access and access via text relay. We also propose a requirement on providers to publicise the service.

Legal Framework – emergency SMS

- 8.27 In paragraph 2.28, we outlined the tests contained in section 47(2) of the Act with which modifications to conditions must comply.
- 8.28 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:
- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Article 26(4) USD, which Ofcom is obliged to implement as it applies to special measures for end-users with disabilities in the UK context;
 - **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC15 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Article 26(4) USD and there is no less intrusive mechanism to achieve the intended purpose; and
 - **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Special measures for end-users with disabilities

- 8.29 Article 23a of the revised USD requires Member States to empower their national regulatory authorities (which in the UK is Ofcom) to specify, where appropriate, requirements to be met by providers of public electronic communication services to ensure that disabled end-users have access to electronic communications services equivalent to those enjoyed by the majority of end-users - and benefit from the choice of CPs and electronic communications services available to the majority of end-users⁴⁸.
- 8.30 GC 15 currently mandates a range of measures designed to promote access by disabled people to communications services.
- 8.31 The revised Directive and associated recitals clarify that the aim should be to deliver functional equivalence, or as close to it as can be achieved. The concept of equivalence is broad and not tied to any specific service. Provision for disabled end-users can be re-examined in the light of, for example, technological developments⁴⁹.
- 8.32 We note that the UK Government is proposing to amend section 51 of the Act to clarify Ofcom's power to impose a GC in relation to equivalence.
- 8.33 In our view, many of the current measures in GC15, for example, free directory enquiries for people who cannot use a printed directory, already seek to promote equivalence for disabled end-users although the word 'equivalence' was not previously used in the condition.
- 8.34 However, we intend to conduct a full review of the specific requirements currently set out in GC15 in the light of transposition changes as well as recent social and technological trends. This will consider the case for a general obligation to offer equivalence and choice of services in addition to any specific, discretionary changes to GCs which flow on from the new equivalence requirement and we plan to issue a separate consultation document in due course about any such proposed changes. This will be a separate piece of work from our current review of relay services, which we will consult on later in 2011.

Access to 116 numbers for disabled end-users

- 8.35 The Directive requires Member States to promote 116 numbers for harmonised services of social value. It also requires measures to ensure disabled end-users can access 116 services "to the greatest extent possible", including whilst travelling in other Member States, based on European standards⁵⁰.

⁴⁸ See also recital 12 of the Citizens' Rights Directive (2009/136/EC) which states that: "Equivalence in disabled end-users' access to services should be guaranteed to the level available to other end-users. To this end, access should be functionally equivalent, such that disabled end-users benefit from the same usability of services as other end-users, but by different means."

⁴⁹ We note that the Body of European Regulators for Electronic Communications (BEREC) issued a consultation on equivalence late last year. BEREC *Electronic communications services: Ensuring equivalence in access and choice for disabled end-users*. Consultation between 11 October – 26 November 2010, http://www.erg.eu.int/doc/berec/bor_10_47.pdf. We expect the outcome of their consultation will be published within the next few months.

⁵⁰ Again, we are not currently aware of any European standards in relation to access to 116 series numbers. If in future such standards are developed, we would take appropriate measures to ensure compliance.

8.36 It should be noted that this wording differs from the requirements for 112/999, where Member States are required to provide equivalent access.

Background to change

8.37 116 numbers are an initiative of the European Commission. The aim is for the same short memorable phone numbers to be available across all Member States, making it easier for citizens to access certain services of social value. To achieve this goal of same number, same service, the Commission requires harmonisation of the 116 six-digit range of national telephone numbers for certain services of social value reserved by the Commission.

8.38 The Commission has reserved the following harmonised European numbers:

- 116000 for a hotline providing support for parents with missing children;
- 116111 for a child helpline service;
- 116123 for an emotional support helpline service;
- 116006 for a helpline for victims of crime; and
- 116117 for a non-emergency medical on-call service.

8.39 Currently these are allocated as follows in the UK:

Missing People	116000
NSPCC	116111
Samaritans	116123
(to be allocated)	116006
(to be allocated)	116117

8.40 General Condition 17 requires CPs to ensure that their customers can call 116 numbers free to caller⁵¹ (and freephone in the case of 116006) in accordance with the National Telephone Numbering Plan.

Existing measures that help disabled end-users to access 116 services

8.41 Hearing and speech-impaired end-users can access harmonised 116 numbers via the existing text relay service, which is mandated by Ofcom in GC15 for customers of all CPs, and is available 24 hours, seven days a week.

8.42 Text relay is available in English to anyone in the UK, regardless of whether they are a resident or a visitor, providing they have the appropriate hardware. From a fixed line this would be a textphone or a PC with appropriate software. End-users with a UK SIM can also access text relay from a mobile handset by using an external keyboard. It is also possible to use public textphones which are located in places like airports and large railway stations.

⁵¹ 116 numbers may be either 'freephone' (a charge may be applied provided the caller is advised) or 'free to caller' (the call is always free). The appropriate charging arrangement depends on the characteristics and requirements of the particular 116 service.

- 8.43 It is also possible for disabled people who do not have a hearing or speech impairment to use public pay telephones to make voice calls to these numbers. Ofcom requires that at least 75% of public call boxes are accessible by reasonable means to people who use wheelchairs.
- 8.44 Unlike for the emergency services, there is no voluntary SMS scheme in place. Setting up such a service for accessing 116 numbers would therefore be a significant change and the likely costs and benefits would need to be considered more fully as a separate exercise to the current transposition process. We do not currently consider it proportionate to mandate CPs to devise a scheme to provide SMS access given that the services concerned are less likely to have the same degree of critical urgency as emergency services.
- 8.45 Given the current provisions for access to 116 numbers, we do not consider that it is necessary to make further changes to GC15 in this respect.

Q6. Do you agree with our proposals to ensure equivalent access to the emergency services for disabled users and to mandate the provision of Emergency SMS?

Q7. Do you agree that given the existing measures that are in place to help disabled users to access 116XXX services, it is not necessary to make further changes to GC15 in this respect?

Section 9

Changes to General Condition 17

Allocation, Adoption and Use of Telephone Numbers

9.1 This Section sets out changes made to the AuD, FD as well as the USD relating to the allocation and use of telephone numbers. We discuss these changes in relation to proposed amendments to GC17 as this condition sets out general requirements relating to the allocation, adoption and use of telephone numbers⁵².

Conditions for the transfer of rights of use for telephone numbers

9.2 We are responsible for administering the UK's telephone numbers. Part of our duty in administering numbers is the allocation of numbers to CPs⁵³. Allocation of numbers gives the allocatee 'rights of use' of the numbers. CPs may then use the numbers to provide services to their customers or they may 'sub-allocate' the numbers to other CPs, service providers or resellers. The act of sub-allocating numbers transfers the rights of use of the numbers to the end-user customer or sub-allocatee.

9.3 Article 5(2) of the AuD requires that: "When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions".

9.4 The requirement is similar to that in the former Article 5(2) of the AuD in relation to transfer of rights of use for numbers. The only change is that the previous text referred specifically to transferring rights of use "at the initiative of the right holder".

Proposed implementation of conditions for the transfer of rights of use

9.5 It is current practice for the transfer of rights of use of allocated UK telephone numbers to take place through sub-allocation and end-user use. However, this situation and the conditions under which transfer may occur are not set out at present.

9.6 We propose that the transfer of rights of use of telephone numbers is permitted explicitly. This approach to number distribution encourages effective and efficient use of numbers⁵⁴ by allowing demand to be met through sub-allocation rather than solely through the direct allocation of large number blocks from Ofcom. In line with the requirements of Article 5(2) of the AuD, we also propose to set out the generic conditions under which transfer may occur and make these clear to relevant undertakings⁵⁵.

⁵² The GC17 annex sets out numbers available for use or adoption in accordance with their designation and without application to Ofcom. GC17 has been modified a number of times since its introduction on 22 July 2003 to implement requirements in connection with the use of telephone numbers.

⁵³ In GC17 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network or an Electronic Communications Service.

⁵⁴ The effective and efficient use of telephone numbers is a requirement on CPs under GC17.6.

⁵⁵ Part C of the Annex to the AuD sets out those general conditions in relation to rights of use of telephone numbers may include: "Transfer of rights at the initiative of the right holder and conditions for such transfer in [accordance with the FD]".

