

A10. Revised guidance on contractual modifications

A10.1 This annex sets out our revised guidance on contractual modifications under GC C1.14-C1.20 to align with the modifications we are making to implement the relevant provisions of the EEC. This guidance will be relevant from June 2022 when these new GCs come into force.¹

A10.2 The modifications to this guidance compared to the **current guidance** are shown as follows:

- a) The words that are underlined and highlighted indicate the insertions; and
- b) The words marked in strike-through and highlighted indicate the deletions.

Conditions C1.14 - C1.17 - ~~Guidance on contractual modifications under conditions C1.6-C1.9~~

~~A10.3 The guidance below, which does not form part of conditions C1.6-C1.9, sets out how we are likely to apply conditions C1.6-C1.9 in relation to changes CPs make to their consumer and small business contracts.~~

~~A10.4 Condition C1.6 states:~~

~~*C1.6 Regulated Providers shall:*~~

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

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

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

~~A10.5 Conditions C1.7 to C1.9 set out increases in price that are contractual modifications likely to be of material detriment to a Consumer or Small Business Customer for the purposes of condition C1.6.~~

~~A10.6 This part of the guidance sets out our expectations as to how providers should apply Conditions C1.14-C1.20 in practice and provides guidance on contractual modifications that would trigger the obligation to give a customer the right to exit, and how we would expect providers to notify customers of such modifications.~~

¹ The right to exit rules set out in current GCs C1.6 – C1.9 (renumbered as C1.14 to C1.17 with effect from December 2021) will stay in force until June 2022.

A10.7 Condition C1.14 says:

“Regulated Providers shall:

(a) give their Relevant Customers notice not shorter than one month of any contractual modifications relating to a Relevant Communications Service, or a Bundle or any elements thereof, that is provided by them, unless the proposed modification is exclusively to the benefit of that Relevant Customer, is of a purely administrative nature and has no negative effect on the Relevant Customer, or is directly imposed by law; and

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

A10.8 Condition C1.15 says:

“At the same time as notifying a contractual modification pursuant to Condition C1.14, Regulated Providers shall:

(a) inform the Relevant Customer of their right to terminate the contract(s) in accordance with Condition C1.15(b), at no additional cost other than the charges set out in Condition C1.16, if the proposed modifications are not acceptable to them; and

(b) allow the Relevant Customer to terminate the contract(s) subject to the contractual modification and to terminate any contract(s) forming part of a Bundle with that contract (those contracts), within one month after notification.”

A10.9 Condition C1.16 says:

“Regulated Providers shall ensure that where a Relevant Customer exercises their right to terminate a contract or contracts in accordance with Condition C1.15, such Relevant Customer is not required to pay any additional charges other than:

(a) the Service Fee(s) for the period ending on the day on which the relevant contract is terminated pursuant to Condition C1.20; and

(b) where the Relevant Customer exercises the right to terminate a Bundle which includes Terminal Equipment that the Relevant Customer chooses to retain:

(i) where the Bundle consists of Linked Split Mobile Contracts, the principal amount due under the Mobile Device Loan Agreement; or

(ii) in all other cases, the smaller of:

a. the remaining value of the Terminal Equipment on the day on which the contract is terminated in accordance with Condition C1.20, calculated in accordance with Condition C1.18; or

b. the Terminal Equipment Fee for the period from the day on which the contract is terminated pursuant to Condition C1.20 until the end of the Commitment Period.”

A10.10 Condition C1.17 says:

“Without limiting the extent of Condition C1.16, where a Relevant Customer exercises their right to terminate a contract or contracts pursuant to Condition C1.15, they shall not be required to pay any Early Termination Charges.”

A10.11 Condition C1.18 says:

“For the purposes of Condition C1.16, the remaining value of the Terminal Equipment refers to an amount calculated in accordance with the terms set out in the contract and which should reflect the value of the equipment, taking into account any depreciation in its value considering the length of time for which it was used, minus any payments already made towards the cost of the equipment.”

