
Review of the General Conditions of Entitlement

Statement on emergency planning direction, number
withdrawal and guidance on contract termination

STATEMENT

Publication Date: 26 March 2018

About this document

This is a statement about:

- a) updating a direction which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters;
- b) a further extension of our power to withdraw telephone numbers where they are used inconsistently with the National Telephone Numbering Plan or otherwise misused; and
- c) providing guidance about the procedures for terminating contracts.

These changes will take effect on 1 October 2018, the same day the revised GCs come into force.

Contents

Sections

1. Executive summary	1
2. Introduction	3
3. Emergency planning	7
4. Ofcom's further power to withdraw number allocations	10
5. Guidance under condition C1 to cover termination procedures	19

Annexes

A1. Notification of Ofcom's decision under section 49A of the Communications Act 2003 to revoke the 2003 Oftel direction and give a new emergency planning direction	33
A2. Notification of modifications to condition B1 of the revised GCs to further extend Ofcom's power to withdraw numbers	38
A3. Ofcom's Guidance under General Condition C1 – contract requirements	42
A4. List of respondents	43

Annex A3 is published as a separate annex.

1. Executive summary

Introduction

- 1.1 The ‘General Conditions of Entitlement’ (the ‘GCs’) are the regulatory conditions that apply to all providers of electronic communications networks and services that operate in the UK (‘communications providers’ or ‘CPs’).
- 1.2 On 19 September 2017, we published a statement (the ‘**September 2017 statement and consultation**’) revoking the current GCs and replacing them with a revised set of GCs with effect from 1 October 2018.¹ Together with our final decisions, we also consulted on certain further consequential proposals:
- a) updating a 2003 direction which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters;
 - b) a further extension of our power to withdraw telephone numbers where they are used inconsistently with condition B1 (of the revised GCs), the National Telephone Numbering Plan (the ‘**Numbering Plan**’) or otherwise misused; and
 - c) providing guidance about the procedures for terminating contracts.
- 1.3 In this document, we set out our final decisions regarding the proposals contained in the September 2017 statement and consultation, and the reasons for them.

Consultation responses

- 1.4 We received two responses² on the proposed emergency planning direction; seven responses³ on our proposals concerning number withdrawal; and seven responses⁴ on the proposed guidance about the procedures for terminating contracts.
- 1.5 In summary:
- a) BT and Telecom2 broadly agreed with the proposed emergency planning direction;
 - b) respondents who provided comments on our proposals concerning number withdrawal agreed with our proposals in principle. However, respondents requested clarification on how withdrawal of allocated numbers would work in practice and suggested that we address some implementation issues around the impact of withdrawing the whole number block in cases of number misuse;

¹ Ofcom’s statement and consultation of 19 September 2017 entitled ‘Review of the General Conditions of Entitlement’: <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

² BT and Telecom2.

³ BT, Colt, Nexbridge, Telecom2, Three, UKCTA and Virgin Media. Colt, Nexbridge and UKCTA provided their comments on number withdrawal in their response to our consultation on providing guidance about the provision of calling line identification facilities.

⁴ BT, Vodafone, Sky, Three, Virgin Media, Telecom2 and Verastar.

- c) the majority of respondents to our proposed guidance about the procedures for terminating contracts agreed, in principle, that guidance in this area was helpful. However, respondents raised a number of concerns about the content of the guidance, in particular about the level of prescription, the interaction with other regulatory requirements, its scope, and the distinction between ‘best practice’ and minimum requirements.

Ofcom’s decisions

The new emergency planning direction

- 1.6 We have decided to implement our proposals concerning the emergency planning direction.

Withdrawal of number allocations

- 1.7 We have decided to implement our proposals concerning our power to withdraw telephone numbers where they are used inconsistently with condition B1, the Numbering Plan or otherwise misused.

Ofcom’s guidance on procedures for terminating contracts

- 1.8 We have decided to publish guidance under condition C1.3. We have made a number of changes to the guidance we proposed in September 2017 in response to stakeholder comments, in particular we have removed the detailed specifications and instead focused the guidance on the consumer outcomes that we expect from CPs’ termination procedures. We have also added a clearer distinction between examples of good practice and the minimum requirements for compliance.
- 1.9 We have consolidated this new guidance on condition C1.3 with our existing guidance on condition C1.6 into one document at Annex A3, which is published as a separate annex.⁵

Next steps

- 1.10 The new emergency planning direction, the further changes that we have decided to make to condition B1, and the guidance on termination procedures, will take effect on 1 October, 2018, the same day that the revised GCs come into force.