- 9.7 The *conditions* of transfer proposed for insertion into GC17 below would ensure that the relevant general prohibitions on adoption and use of numbers and requirements in connection with the adoption of telephone numbers (already set out in GC17) are preserved when numbers are transferred.
- 9.8 We propose that conditions for the transfer of rights of use of numbers in GC17 are as follows:
- the telephone numbers have been:
 - allocated to the CP transferring the rights of use; or
 - the CP has been authorised (either directly or indirectly) to adopt those telephone numbers by the person allocated those telephone numbers.
 - the telephone numbers are used in accordance with the National Telephone Numbering Plan.
 - the telephone numbers are adopted or otherwise used effectively and efficiently.
- 9.9 The proposed modification is set out in Annex 7.

Granting rights of use of telephone numbers for a limited period

- 9.10 Allocations of telephone numbers to CPs are generally made for an indefinite time period. However, on occasion, we have made time-limited allocations of telephone numbers, either at the request of a CP to meet a temporary requirement or because we decide that a time-limited allocation is most appropriate to meet the service need or to provide an opportunity to review the allocation.
- 9.11 Article 5(2) of the AuD requires that: “Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation”.
- 9.12 The requirement in Article 5(2) of the AuD provides additional detail to the previous text by setting out that an appropriate duration must take account of the objective pursued and allow for an appropriate period for investment amortisation.

Proposed implementation on granting rights of use for a limited period

- 9.13 Current working practice is that rights of use of telephone numbers are generally granted for an indefinite period but may, on occasion and on a case-by-case basis, be granted for a limited period. However, this situation and details of appropriate duration are not set out explicitly at present.
- 9.14 We propose that, in general, we grant rights of use of numbers for an indefinite period (subject to sections 61 and 62 of the Act). This provides undertakings that use numbers with greater certainty to plan and invest in the use of specific numbers (provided that use is in line with requirements in the National Telephone Numbering Plan and GC17).
- 9.15 We also propose to have the flexibility to grant rights of use for a limited period on a case-by-case basis in appropriate circumstances and in line with the criteria in Article 5(2) of the AuD. The ability to grant rights for a limited period allows us to tailor

allocations to meet the requirements of the allocatee and/or other relevant parties, including Ofcom.

- 9.16 We therefore propose to modify GC17 to set out that rights of use of telephone numbers may be granted for a limited period of time provided that the duration is appropriate for the service concerned in view of the objective pursued and taking due account of the need to allow for an appropriate period for investment amortisation⁵⁶. The proposed modification will also set out that Ofcom may withdraw the numbers from the CP once that period of time has ended.
- 9.17 Our proposed changes are set out in Annex 7.

Impact of proposed modifications to GC17

- 9.18 We consider that the proposed modifications to GC17 will have no material effect on CPs as they reflect current working practices. The proposals further the interests of stakeholders by setting out the current practices in GC17 thereby improving transparency.

Minor changes to terminology in the FD and USD – no proposed amendment to GC17

- 9.19 Article 10(1) of the FD has been amended to refer to “granting of rights of use” of national numbering resources, which replaces the previous terminology of “assignment”/“assigning” of national numbering resources. Similarly, Article 10(2) has been amended to refer to “an undertaking to which the right of use for a range of numbers has been granted” rather than “an undertaking allocated a range of numbers”.
- 9.20 ‘Granting of rights of use’ of numbers rather than ‘assignment/allocation’ brings the terminology in the FD into line with that used for radio frequencies and numbering in the AuD and does not represent any changes in policy.
- 9.21 In the UK, the Act and Ofcom’s numbering documents⁵⁷ refer to the ‘allocation’ of numbers. The ‘allocation of telephone numbers’ has the same meaning as ‘the granting of rights of use of telephone numbers’ and we consider that stakeholders understand this to be the case.
- 9.22 Taking account of industry’s widespread use and understanding of the term ‘allocation’, and that we consider it to be clearly understood that ‘allocation’ of numbers gives the undertaking rights of use of numbers, we do not propose to amend GC17 (or the Act and the other numbering documents) to reflect the revised terminology in Article 10 of the FD.
- 9.23 In addition, the definition of ‘geographic number’ and ‘non-geographic number’ in Article 2 of the USD has been amended to refer to the “national telephone numbering plan” rather than the “national numbering plan”. This amendment limits the reference to telephone numbers, excluding plans for other national numbering types.

⁵⁶ Part C of the Annex to the AuD sets out that general conditions in relation to rights of use of telephone numbers may include: “Maximum duration in conformity with Article 5 of [the AuD], subject to any changes in the national numbering plan.”

⁵⁷ GC17, the National Telephone Numbering Plan and the numbering application forms for telephone numbers.

9.24 In the UK, we already publish a document known as the National Telephone Numbering Plan (as required by section 56 of the Act) which sets out the telephone numbers available for allocation and any restrictions on how they may be adopted or used. As we already use the term 'national telephone numbering plan' rather than 'national numbering plan' wherever we refer to the UK's telephone numbering plan, we therefore do not need to make an amendment to our definition of 'geographic number', 'non-geographic number' or any other reference to our numbering plan to reflect this change .

Legal Framework

9.25 In paragraph 2.28, we outlined the tests contained within section 47(2) of the Act with which modifications to conditions must comply.

9.26 We consider that our proposals for modifications to GC17 in relation to the transfer and time-limited rights of use of numbers meet the criteria set out in section 47(2) of the Act being:

- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Article 5(2) of the AuD, which Ofcom is obliged to implement;
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC17 is relevant to them;
- **proportionate** as the change is the minimum necessary to implement the revision of Article 5(2) and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

9.27 We also consider that the proposed modifications would fulfil our general duty as to telephone number functions as set out in section 63 of the Act by:

- **securing the best use of appropriate numbers**, by allowing allocated numbers to be transferred and setting the conditions under which transfer may occur, thus facilitating best use of numbers through sub-allocation in accordance with certain conditions for using the numbers appropriately. The proposal in relation to time limited allocations of numbers would secure best use by aligning the period of allocation with the service requirement; and
- **ensuring efficiency and innovation**, in that the proposals would further the ability for CPs to use numbers efficiently and effectively through the transfer of numbers via sub-allocation to other CPs, service providers and resellers, thus broadening their access to numbers on which to provide services to customers, facilitating higher utilisation of numbers allocated in large blocks by Ofcom and by preventing access to numbers being a barrier to innovation. The proposal in relation to time limited allocations of numbers would ensure that numbers would only be allocated for a period appropriate to the service with a mechanism for withdrawal once the set period had ended, which ensures efficient use and facilitates the provision of innovative services.

Q8. Do you agree with our proposals on conditions for transferring the rights of use of telephone numbers and also for granting their use for a limited period of time?

Section 10

Changes to General Condition 18

Facilitating a change of provider (number portability)

Introduction

- 10.1 GC18 implements the requirements set out in Articles 30 (1) to (4) of the USD regarding the right of subscribers with numbers from the National Telephone Numbering Plan to port their telephone numbers between undertakings providing publicly electronic communications services. GC18 currently requires CPs⁵⁸ to provide number portability as soon as is reasonably practicable and sets out rules on porting charges.
- 10.2 The new obligations contained in Articles 30 (1) to (4) of the USD which Ofcom is required to implement are that:
- ported numbers should be activated within one working day⁵⁹; and
 - CPs must operate a scheme which compensates subscribers in the event of delay or fault with the porting process.
- 10.3 In addition, there are some minor changes relating to changes to definitions and terminology.
- 10.4 This Section sets out our proposals for amending GC18 to reflect the revised requirements in the USD.

What is number portability?

- 10.5 An essential element in the health of the UK's telecommunications market is the ability of subscribers to choose between competing providers and to switch between providers quickly and easily. When switching, subscribers have the right, if they wish, to retain their telephone numbers. The facility that enables consumers to retain their telephone number when switching provider is called 'number portability'.
- 10.6 In this Section, we will use several terms when describing the potential parties to such a 'porting' process. The Gaining Provider (GP) is the CP who the subscriber wants to port to. The Losing Provider (LP) is the CP from whom the subscriber is porting from. The Range Holder (RH) is typically the CP to whom the telephone number the subscriber wishes to port, has been allocated to by Ofcom.
- 10.7 Also references to mobile *bulk* porting describe the situation when more than 25 mobile phone numbers are processed under one PAC (porting authorisation code) -

⁵⁸ In GC18 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network or an Electronic Communications Service.

⁵⁹ For the purposes of the consultation document we refer to *one working day*. However, in line with our statement on mobile number portability last year - see paragraph 3.36 of Ofcom *Changes to the Mobile Number Porting Process* 8 July 2010 <http://stakeholders.ofcom.org.uk/binaries/consultations/mnp/statement/mnp.pdf> - we would reflect this in the text of GC18 as *one business day*.

and *non-bulk* porting relates to those cases where less than 25 mobile phone numbers are processed under a single PAC.