A10.12 Condition C1.19 says:

“Where a Relevant Customer exercises their right to terminate a Bundle which includes Terminal Equipment, or any elements thereof, pursuant to Condition C1.15, Regulated Providers shall take all necessary steps to ensure that any restriction on the use of that Terminal Equipment on the Electronic Communications Network of another Communications Provider (including but not limited to Handset Locking Restrictions) can be lifted, free of charge, on or before the day on which the contract(s) is(are) terminated pursuant to Condition C1.20.”

A10.13 Condition C1.20 says:

“Subject to Condition C7.7(a), where a Relevant Customer exercises the right to terminate a contract or contracts pursuant to Condition C1.15, unless the Relevant Customer expressly agrees otherwise, the contract(s) shall be terminated:

(a) on the day before the proposed modification comes into effect; or

(b) if it is not feasible for the contract to be terminated in accordance with Condition C1.20(a), and provided that the relevant modification is not applied to the Relevant Customer, as soon as reasonably possible after that date.”

A10.14 This guidance is likely to be most relevant to modifications made to standard contracts for residential customers, Microenterprise or Small Enterprise Customers and Not-For Profit Customers. Business customers on bespoke contracts may have specific arrangements in place regarding contractual modifications and termination rights, and where this is the case, this guidance may be less relevant.

Contractual modifications that would trigger the obligation to give a customer the right to exit

A10.15 The right to exit in Condition C1.15 applies where a provider decides to make a modification to a customer’s contract, unless that modification is one or more of the following:

- a) exclusively to the customer’s benefit (for example, a speed upgrade),
- b) is purely administrative and has no negative effect on the customer (for example, a change in the address or bank details of the provider), or

c) is directly imposed by law (for example, a change in the rate of VAT).

A10.16 We recognise that providers will need to identify which customers need to be notified of a particular change to the contractual terms and conditions, as not all customers will necessarily be affected by every change. For example:

a) Under the terms of a contract, a provider may enable customers to take ancillary services or facilities for which it levies an additional charge.² If the provider were to increase the charge for such ancillary services, for example paper billing, only customers who have opted to take that ancillary service would need to be notified of the change and offered the right to exit.

b) However, in contrast, just because a customer has never been late paying their bill, providers cannot assume that they will never be late making payment in the future. Therefore, providers would need to notify all customers of an increase in their late payment charge.

A10.17 The above will also be subject to any contractual terms that set out specified variations to the prices charged, or services offered, during the contract period (see below at A10.29).

A10.18 In addition, where a customer chooses to take an additional service offered by a third party under separate terms and conditions that apply between the customer and the third party, the communications provider would not be expected to notify the customer of changes made by the third party to those additional services.

A10.19 This would include where a third party markets directory enquiries or other premium rate call services, for which it sets a service charge that does not form part of the contract between the provider and their customer. Where there is an increase in the service charge set by the third party, the communications provider would not need to offer the customer the right to exit the contract for the communications service.

A10.20 In contrast, where an access charge for calling a premium rate service is levied by a communications provider, and forms part of the communications provider's contract with its customer, an increase in the access charge *would* trigger the right to exit (unless the increase was in line with a price variation clause, see below at A10.29).

A10.21 Providers should be able to demonstrate that they have mechanisms and processes in place to comply with the requirements of this GC and ensure affected customers are notified when they make changes to those customers' contractual terms and conditions.

Contractual modifications and the right to exit bundles

A10.22 Where a customer has the right to exit a bundle of services and/or terminal equipment (where applicable) as a result of a contractual modification falling under Conditions C1.14 and C1.15, they should have the choice to exit the whole bundle,

²See paragraphs A10.23-A10.26 for add-on services provided as part of a bundle, where those add-ons do not have a commitment period.

retain the whole bundle or retain the elements that are not subject to the contractual modification (where those elements are offered by the provider separately to the service that is subject to the contractual modification), if they so wish.

Optional add-on services

A10.23 Where a contractual modification is made to an optional add-on service, the right to exit does not apply to the rest of the bundle, as long as the optional add-on service is:

- a) not, in practice, part of the core service³ provided by the communications provider; and
- b) offered on a short-term basis (i.e. a contract period of no more than 30 days including one which may be automatically renewed for further periods of time unless the customer gives notice to terminate) or is not subject to a commitment period (for example is offered with no minimum contract period and may be terminated on notice of no more than 30 days).