Relevant changes to the USD

10.8 The first sub-paragraph of paragraph 4 of Article 30 of the revised Directive states:

‘Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day’.

10.9 In relation to the new requirement regarding a compensation scheme, the Directive states:

‘Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf’.

The UK Government’s (BIS’) consultation

10.10 BIS considered the one working day porting requirement as part of its consultation on implementing the amendments to the Framework regime².

10.11 In relation to mobile bulk porting, BIS acknowledged that the “*priorities of consumers porting multiple numbers simultaneously are often different from those porting one or few numbers*”⁶⁰. It made reference to Ofcom research which showed that “*the priority for bulk porting is a smooth migration process, whereby the practical logistics of the process (such as having phones and SIM cards in the right locations) can be completed before the numbers are ported (always minimising loss of service), rather than the speed at which the numbers are ported*”⁶¹.

10.12 BIS considered that the one working day requirement should apply to bulk mobile ports from when subscribers offer their PAC to the recipient operator, but it did not feel the intention of the USD was to deny consumers the right to request an alternative port date⁶². It further stated that “*MNOs may decline a request to bulk port within one working day and risk losing the business, if they feel they are unable to meet this requirement*”⁶³.

10.13 In relation to fixed line porting, the BIS consultation acknowledged that there are currently consumer verification/authentication steps for subscribers switching providers and also recognised that in some cases there would be the provisioning of a line to support a switch request from a subscriber⁶⁴. It stated that the subscriber’s line must be ‘ready for service’, that is ready to receive service from the GP, before it would be appropriate to port a number. Where numbers were ported prior to the ‘ready for service’ point, it is likely the subscriber would lose service.

⁶⁰ See paragraph 202 of the BIS consultation.

⁶¹ *ibid*

⁶² See paragraph 204 of the BIS consultation.

⁶³ *ibid*

⁶⁴ Paragraph 205 of BIS consultation.

10.14 BIS also discussed the compensation scheme requirement in its consultation⁶⁵ and proposed to make a new provision in the Act, to ensure that companies are obliged to compensate subscribers in the event of delay of porting or abuse of the porting process.

Recent relevant Ofcom projects

Mobile Number Portability

10.15 In July 2010, Ofcom published *Changes to the Mobile Number Porting Process* (the MNP Statement) which set out changes to the non-bulk mobile number porting process⁸. These changes are due to take effect from 11 April 2011 and require non-bulk mobile numbers to be activated within one working day of a subscriber providing the gaining provider (GP) with a PAC. CPs are also required to provide non-bulk subscribers with their PAC immediately over the phone or by SMS within two hours of the request.

Switching Review

10.16 Ofcom has launched a Strategic review of consumer switching⁴⁰⁴⁰ (the Switching Review) which will review switching in a number of sectors – fixed and mobile telecommunications, broadband and pay TV. The Switching Review is seeking to identify the key issues and problems with the current switching processes and set out a strategic vision for our preferred switching model. In particular, fixed line and broadband switching have been identified as priority areas for further work. The second consultation is planned for May/June 2011 and the statement at the end of 2011.

10.17 The Switching Review is looking at the end-to-end consumer switching process for fixed line, particularly the existing consumer protection measures which have an impact on overall port lead times, and also the competition aspects in relation to switching costs and targeted 'save' activity⁶⁶.

Ongoing work to address fixed porting processes

10.18 The existing fixed porting processes are not without issues. Ofcom has encouraged industry to work together to resolve particular problems such as a lack of geographic number portability arrangements between some operators, particularly for subsequent porting⁶⁷ and a lack of effective and robust order handling arrangements. More generally, the Office of the Telecommunications Adjudicator (OTA2)⁶⁸ has been working with industry to improve fixed line porting processes.

⁶⁵ Paragraphs 208 to 210 of the BIS consultation.

⁶⁶ 'Save' activity is where the Losing Provider contacts the subscriber and offers an incentive not to switch.

⁶⁷ 'Subsequent porting' is where a number has already been ported from the Range Holder to a CP and where the subscriber then subsequently ports to another CP who is not the Range Holder.

⁶⁸ The OTA2 is independent of the regulator and of industry and facilitates the swift implementation of processes where necessary to enable a wider range of Communications Providers and end-users to benefit from clear and focussed improvements primarily dealing with major or strategic issues affecting the rollout and performance of Openreach products.

We will reflect a change from publicly available telephone service to subscribers with numbers from the National Telephone Numbering Plan

- 10.19 Given that the revised text of the USD no longer limits the right to number portability to publicly available telecommunications services (also known as publicly available telephone service) but instead applies it to subscribers with numbers from the National Telephone Numbering Plan, GC18 will be amended to reflect this change. This will mean that there are additional subscribers who will be able to port their numbers, such as those provided with an incoming service only. It is also clear that paging portability is now covered by this requirement and GC18 will be amended to reflect this⁶⁹.
- 10.20 However, we do not consider that the inclusion of these subscribers will have a material effect on the existing provision of number portability.

We will reflect the change to porting being carried out ‘within the shortest possible time’

- 10.21 The USD has been amended to refer to porting being carried out *within the shortest possible time*. GC 18 currently refers to the provision of number portability being provided *as soon as is reasonably practicable*. We propose to amend GC18 to reflect the new terminology in order to bring into line with the wording of the revised USD. We interpret the terms to mean the same in that they both require that porting be undertaken in as short a time as possible while taking into account the practicalities of porting. Therefore, we do not consider that this change will have an impact on current porting practices.

We will include a requirement that any porting charges do not act as a disincentive to subscribers against switching

- 10.22 Article 30(2) of the USD states that any direct charges to subscribers must not act as a disincentive for subscribers against changing service providers.
- 10.23 While this provision has not changed as a result of the revised Framework, we consider that it is appropriate to make this requirement explicit within GC18. GC18 currently requires that porting is provided ‘on reasonable terms, including charges’ and we consider that this implicitly requires that charging does not act as a disincentive to switching. For reasons of clarity and to reflect the text of Article 30 of the USD, we propose including a requirement that any porting charges do not act as a disincentive to subscribers against switching. We do not consider that putting in place this high level requirement will have a material impact on current porting charges.

We will reflect the ‘one working day’ requirement in GC18 for bulk mobile ports

- 10.24 As mentioned above, the changes in relation to non-bulk mobile ports are due to come into effect from 11 April 2011. Given that we have only recently concluded on our approach in relation to non-bulk mobile ports and consider this to be in line with

⁶⁹ It is unclear whether Paging Portability is feasible or whether there is any demand for it. We would welcome any views on either of these issues.

the revised USD, we are not proposing any changes to the revised text contained in GC18 for non-bulk mobile ports.

- 10.25 Therefore, our proposals in relation to mobile porting only relate to the implementation of the one working day⁷⁰ requirement for bulk mobile porting.
- 10.26 As noted above, mobile bulk ports are distinguished by the mobile industry as ports involving 25 or more mobile phone numbers processed under a single PAC⁷¹. Unlike in the fixed environment, where the GP may have to undertake work to physically install the subscribers' connection to the public network in order to provide service, the service provisioning aspects of mobile switching can be performed more readily. However, in order to establish service and receive calls on a mobile ported number, the end-user may require time to receive, swap and distribute either replacement SIM cards or entire handsets.
- 10.27 In order to ensure a seamless transfer (i.e. minimising loss of service), businesses undertaking bulk ports of this type, will probably want to ensure that on the day of the switch, all logistical requirements to facilitate the port have been completed and that SIM cards and handsets have been distributed to employees in advance. The planning for a bulk port, potentially involving hundreds or even thousands of numbers, is therefore a detailed logistical exercise that can take a number of weeks (or months) to plan and is usually tied in with contractual periods which are known well in advance.
- 10.28 The current bulk process seems to adequately support business subscriber requirements, even though this currently takes longer than the non-bulk process. The available evidence suggests that business subscribers are more interested in knowing when exactly porting will take place and a smooth migration process, rather than completing the port process in a shorter time frame.

Our proposed implementation of the one-day requirement for bulk mobile ports

- 10.29 In relation to mobile, we consider that the one working day requirement may reasonably be interpreted as meaning that subscribers who have concluded an agreement to port a number with the GP shall be provided (by the GP) with the ability to receive and make calls by means of that number within one working day. Under the current donor-led process, it is therefore reasonable to assume that the 'one working day' requirement starts when subscribers provide their PAC to the GP, since the provision of the PAC to the GP is a necessary pre-condition for porting to take place.
- 10.30 As we stated in our April and July 2010 statements on mobile number portability (for non bulk mobile numbers) last year, the consumer may request an alternative port date that is later than the default date if they so chose. We believe this should apply equally for bulk ports i.e. MNOs and the subscriber in this instance would be able to agree an alternative port date. We recognise the logistical requirements, such as the distribution of SIM cards and handsets, associated with a large number of ports and

⁷⁰ As noted in paragraph 3.36 of our MNP statement last year, we consider the use of 'business day' in the context of GC18 and "working day" in the context of Article 30 USD to be *synonymous*.

⁷¹ Operator Steering Committee *Mobile Number Portability Porting Process Manual* April 2009, at http://www.mnposg.org.uk/Main_Documents/MNP2%20Manual%20issue%201-20.pdf .

believe this approach provides the flexibility for subscribers and GPs to agree an alternative port date to ensure that a seamless migration occurs⁷².

- 10.31 However, we note that providers should not use this as an opportunity to make subscribers feel that they have no option but to agree to a different port time. If Ofcom were to have evidence of such undue influence, we would consider opening an investigation under GC18 for non-compliance with its obligations.
- 10.32 We propose amending GC 18 to require that bulk mobile numbers are activated within one working day of a subscriber providing a PAC over the phone, in order to implement the requirement in the revised USD in respect of bulk mobile porting. The proposed modifications are set out in Annex 7.
- 10.33 GC18 requires the LP to enable subscribers to request a PAC over the phone and provide non-bulk subscribers with their PAC immediately over the phone or by SMS within two hours of the request. Noting that all CPs are required to provide number portability to subscribers who request it within the shortest possible time, we do not consider that this requirement concerning the requesting and issuing of PACs would be appropriate to apply to bulk ports, as it is unlikely to be practicable and additional subscriber verification, e.g. written confirmation from the business account holder, may be necessary before a PAC is provided, especially where the port involves a large volume of numbers.
- 10.34 We would like to understand better the impacts of implementing this requirement. The decision whether to accept a request from a bulk customer for one day porting would be made by the GP and it is the GP that must facilitate most of the porting process, for example organising the distribution of any new equipment to end-users. However, a decision to accept a request for one day porting would also have consequences for the LP. Our current view is that such requests for one-day porting are (a) quite unlikely to be made in practice, and (b) might not be accepted by a potential GP.
- 10.35 In this respect, our view is that GPs and LPs will need to adopt different, accelerated processes only infrequently. It is unclear to us at this point whether such processes can be performed by exception, or whether under these proposals more comprehensive changes to processes would be required, such as changes to the central web system for processing port requests (the Syniverse system) and to internal administrative and technical systems and processes. We note that providers already have to change the Syniverse system in order to bring in the required changes to non-bulk porting by 11 April 2011. We invite evidence from stakeholders on:
- the likely frequency of requests from bulk customers for one-day porting;
 - the likelihood that such requests will be accommodated by GPs; and
 - the nature and extent of impacts on GPs and LPs from meeting the expected level of requests for one-day bulk porting, including how processes for dealing with bulk ports differ from dealing with single ports.

⁷² We also note that the GP may decline a request to port if they are unable to meet the one working day requirement and the subscriber does not want to agree to an alternative date.

We will reflect the ‘one working day’ requirement in GC18 for fixed line porting

- 10.36 We have reviewed the various industry manuals which set out the existing industry processes and timelines for fixed number porting and activation. In very general terms, the porting process is led by the GP who recruits the switching subscriber and contacts the LP to initiate the port process. This process involves consumer protection/verification steps and coordinating system changes which sometimes involve a third party RH network. It may also be necessary for the GP to provision a line to the subscriber’s premises. Finally, either the GP requests port activation from the LP or the LP commences port activation automatically as per the fixed date and time agreed with the GP.
- 10.37 Current consumer protection measures for switching fixed voice services are through various safeguards which have been built into the switching process. The current process for switching fixed voice services is known as the ‘Notification of Transfer’ process⁷³. This works on the basis of the customer being notified through a ‘notification of transfer’ letter that the switch is happening. There is a 10 working day transfer period during which time the customer is able to stop the order going ahead where they simply change their mind or in cases of slamming.
- 10.38 The complexity of the port process varies very significantly particularly if there are multiple parties involved. Where a subscriber has chosen to switch providers more than once, there may be 3 parties to a standard port; the GP, LP and RH. Where a reseller is involved as either the GP or the LP, they too may become part of the order handling process (e.g. account creation or cessation, customer validation and authentication etc) in order to facilitate the request.

Our proposed implementation of the one-day requirement for fixed line porting

- 10.39 Our interpretation of the Directive is that once an agreement to port has concluded, the one working day requirement must commence from that point. In relation to fixed porting, this point must necessarily be after the consumer protection/verification measures have been completed and any necessary line provisioning has taken place.
- 10.40 Therefore, we propose that the one working day port requirement applies from the point that the request for activation has been made by the GP to the LP i.e. after the consumer protection steps and line provisioning have been completed. Where the port date has been fixed, the one working day porting requirement would apply from the time of day on the agreed port date that the activation process is usually commenced by the GP and LP (and where relevant, the RH). For example, for non-geographic number portability, the scheduled time for a port activation is 00:01 on the day of the port and will take place between 00:01 and 04:00 depending on the queue⁷⁴.
- 10.41 As the activation point occurs after the consumer protection measures have occurred and any line provisioning has taken place, this approach will have limited impact on the current fixed porting regime. It allows for the existing lead-times for all fixed ports, including where physical changes are required.

⁷³ This does not apply where a customer is transferring to and from a cable network.

⁷⁴ For geographic number portability, the current SLA commitment is that ported numbers will be activated within 15 minutes of a request 95% of the time and within 20 minutes 99% of the time. For personal number portability, activation occurs between 07:00 and 11:00 on the port date.

- 10.42 We consider that it would not be appropriate to implement the one working day requirement in such a way that would conflict with current consumer protection/verification measures⁷⁵. Further, it would not appear to be appropriate to simply remove these measures in order to apply the one working day requirement at an earlier point in the process, especially ahead of any recommendations to be made by the Switching Review.
- 10.43 In addition, we do not consider it appropriate to implement the one working day porting requirement in such a way that does not allow sufficient time for any line provisioning to take place. If we did require this, porting might take place before a line is ready which could result in an unintentional loss of service for the subscriber.
- 10.44 Therefore, our proposed approach for fixed is that it is the *port activation* that must take place within one working day⁷⁶ from when the GP requests activation from the LP. The proposed modifications to GC18 in relation to fixed porting are set out in Annex 7.
- 10.45 As a result of the work being carried out by the Switching Review and the OTA2, overall port times may be reduced if conclusions of that work indicate, for example, that consumer protection measures should take place in a shorter timescale. We consider that these aspects of the porting process are best assessed in the context of that work rather than in this consultation.
- 10.46 More generally, we consider that the proposed implementation approach takes appropriate account of technical feasibility and the need to maintain continuity of service to the subscriber as envisaged by Article 30 (4) USD, as well as ensuring that subscribers are protected throughout the process and are not switched to another provider against their will.

We will reflect a requirement for CPs to put in place schemes to compensate subscribers for delays or faults with porting

- 10.47 As set out above, the USD requires that there are appropriate sanctions in place on undertakings, including an obligation to compensate subscribers, where there is a delay or fault in porting.

Proposed implementation of the compensation scheme requirement

- 10.48 We propose to modify GC18 to require that CPs provide reasonable compensation as soon as is reasonably practicable following the correction of any delay or abuse in the porting process by them or their representatives. This requirement to compensate must be in place as from 25 May 2011.
- 10.49 We have considered whether it is appropriate to set out in GC18 further details of the compensation scheme, such as the appropriate levels of compensation and other scheme parameters. However, consistent with our regulatory principles, we are proposing a lighter touch approach whereby CPs will be able to design the detail of the scheme themselves in a way that it is more suited to their business and existing administrative processes.

⁷⁵ Ofcom notes that Article 8 (4) of the revised FD in effect states that Ofcom must take all reasonable measures when carrying out its regulatory tasks to promote the interests of the citizen by ensuring a high level of protection for consumers in their dealings with suppliers.

⁷⁶ We note again that we consider the use of “business day” in the context of GC18 and “working day” in the context of Article 30 of the USD to be synonymous.