A10.24 Therefore, when contractual modifications are made to an optional add-on service provided without a commitment period, we expect providers to assess whether that service is genuinely an optional add-on to the customer's core service(s).

A10.25 For example, a provider may provide a customer with a landline bundle which has an 18 month commitment period for the line rental service and a call package on a 30 day rolling basis (this could vary from basic options covering calls to UK landline and mobile numbers to more expensive options which might include larger allowances or international calls). Faced with a price increase for the call package, the customer could move to a different call package on 30 days' notice, however, their provider might not be able to offer them a different call package that meets their needs. Once a customer has entered a commitment period for a line rental service, they are in effect tied to that provider for landline calls for the duration of the commitment period for the line rental contract. Therefore, in practice, the call package is part of the core service taken by the customer. If there was a change in the terms of the call package that was not exclusively to the benefit of the customer, and the customer wished to terminate that element of their bundle, the customer would not be able to switch to a landline call package from another provider unless they also take line rental with that other provider.

A10.26 In this example, if a contractual modification falling within the scope of Condition C1.14 is made to the call package, the customer should also be given the right to exit the line rental for which they are tied into a commitment period, as well as any other bundled services, in accordance with Condition C1.15.

Changes to contractual prices Variation clauses in contracts

Application to bundles

³ For example, an add-on might be considered to be part of the core service if a customer is likely to consider it central to the service that is being provided and if a recurring charge for that add-on appears on the customer's bill each month.

A10.27 In some circumstances, communications services may be marketed and sold to subscribers together as part of a bundle. Such a bundle may include some services subject to conditions C1.6 to C1.9 and some not. It will be a question of fact and proper contractual construction as to whether all the services comprised in any such bundle are:

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

A10.28 In the first two circumstances, Ofcom is likely to treat conditions C1.6 to C1.9 as applying to the whole contract even if there are elements within it which, on their own, are not subject to that condition. We would be likely to regard any mid contract increase in the agreed core subscription price to be materially detrimental (or likely to be materially detrimental) for the purposes of conditions C1.6 to C1.9.

A10.29 Where a provider's contract contains a price variation clause, which has the effect of binding a customer to pay different prices at different times during their commitment period, the requirements in Conditions C1.14 and C1.15 will not apply, provided that, at the time the customer signed the contract:

- a) those terms were sufficiently prominent and transparent; and
- b) the provider ensured the customer was fully informed about the different amounts they would have to pay at different times, such that the customer can be said to have agreed to those terms.

A10.30 Price variation clauses should only be used where there is reasonable justification on practical grounds, and where the two criteria set out in the paragraph above are met.

A10.31 Our guidance on Contract Information and Contract Summary provides examples of how information on Core Subscription Price could be set out in clear and useful terms for customers. We would however expect providers to adopt a clear and transparent approach in setting out all price variation terms as part of the Contract Information, regardless of whether the service and/or facility constitutes part of the Core Subscription Price and regardless of whether the price variation is linked to a particular price index.

A10.32 Similar considerations would also apply for non-price variation terms where there are aspects of the provision of a service that might vary in accordance with the contractual terms and conditions in a way that does not involve a modification of those contractual terms and conditions.

Notification of ~~contract~~ contractual modifications and the right to exit

A10.33 We expect CPs to actively communicate to their subscribers any proposed contractual modifications. CPs need to ensure that subscribers know how such changes will be communicated to them. For example, the terms and conditions should state the method(s) used to communicate contractual modifications and timescales for doing so.

Notification methods

A10.34 Notifications should be set out with due prominence in order to attract the subscriber's attention. They should be in a form which subscribers can reasonably be expected to read.

A10.35 Notifications of proposed contractual modifications and the customer's right to exit should be set out in a clear and comprehensible manner on a durable medium.⁴

A10.36 Notifications should make the customer aware of the nature of the contractual modification, the likely impact on the customer, and set out clearly that they have the right to exit the contract without incurring additional costs, such as early termination charges.

A10.37 We consider that it is particularly important for these notifications to be set out with due prominence and in a form that customers can reasonably be expected to read. Key information, such as the customer's right to exit, should be contained upfront and in the main body of the notification rather than via a link in the message. This is to ensure that the customer is made aware of such changes and also of their right to exit their contract to avoid those changes. Some examples of how providers could do this are below.