- 10.50 While there are costs associated with a compensation scheme, we consider that this approach will keep implementation costs to a minimum. We will monitor the compensation schemes that CPs put in place after 12 months and we may decide to specify the detail of the schemes at a later date should the schemes be inadequate for their purposes. In order to assist CPs in putting in place their schemes, we have set out some guidance below as to how the scheme might operate and what 'reasonable compensation' might mean.
- 10.51 The proposed modifications in relation a porting compensation scheme are set out in Annex 7.

Guidance

The operation of the scheme

- 10.52 From when the new requirement to compensate in GC18 takes effect, i.e. when a subscriber experiences a delay with a port request or there is a fault or abuse with the port, a subscriber must be able to claim compensation. In order to receive compensation, it would seem reasonable for subscribers to lodge a complaint with their CP via its standard complaints handling process. All CPs are required by Ofcom to have a complaints code of practice in place which is approved by us and they must also belong to an Ofcom approved Alternative Dispute Resolution ('ADR') scheme and adhere to the final decisions made by that scheme⁷⁷. The two ADR schemes authorised by Ofcom are CISAS⁷⁸ and Otelo⁷⁹.
- 10.53 Where a subscriber and a CP are unable to reach an agreed resolution, the matter should be referred to an ADR scheme. At the moment, subscribers can access a CPs ADR scheme eight weeks after lodging their initial complaint with a CP. This would also seem an appropriate timeframe to apply to porting compensation claims. ADR schemes are provided at no cost to subscribers and the decision of the scheme is final⁸⁰.
- 10.54 For larger subscribers who cannot use the ADR system described above because they are an undertaking employing more than ten individuals, the normal court route should be taken to resolve any claims for porting compensation.
- 10.55 The text in the Directive does not state that compensation payments must be made proactively. Therefore, we consider it reasonable to place the onus on subscribers to bring a claim for compensation in the event of a delay or fault with porting.

Level of subscriber compensation

- 10.56 CPs will be required to pay a reasonable level of compensation in the event of delay or abuse of porting. We consider that a delay or fault in porting is analogous to a delay or fault in service provision.
- 10.57 We have reviewed a number of fixed line CPs' existing compensation schemes for fault compensation. Those that offer compensation generally work this out based on a rate equivalent to the daily cost of the service. For example, BT calculates this by

⁷⁷ These regulatory obligations are contained within General Condition 14.4 and 14.5.

⁷⁸ CISAS is the Communications and Internet Services Adjudication Scheme, <http://www.cisas.org.uk/>

⁷⁹ Otelo is the Office of the Telecommunications Ombudsman, <http://www.otelo.org.uk/>

⁸⁰ Part of the decision taken by the ADR scheme will be which provider in the porting process (the GP or LP) is responsible for the delay or abuse, and thus liable for the compensation payment.

multiplying the subscribers' quarterly phone service rental by four, dividing by 365 and multiplying by the number of days late in installing the service or a fault not repaired⁸¹. Additionally, some CPs make further 'good will' payments, which they may also want to make for porting delays.

- 10.58 We have considered what the comparable level of compensation could be for mobile subscribers. For contract mobile subscribers, CPs could apply a level of compensation equivalent to a daily cost of the subscriber's monthly contract. This would reflect the approach already taken by fixed line CPs. With regards to Pay As You Go (PAYG) mobile subscribers, as they do not have a set monthly contract, a proxy could be to calculate the daily amount of an individual CPs Average Revenue Per User (ARPU) for PAYG subscribers. This could provide a standard approach across the industry and a set reference point for each CP to apply for all PAYG subscribers, albeit precise figures will vary between operators.

Information requirements

- 10.59 In order to ensure a meaningful compensation scheme, we propose amending GC18 to require that subscribers are advised of the relevant port date when their number will be ported. This may be done at the time that the port is requested or, in relation to fixed, at a later date so long as the subscriber is notified prior to the request for activation. In addition, in relation to fixed porting, where CPs have advised of a port date, they are able to alter this date as long as it is communicated to the subscriber in advance of the request for activation.
- 10.60 We are also proposing to amend GC18 to require CPs to set out in a clear, comprehensive and easily accessible form how their compensation scheme will operate⁸². At the very least, we would expect CPs to include this information in their terms and conditions and have it available on their website.

Impact of proposals

- 10.61 As a result of these proposals, subscribers will be eligible to receive a payment for any delay in the porting process. This will provide subscribers with compensation that they might not otherwise receive, which we consider to be of benefit to users. The compensation proposals may also have a disciplining effect on GPs and LPs, ensuring that each party has the incentive to design and execute a smooth porting process. The strength of this effect will depend on the level of compensation involved.
- 10.62 The proposals will result in a set of one-off costs for operators to implement their compensation schemes, though we do not expect these costs to be onerous as any scheme could be run in tandem with their ADR processes. There will also be costs to administer the schemes and make payments to subscribers in relation to delayed porting; these costs will ultimately be borne by the CP responsible for the delayed port, so all CPs will have an incentive to keep such costs to a minimum.

⁸¹ Talk Talk operates a similar policy. BT also currently allows residential subscribers to claim for financial loss up to £1,000 if they can prove they lost money as a result of the down time. However, we do not propose to state in our guidance that schemes should allow subscribers to claim for financial loss, as this is not contained in the Directive.

⁸² The information requirements are made pursuant to Article 20 of the USD.

Implementation considerations

10.63 Given that this requirement to compensate for porting delays needs to be place by 25 May 2011, there will not be an opportunity to delay this requirement coming into force to allow CPs a period of time to put in place their schemes. CPs will need to ensure that any compensation for porting delays and abuse is paid to subscribers from 25 May 2011. We consider that CPs should be able to put in place the appropriate processes to ensure that subscribers receive compensation by this date.

Legal Framework

10.64 In paragraph 2.28, we outlined the tests contained section 47(2) of the Act with which modifications to conditions must comply.

10.65 We consider that our amendments meet the criteria set out in section 47(2) of the Act. They are:

- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Articles 30(1) to (4) of the USD, which Ofcom is obliged to implement;
- **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC18 is relevant to them;
- **proportionate** as the change is the minimum necessary to implement the revision of Articles 30(1) to (4) and there is no less intrusive mechanism to achieve the intended purpose; and
- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

Q9. Do you agree with our proposals on the one working day requirement in relation to bulk mobile ports and in relation to fixed porting? If not, please explain why?

Q10. Do you agree with our proposed approach to the porting compensation scheme requirement?

Section 11

Changes to General Condition 20

11.1 This Section sets out changes made to the USD relating to access to telephone numbers and the services provided on those numbers across the European Community. The scope of the changes covers access to all numbers from national telephone numbering plans and pan-European numbering ranges.

The GC formerly known as ‘Non-geographic Numbers’

11.2 The current GC20 covers obligations on CPs⁸³ in relation to access to non-geographic numbers and transposes the requirements in former USD Article 28. Those requirements were to make sure that CPs, where technically and economically feasible, ensure that end-users in any part of the European Community outside of the UK are able to access non-geographic numbers adopted in the UK, unless the called party has limited access by calling parties located in specific geographic areas for commercial reasons. We note that BEREC (Body of European Regulators for Electronic Communications) has been consulting on the cross-border implications of Article 28⁸⁴.

Ensuring access to services using non-geographic numbers within the Community and to all numbers provided in the Community

11.3 The revised Article 28 of the USD has been re-titled ‘Access to numbers and services’. The scope of requirements covered has been extended to cover access to all numbers provided in the Community and access and use of services using non-geographic numbers. The changes to Article 28 of the USD are explained below.

11.4 Whereas previously Article 28 required Member States to ensure end-users from other Member States were able to access non-geographic numbers in their territory, obligations now rest on Member States to ensure that relevant national authorities take all necessary steps to ensure certain access rights for end-users. Requirements continue to be subject to technical and economic feasibility and called subscribers may continue to limit access by calling parties located in specific geographic areas.

Access and use of services using non-geographic numbers

11.5 Article 28(1)(a) of the USD states that Member States shall ensure that, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory authorities (i.e. in the UK, Ofcom) take all necessary steps to ensure that end-users are able to “*access and use services using non-geographic numbers within the Community*”.

11.6 The previous requirement was on CPs to ensure, where technically and economically feasible, that end-users from other Member States were able to access non-geographic numbers within any Member State territory. The revised requirement

⁸³ In GC20 and for the purposes of this section, a CP means a person who provides an Electronic Communications Network, Electronic Communications Service or Publicly Available Telephone Services.

⁸⁴ See http://www.erg.eu.int/doc/consult/bor_10_62.pdf.

clarifies that the obligation also covers the ability of end-users to use the service provided on non-geographic numbers as well as access to the number.

Access to all numbers provided in the Community

- 11.7 Article 28(1)(b) of the USD states that all necessary steps must be taken to ensure that end-users are able to “*access all numbers provided in the Community, regardless of the technology and devices used by the operator, including numbers from the national numbering plan, the European Telephony Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN)*”.
- 11.8 The previous requirement was on Member States to ensure access from Member States to non-geographic numbers within their territory. The revised requirement is for relevant national authorities to ensure end-user access to all numbers provided in the Community. The requirement is therefore extended to cover all numbers in national telephone numbering plans (i.e. now includes geographic numbers) and international numbering ranges such as shared country codes (e.g. the ETNS – see further below) and Universal Numbers (e.g. Universal International Freephone Numbers).
- 11.9 In practice, we do not foresee this translating to an extensive additional requirement on CPs as i) access to geographic numbers across the European Community is generally provided and ii) access to numbers from international numbering plans, if not already provided, would be subject to technical and economic feasibility.

Blocking access to numbers and services on a case-by-case basis where justified by reasons of fraud and misuse

- 11.10 Additionally, a new Article 28(2) requires Member States to ensure that “*the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues*”.
- 11.11 This is a new consumer protection requirement placed on Member States. A draft BEREC report⁸⁵ on cross border issues under Article 28 USD on which consultation closed on 13 January 2011, considers issues of fraud and misuse of numbers relating to Article 28 of the USD and matters of transposition.

Proposed implementation on access to numbers and services

- 11.12 We propose to re-title GC20 as ‘Access to numbers and services’ and implement the requirements in Article 28 of the USD in this GC⁸⁶.
- 11.13 The proposed text for the revised GC20.1 reflects the changes set out above. The specific insertions and deletions are set out in Annex 7. The proposed text is as follows:

⁸⁵ http://www.erg.eu.int/doc/consult/bor_10_62.pdf .

⁸⁶ Section 58(1)(d) of the Act provides for us to include such requirements in a GC as it states that “General conditions may include conditions which... impose requirements on a communications provider in connection with the adoption by him of telephone numbers”.

“The Communications Provider shall ensure, where technically and economically feasible, that End-Users in any part of the European Community are able to:

- a) access and use services using those Non-geographic Numbers which the Communications Provider Adopts;
- b) access all Telephone Numbers provided in the European Community, regardless of the technology and devices used by the operator, including those in the National Telephone Numbering Plan, those from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN)”

11.14 We also propose to add a new GC20.3 as follows:

“The Communications Provider shall, where requested in writing by or on behalf of Ofcom on the basis of fraud or misuse, block access to Telephone Numbers and/or Public Electronic Communication Services and in such cases withhold revenue associated with such Telephone Numbers and/or Public Electronic Communication Services”.

11.15 In relation to the requirement for undertakings to block access to numbers and to withhold relevant interconnection or other service revenues on a case-by-case basis, we propose that the case-by-case nature of this requirement be implemented by way of a request issued by Ofcom.

Impact of modifications to GC20 in order to implement changes to Article 28 of the USD

11.16 We consider that the proposed changes set out above would further the interests of citizens and consumers by supporting access to numbers and services across the European Community and providing a consumer protection measure where there are instances of fraud and misuse.

11.17 The proposed changes are considered to have minimal impact on CPs as:

- the inclusion of access to services that use non-geographic numbers is unlikely to have an impact beyond the existing requirement to provide access to non-geographic numbers;
- the extension to providing access to all numbers in the European Community is a minor change to the existing requirement to provide access to non-geographic numbers, given that access to geographic numbers is generally provided; Although we are unclear as to the extent to which CPs have adopted numbers from international numbering plans, including Universal International Freephone Numbers we note that the requirement is subject to technical and economic feasibility. Also, the impact on subscribers being called is reduced as CPs would be required to limit access for calling end-users located in specific geographical areas where that subscriber has chosen for this to be done for commercial reasons; and
- implementing requests from Ofcom or on behalf of Ofcom to block access to numbers and services and withhold relevant revenues on a case-by-case basis is

not expected to be an onerous requirement on CPs. We plan to develop a set of guidelines on the criteria for determining fraud or misuse in relation to numbers and services, how we would issue written requests to block access and withhold revenue and how we would expect CPs to respond to such requests. We note that examples of such practice are already in existence, for instance the PhonepayPlus Code of Practice⁸⁷ requires network operators to withhold revenues generated by a premium rate service for thirty days and to terminate access to premium rate services and numbers when directed to do so by PhonepayPlus.

Principles for the *potential* European Telephony Numbering Space

11.18 The revised Article 27(3) of the USD refers to access to the European Telephony Numbering Space (ETNS), although the ETNS is not currently in use. It was a concept introduced in 2000 for a European telephony numbering space for pan-European numbering using the shared country code +3883 with a European, as opposed to national or global identity. However, the original ETNS did not develop and the +3883 code was reclaimed by the International Telecommunications Union (ITU) on 31 December 2010. The European Commission is consulting on options for pan-European harmonisation of numbers for the provision of business services⁸⁸. One option under consultation is to re-establish the ETNS under the enhanced provisions of the amended USD (see below).

11.19 The revised USD Article 27(3) on 'European telephone access codes' states that:

“Member States shall ensure that all undertakings that provide publicly available telephone services allowing international calls handle all calls to and from the ETNS at rates similar to those applied for calls to and from other Member States”.

11.20 Changes to the former Article 27(3) of the USD are that:

- the obligation to handle calls to and from the ETNS now falls on “all undertakings that provide publicly available telephone services allowing international calls” as opposed to “all undertakings that operate public telephone networks”; and
- calls to and from the ETNS are to be handled “at rates similar to those applied for calls to and from other Member States”. The former requirement in relation to handling calls to and from the ETNS did not specify applicable tariffs, only that calls are handled “without prejudice to the need for an undertaking that operates a public telephone network to recover the cost of conveyance of calls on its network” (which has been deleted from the revised USD).

Proposed implementation on ETNS

11.21 We propose to set out the requirement to handle calls to and from the ETNS and that rates applied are similar to those for calls to and from other Member States as a GC in connection with the adoption of telephone numbers. We propose to include these

⁸⁷ See sections 2.3.3 and 2.5.2 of the PhonepayPlus Code of Practice 11th Edition <http://www.phonepayplus.org.uk/output/Code-of-Practice-1.aspx> .

⁸⁸ European Commission *Consultation on the future harmonisation of numbering resources for the provision of business services*. The consultation closes on 28 February 2011 - http://ec.europa.eu/information_society/policy/ecomms/doc/library/public_consult/numb_harm/questionnaire.pdf .

requirements in GC20.4, as they relate to access to numbers and services. The proposed text, taken from Article 27(3) of the USD, is set out in Annex 7.

Impact of modifications to GC20 in order to implement changes to Article 27 of the USD in relation to the ETNS

- 11.22 As mentioned above, the ETNS is not currently in service. Under current circumstances, therefore, there would be no impact on stakeholders from the proposed modification to GC20 in relation to the ETNS.
- 11.23 The European Commission is consulting on possible options for future use of the ETNS and it is unclear at present whether it will be re-launched and, if so, the characteristics of the service. It is therefore difficult to assess the impact of the proposed modifications should the ETNS be put in service.

An access obligation to ensure people can call the hotline for missing children on 116000

- 11.24 The new Article 27a of the USD on 'Harmonised numbers for harmonised services of social value, including the missing children hotline number', sets out certain obligations for Member States in relation to the promotion, access and provision of services on '116' numbers reserved by the European Commission (see paragraphs 8.37 to 8.40 for information on 116 numbers). The majority of these relate to obligations on Ofcom and/or the UK Government (DCMS) to fulfil and are not relevant for the GCs. Requirements in Article 27a(2) in relation to disabled end-users access to '116' numbers are discussed in Section 8 of this document.
- 11.25 Article 27a(4) relates to access to the 116000 number and the 'Hotline for missing children' service provided on that number. 116000 is a pan-European harmonised number reserved by the European Commission to provide 'same number – same service' memorability for this service of social value. Article 27a(4) states that Member States shall *"make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number '116000'"*.