A10.38 Letters and emails (if that is the preferred means of communication chosen by the customer) are the most obvious examples of notifications:

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

⁴ This is defined in the GCs as "paper or email or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored".

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

A10.39 Notifications may also be sent by SMS (text message). We are aware of the need to keep SMS relatively simple and concise in the interest of effective messaging. If a provider wishes to send notifications by SMS, it should ensure that key pieces of information, such as the customer's right to exit, are effectively conveyed in the main body of the SMS rather than via a link in the message. Any notifications sent by SMS should also include a link to a copy of the full notification which is in a durable medium.

Content of notification

A10.40 The notification must be clear and easy to understand. For example, it should make the customer aware of the nature of the contractual modification, the likely impact on him/her, and, where relevant, set out clearly what action the subscriber can take to avoid the impact, should he/she wish to.

A10.41 Information about the subscriber's termination rights should be made clear upfront. For example, on the front page of a hard copy notification, in the main email message rather than via a link in the message or on the actual webpage of the modification notification rather than via a link to another page.

Notification of termination rights

A10.42 Where it arises, a subscriber's right to terminate their contract must be real and capable of effective exercise in practice.

A10.43 To that end, where the subscriber does not have the ability to terminate, this should be made clear in the main body of the notification rather than in a footnote or a reference to the relevant clause of the terms and conditions.

A10.44 The minimum timescale that CPs should give subscribers the ability to exit the contract for any relevant changes is 30 days. This is to enable subscribers to consider the proposed contractual modification and give them time to research their options.

- a) When this 30 day period for termination starts and ends should be made clear to the subscriber in the notification they receive from the CP of the proposed changes.
- b) When the cancellation of the services actually takes effect following a subscriber's request to terminate should also be made clear.

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

A10.45 The notification should set out any fees payable by the customer on termination in accordance with Conditions C1.16 to C1.18. This would include fees for using the service in the period before the contract is terminated and fees for any retained terminal equipment.

A10.46 Providers must allow customers to exercise their right to terminate the relevant contract(s) within one month of notification of the contractual modification – we expect providers to give customers at least **30 days'** notice in order to comply with this requirement. We would expect providers to make clear in the notification the deadline by which the customer is able to exercise their right to terminate, i.e. it should specify the date by when the customer can terminate without incurring an early termination charge. Providers may give their customers a period of more than 30 days in which to exercise their right to terminate their contract if they wish to do so.

A10.47 If a customer gives the provider notice that they wish to exercise their right to terminate, providers should, where possible, ensure the contract is terminated the day before the modification comes into effect, unless the customer agrees an alternative termination date with the provider.

A10.48 Where a provider has practical difficulties terminating a contract the day before the proposed modification takes effect because the customer exercises their right to cancel at the end of the notice period, the provider should terminate the contract as soon as reasonably possible after that date and ensure that, in the meantime, the modification is not applied to that customer. The customer should not be subject to the contractual modification in the period between notifying their provider that they wish to exit their contract and the date on which the provider terminates the contract.

Further considerations

A10.49 The terms and conditions or other practices CPs providers apply (whether in contracts for bundled services and/or terminal equipment or other contracts relating to that in respect of which a relevant price rise contractual modification occurs) in respect of contract termination are also important considerations. Terms and/or practices which frustrate the practical effect of condition Conditions C1.6 C1.14 and C1.15 are liable to attract suspicion of non-compliance with the relevant rules.⁵

A10.50 CPs should also keep in mind the need to comply with all their obligations under the General Conditions, including as to switching processes. This is particularly relevant where the rules provide for a gaining provider led process under which a customer is able to switch providers by contacting a new provider and without needing to contact their existing one.

A10.51 Neither Condition C1.6 C1.15 itself nor this guidance requires that a subscriber customer must exercise their rights under that Condition by contacting their existing

⁵ In this regard, Condition C1.3 C1.8 is also relevant.

provider. One way the CP provider making contract modifications that are not exclusively to the benefit of the customer could meet its obligations in a relevant case is by telling the customer subscriber that they can exercise their the condition C1.6 termination rights may be exercised by authorising their contacting a new provider to do this following a regulated switching process.