Proposed implementation on the hotline for missing children

- 11.26 The obligation to ensure that citizens have access to a hotline for missing children on 116000 is a new requirement. 116000 is one of currently five harmonised '116' numbers and has been singled out for extra safeguards to ensure that access is provided as Member States must *"make every effort to ensure citizens have access"* to such a hotline on the number '116000'.
- 11.27 We consider that in order to ensure that access to 116000 is provided the 116000 number must be:
- allocated to a service provider; and
 - accessible to all citizens.
- 11.28 The 116000 number was allocated to Missing People and its chosen communications provider BT on 17 May 2010 and the number is operational. In order to ensure that the hotline is accessible to all citizens, we propose to introduce an obligation in GC20.5 on all CPs that provide public electronic communications networks and/or

publically available electronic communications services to ensure that any end-user can access a 'Hotline for missing children service' by using the number 116000. The proposed text is as follows:

"The Communications Provider shall ensure that any End-User can access a hotline for missing children by using the number '116000'".

Impact of modifications to GC20 in order to implement changes to Article 27 of the USD in relation to the ETNS

- 11.29 Article 27a(4) of the USD provides Members States with some discretion as to how "every effort to ensure citizens have access" to the 116000 number and the hotline, is applied. We consider that the extreme social value of this service and the clear social benefits of ensuring pan-European access mean that intervention in ensuring access from CPs is proportionate. Although we understand access to 116000 is provided from all large networks and the vast majority of CPs, we have experienced some initial difficulty in achieving access for all end-users and consider it vital for the success of the 116000 number and hotline service that this situation does not arise in the future.
- 11.30 GC17.12 obliges CPs to comply with the designations for '116' numbers in the National Telephone Numbering Plan. For 116000, the designation includes that 116000 is a 'free-to-caller' number, meaning that calls are free regardless of the means of making that call (e.g. from a fixed line or mobile). Therefore, an obligation on CPs to provide access to 116000 is also an obligation that CPs' customers can make calls to 116000 free of charge.
- 11.31 There may be some impact on certain CPs due to interconnection arrangements arising from this obligation⁸⁹. However, we consider that the value of providing full access to the hotline service, and the fact that the majority of CPs have already taken such action, means that our proposal is proportionate.

Legal Framework

- 11.32 In paragraph 2.28, we outlined the tests contained within section 47(2) of the Act with which modifications to conditions must comply.
- 11.33 We consider that our proposals for modifications to GC20 in relation to access to numbers and services meet the criteria set out in section 47(2) of the Act being:
- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Articles 27, 27a and 28 of the USD, which Ofcom is obliged to implement;
 - **not unduly discriminatory** as the revised requirement will apply to all CPs to the extent GC20 is relevant to them;
 - **proportionate** as the change is the minimum necessary to implement the revision of Articles 27, 27a and 28 and there is no less intrusive mechanism to achieve what is intended; and

⁸⁹ We would expect that interconnection rates should be agreed through commercial negotiations between interested parties. Clearly we would expect such agreements to be informed by arrangements for free-to-callers services for other non-profit public service organisations and any regulations on interconnection rates applicable at the time.

- **transparent** as the purpose of the change is clear and what CPs need to do in order to comply with the amended GC is also clear.

11.34 We also consider that the proposed modifications would fulfil our general duty as to telephone number functions as set out in section 63 of the Act by:

- **securing the best use of appropriate numbers**, in that the proposals in relation to access to numbers and services would further service provision on numbers in the European Community and would secure access from all CPs to a hotline for missing children on 116000. The proposals would also ensure that fraud and misuse of numbers may result in the blocking of access to numbers and services and the withholding of relevant revenue; and
- **ensuring efficiency and innovation**, in that the proposals would encourage the use of numbers and the provision of innovative services for end-user access across the European Community, with the additional consumer protection safeguard relating to fraud or misuse of numbers.

Q11. Do you agree with our proposed approach on requirements relating to ensuring access to all numbers within the Community, the charging of ETNS numbers and calling the hotline for missing children on 116000?

Section 12

Changes to Universal Service Conditions

Introduction

- 12.1 The Universal Service Conditions are conditions imposed on universal service providers (Kingston Communications in the Hull area and BT elsewhere in the UK) under section 45(4) of the Act.
- 12.2 The USCs are affected by changes to definitions of certain terms. These are discussed in Section 3 of this document.
- 12.3 There is also one minor amendment required to Condition 1 for both Kingston Communications and BT to reflect a change in the wording of Article 4(2) of the USD which refers to connections being capable of supporting “voice” communications. However, this will not change the scope of the existing USC which already cover ‘calls’. It should therefore have no impacts on BT and Kingston.

A new requirement to notify Ofcom when disposing of local access network assets

- 12.4 Article 8 has been added to the USD which requires that, where a universal service provider intends to dispose of a substantial part or all of its local access network assets (that is the assets involved in the physical connection between the consumer’s premises and the local telephone exchange) to a separate legal entity under different ownership, it must inform in advance the national regulatory authority (i.e. Ofcom) in a timely manner, in order to allow assessment of the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4.
- 12.5 In other words, the notification will enable us to consider the effects of the transaction in order to ensure the continuity of universal service obligations in all or parts of the national territory⁹⁰.

Proposed implementation of disposal of local access network assets notification

- 12.6 In relation to Article 8, we propose to implement the changes by introducing a Condition⁹¹, to read:

“Where [BT/Kingston] intends to dispose of a substantial part or all of its local access network assets⁹² to a separate legal entity under different ownership, it shall inform Ofcom no less than a month in advance of such disposal.”

⁹⁰ The recital (10) to the revised USD notes that “the assessment of the national regulatory authority should not prejudice the completion of the transaction”.

⁹¹ Condition 7 for Kingston and Condition 9 for BT.

⁹² We consider these assets to be the part of the communications network that provides the connection at the network termination point.

12.7 We do not envisage that such notifications will be a regular occurrence or that they will involve any significant administrative costs for BT and Kingston.

12.8 Our proposed modifications to the USCs are set out in the notification at Annex 8.

Legal Framework

12.9 As discussed in paragraph 2.28, we outlined the tests contained in section 47(2) of the Act with which modifications to conditions must comply.

12.10 We consider that our proposal meets the criteria set out in section 47(2) of the Act. It is:

- **objectively justifiable** as the amended requirements directly reflect the requirements set out in Article 8 of the USD, which Ofcom is obliged to implement;
- **not unduly discriminatory** as the revised requirements will apply equally to both Kingston and BT (albeit that the definitional changes feed through in a slightly different way for each given pre-existing differences in the obligations on each);
- **proportionate** as the disposal notification requirement is the minimum necessary to implement the revision of Article 8; and
- **transparent** as the purpose of the change is clear and what Kingston and BT need to do in order to comply with the amended USC is also clear.

Q12. Do you agree with the proposed obligation on universal service providers to notify us when they are disposing of part or all their local access network assets?

Annex 1

Implementing the revised Framework – assessment of impact

A1.1 Impact assessments (IAs) form a key part of best practice policy making. They are used to consider different options for regulation, and, using objective criteria and subject to the principle of proportionality, to select the best option.

We must revise GCs and USCs or the UK will risk infraction proceedings

A1.2 The revised EU Framework must be transposed in the UK by 25 May 2011. Some of the implementation of the revised Framework requires changes to GCs and USCs which Ofcom has the authority to amend and impose. If we do not make the appropriate changes to these conditions then the UK would not be compliant with EU law and would risk infraction proceedings. The failure to properly transpose an EU obligation can eventually lead to a fine⁹³. The maximum fine that could be imposed on the UK has been estimated as being €534,000 (£350,000) per day, approximately £127 million per year⁹⁴.

In most cases we have little discretion

A1.3 Many of the changes we are proposing have to be transposed in accordance with the revised Directive and we have little or no discretion as to how they are implemented. Where this is the case, it has not been appropriate to consider options for implementation.

Many of the proposed changes do not have large impacts or costs

A1.4 Many of the proposed changes are fairly minor and are unlikely to have large impacts on stakeholders, Ofcom, the general public or on specific parts of the UK.

A1.5 In these cases, we have set out what is required in the Directive and the consequential amendment we propose to make to a condition, while noting any likely impacts where we can.

However, there are a few areas of more substantive change

A1.6 Nevertheless, in a few cases, our proposals on GCs may have larger generic impacts and/or discrete impacts on particular groups. This includes in particular the changes to contracts (GC9), mandating emergency SMS (GC15) and the new requirements on number portability (GC18).

A1.7 In these cases we explain and discuss our proposed changes and their potential impacts in more detail.

⁹³ Article 260 of *The Treaty on the Functioning of the European Union*
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF> .

⁹⁴ See, for example, <http://www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Transpositions/Infractions/Infractions> .

Costs and benefits of changes to the GCs/USCs

A1.8 Where possible, we noted the broad nature of impacts from our proposals in Sections 3 to 12. We now summarise in Figure 3 the high level benefits and costs (we have identified) for each of our proposals to change the GCs and USCs.

Figure 3: Table of costs and benefits of proposed changes to GCs and USCs

Proposal	Overall benefits	Overall Costs
<p><u>Definitions</u></p> <p><i>Broadening definition of Publicly Available Telephone Services and change from Public Telephone Networks to broader Public Electronic Communications Services. Plus changes to refer to Act definitions rather than copying into conditions themselves.</i></p>	<p>The slight broadening will extend obligations to a small class of additional services which should raise consumer standards. Other changes are not material but will make the document tidier and more readable</p>	<p>Limited costs in relation to additional services caught by the conditions</p>
<p><u>Change to GC2 – Standardisation and specified interfaces</u></p> <p><i>Adding CEPT to the list of standardisation bodies</i></p>	<p>Very minor change which may encourage adoption of standards by specified bodies</p>	<p>Limited costs expected to arise for CPs</p>
<p><u>Change to GC3 – Proper and effective functioning of the network</u></p> <p><i>All CPs covered by Article 23 must take all necessary measures to ensure the fullest possible availability of publicly available telephone services/uninterrupted access to emergency services</i></p>	<p>The wider scope (beyond just fixed networks) may encourage more providers to improve their network resilience, but scale of effect thought to be small</p>	<p>Limited impacts on those CPs brought within the scope of the GC and no material impact on operators of fixed networks and telephone services</p>
<p><u>Changes to GC4 – Emergency call Numbers</u></p> <p><i>Enhancing the implementation of 112/999 emergency access, for instance by ensuring improvements to caller location information</i></p>	<p>Greater efficiency of emergency services due to enhanced access to and improved accuracy and reliability of caller information – although given that requirements are in general already carried out benefits will be limited</p>	<p>Minimal costs (as in general requirements are already practised in UK)</p>
<p><u>Changes to GC9 - Contracts</u></p> <p><i>Several changes relating to what information is contained in contracts, their length, how they are provided, modified and conditions for termination</i></p>	<p>Minor benefit to other end-users from the right to exit contracts penalty free after notified materially detrimental modifications. Limited impacts on contract lengths; some greater transparency for consumers and other end-users (on request) from new information requirements</p>	<p>Some costs potentially from requirements e.g. in satisfying the new information requirements and in relation to the notifications of contract modifications to other end-users (and those other end-users who choose to exercise their right to exit from changed contracts penalty free)</p>
<p><u>Changes to GC 15 – Special measures for end-users with disabilities</u></p> <p><i>Mandating emergency SMS to meet requirement to ensure equivalent access by disabled users to 112 and 999 emergency services</i></p>	<p>Benefits from certainty of service for disabled users</p>	<p>Approximately 80k one-off cost with £71.5k annual ongoing cost (see main document 8.14-8.24). Cost would be same under GC4 as agreed under voluntary scheme</p>

<p><u>Changes to GC17 – allocation, adoption and use of telephone numbers</u></p> <p><i>New wording setting out conditions for transfer of rights of use; and also new wording on granting of rights of use for a limited period</i></p>	<p>No substantive change to current working practice – benefits relate to making the position transparent</p>	<p>No costs</p>
<p><u>Changes to GC 18 – Number portability</u></p> <p><i>One working day for porting a telephone number following a change of fixed or mobile operator; plus requirement to put in place a compensation scheme for subscribers</i></p>	<p>Limited benefits from improved switching as current porting processes remain</p> <p>Subscribers compensated in the event of a failure with porting process</p>	<p>Limited costs expected on one-day porting as requirements are likely to require little change to current processes on bulk mobile and fixed porting. Costs for CPs to put in place compensation schemes for delayed porting and to pay out compensation</p>
<p><u>Changes to GC 20 – Access to numbers and services</u></p> <p><i>End-users should be able to access numbers and services across the European community; undertakings allowing international calls must handle calls to potential ETNS (European telephony numbering space i.e. pan-European numbering) at rates similar to those for calls to/from other Member States; and introduce an obligation on CPs to ensure end-users can access the hotline for missing children by using the number 116000</i></p>	<p>Requirements largely practised already but there are benefits from certainty of access to the hotline for missing children</p>	<p>Minimal costs expected as requirements largely practised already and ETNS is not currently in use</p>
<p><u>Changes to USCs</u></p> <p><i>Main change is new conditions - 9 for BT and 7 for Kingston which requires them to notify us when they are disposing of all or part of their local access network assets</i></p>	<p>Allows us to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4</p>	<p>Minimal impacts on CPs in terms of making notifications to Ofcom</p>

Annex 2

Glossary

A2.1 The following terms have been used in this document and are defined as follows:

- **electronic communications network** *currently* means the following (but as noted in paragraph 3.7, this may change as a result of Government's transposition of the revised Framework):
 - (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
 - (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals - (i) apparatus comprised in the system; (ii) apparatus used for the switching or routing of the signals; and (iii) software and stored data.
- **electronic communications service** means any 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.
- **emergency organisation** means in respect of any locality:
 - (a) the relevant public police, fire, ambulance and coastguard services for that locality; and
 - (b) any other organisation, as directed from time to time by the Director as providing a vital service relating to the safety of life in emergencies.
- **National Telephone Numbering Plan** (noted in para 9.24) means a document published by the Director from time to time pursuant to section 56 of the Act.
- **non-geographic number** means a telephone number from a range of numbers in the National Telephone Numbering Plan designated for assignment to end-users, the digit structure of which contains no geographic significance for routing calls.
- **public electronic communications network** *currently* means the following (but as noted in paragraph 3.7, this may change as a result of Government's transposition of the revised Framework): an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public.
- **public electronic communications service** means any electronic communications service that is provided so as to be available for use by members of the public.
- **publicly available telephone service** is currently as defined in paragraph 3.15 which we propose to change to the definition in paragraph 3.17; and
- **public telephone network** is currently defined in paragraph 3.10 but as set out in 3.11-3.12 we propose to delete references to this term in the GCs and USCs and refer to public electronic communications network as defined by the Act.

Annex 3

Responding to this consultation

How to respond

- A3.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 7 April 2011**.
- A3.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/gc-usc/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 5), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A3.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email **GCUSC.condoc@ofcom.org.uk** attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A3.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Selina Chadha**
4th Floor – Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3333
- A3.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A3.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 6. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A3.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact **Zahid Deen** on **020 7981 3832**.

Confidentiality

- A3.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A3.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A3.11 Following the end of the consultation period, Ofcom intends to publish a statement around **mid-May 2011**.
- A3.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A3.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 4.
- A3.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 4

Ofcom's consultation principles

A4.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A4.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A4.3 We will be clear about who we are consulting, why, on what questions and for how long.

A4.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A4.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A4.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A4.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A4.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 5

Consultation response cover sheet

- A5.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A5.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A5.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A5.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A5.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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)

Annex 6

Consultation questions

Q1. Do you agree with our proposed approach to definitions?

Q2. Do you agree with our proposal to add CEPT to the list of standardisation bodies?

Q3. Do you agree with our proposals to extend the requirements of GC3 beyond 'fixed locations' and to require CPs to 'take all necessary measures' to maintain their networks and services and access to emergency services?

Q4. Do you agree with our proposals for emergency call numbers - which includes amending the definition of CP and requiring that location information is provided free of charge, as soon as the call reaches the emergency organisations and is accurate and reliable (in line with our proposed high level criteria)?

Q5. Do you agree with our proposed approach to contract related requirements relating to the provision of additional information, the length of contracts and the conditions for termination?

Q6. Do you agree with our proposals to ensure equivalent access to the emergency services for disabled users and to mandate the provision of Emergency SMS?

Q7. Do you agree that given the existing measures that are in place to help disabled users to access 116XXX services, it is not necessary to make further changes to GC15 in this respect?

Q8. Do you agree with our proposals on conditions for transferring the rights of use of telephone numbers and also for granting their use for a limited period of time?

Q9. Do you agree with our proposals on the one working day requirement in relation to bulk mobile ports and in relation to fixed porting? If not, please explain why?

Q10. Do you agree with our proposed approach to the porting compensation scheme requirement?

Q11. Do you agree with our proposed approach on requirements relating to ensuring access to all numbers within the Community, the charging of ETNS numbers and calling the hotline for missing children on 116000?

Q12. Do you agree with the proposed obligation on universal service providers to notify us when they are disposing of part or all their local access network assets?