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf

2. Introduction

Ofcom's proposals for consultation

- 2.1 In September 2017, we published a statement (the '**September 2017 statement and consultation**') revoking the current GCs and replacing them with a revised set of GCs with effect from 1 October 2018.⁶ Together with our final decisions, we also consulted on certain further consequential proposals:
- a) updating a 2003 direction which specifies which public bodies may request industry to make arrangements for the restoration of communications services in the event of disasters;
 - b) a further extension of our power to withdraw telephone numbers where they are used inconsistently with condition B1, the Numbering Plan or otherwise misused; and
 - c) providing guidance about the procedures for terminating contracts.
- 2.2 We invited stakeholders to respond to our consultation by 14 November 2017 (i.e. within eight weeks of the publication of our consultation document).
- 2.3 The following stakeholders provided comments on our proposals:
- a) BT and Telecom2 provided comments on the proposed new emergency planning direction;
 - b) BT, Colt, Nexbridge, Telecom2, Three, UKCTA and Virgin Media provided comments on our proposals concerning number withdrawal; and
 - c) BT, Sky, Telecom2, Three, Virgin Media, Verastar and Vodafone provided comments on the proposed guidance about the procedures for terminating contracts.
- 2.4 All non-confidential responses are available on our website.⁷
- 2.5 The rest of this document is structured as follows:
- a) in paragraphs 2.6-2.21 (Section 2), we set out the relevant legal framework and our duties;
 - b) in Sections 3, 4 and 5, we summarise stakeholders' responses and we set out the decisions that we have decided to make in light of these responses;
 - c) Annex 1 is a notification under section 49A of the Communications Act 2003 (the '**Act**') setting out the emergency planning direction that we have decided to make under condition A4.2 of the revised GCs;

⁶ Ofcom's statement and consultation of 19 September 2017 entitled 'Review of the General Conditions of Entitlement': <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>. Colt's, Nexbridge's and UKCTA's responses are available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-for-cli-facilities>

- d) Annex 2 is a notification under section 48(1) of the Act setting out our decision to amend condition B1 of the revised GCs to further extend Ofcom's power to withdraw numbers;
- e) Annex 3 sets out Ofcom's guidance under condition C1 of the revised GCs.

The legal framework and our duties

Section 3 – Ofcom's general duties

- 2.6 When considering the appropriateness of our decisions, we have had regard to our duties under the Act.
- 2.7 In particular, section 3(1) of the Act sets out our principal duty in carrying out our functions under the Act, which is:
 - a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in the relevant markets, where appropriate by promoting competition.
- 2.8 We have also considered 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 we have had regard to the matters mentioned in section 3(4) of the Act that appeared to us to be relevant to the matters discussed in this statement.
- 2.9 In line with section 3(3) of the Act, we have had regard to the principles under which our regulatory activity should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, together with our regulatory principles. These principles include, in particular, a bias against intervention and a commitment to seek the least intrusive regulatory mechanisms to achieve our policy objectives.

Section 4 – Ofcom's duties for the purpose of fulfilling EU obligations

- 2.10 Section 4 of the Act requires us to act in accordance with the six EU requirements for regulation. These should be read in light of the policy objectives and regulatory principles as set out in Article 8 of the Framework Directive. Those relevant to this statement include:
 - a) ensuring that users, including disabled users, elderly users, and users with special social needs, derive maximum benefit in terms of choice, price and quality (Art.8(2)(a));
 - b) ensuring a high level of protection for consumers in their dealings with suppliers (Art.8(4)(b));
 - c) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using public electronic communications services (Art.8(4)(d));
 - d) encouraging efficient use and ensuring the effective management of numbering resources (Art.8(2)(d)); and
 - e) ensuring that the integrity and security of public communications networks are maintained (Art.8(4)(f)).

Section 47 – test for setting or modifying numbering conditions

- 2.11 Our powers to make general conditions are set out in sections 45 to 64 of the Act. Section 45 of the Act allows us to set various different types of conditions, namely general conditions, universal service conditions, access-related conditions, privileged supplier conditions and significant market power conditions. The general conditions are conditions which are of general application. We can impose them on all CPs or on all providers of networks or services of a particular description.⁸
- 2.12 The types of GCs which may be imposed on CPs are limited by the EU Framework. The Authorisation Directive, in particular, provides a maximum list of GCs which may be attached to a general authorisation (Annex 1, Part A). These EU provisions have been implemented in the UK through sections 51, 52, 57, 58 and 64 of the Act (section 45(3) of the Act), which set out the matters that we can regulate through the GCs.
- 2.13 The matters that we can regulate through the GCs include the use of telephone numbers (sections 56-63 of the Act). In particular, we have the power to specify in the numbering conditions the circumstances in which Ofcom may withdraw a number allocation for the purpose of securing what appears to us to be the best and most efficient use of the numbers (section 61(2)(d) of the Act).
- 2.14 Under section 47 of the Act, we can set or modify a GC only where we are satisfied that the condition or modification is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories which we regulate;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the condition or modification is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 2.15 In carrying out our telephone numbering functions, we are also required to fulfill these further duties:
- a) to secure that what appear to us to be the best use is made of numbers that are appropriate for use as telephone number (section 63(1)(a) of the Act);
 - b) to encourage efficiency and innovation for that purpose (section 63(1)(b) of the Act); and
 - c) to secure that there is no undue discrimination by CPs against other CPs in relation to the adoption of telephone numbers for purposes connected with the use by one CP, or his customers, of an electronic communications network or electronic communications service provided by another (section 63(2) of the Act).

⁸ We cannot impose general conditions on specific individual providers.

- 2.16 In Section 4, we have set out why we consider that our decision to extend our power to withdraw telephone numbers where they are used inconsistently with the Numbering Plan or otherwise misused set out in this document meet these legal tests.

Section 49 – test for revoking and giving directions

- 2.17 Under section 45(10)(a) of the Act, Ofcom’s power to set a general condition includes power to impose a requirement on the person or persons to whom the condition is applied to comply with such directions with respect to the matters to which the condition relates as may be given from time to time by Ofcom or by another person specified in the condition.
- 2.18 Ofcom’s power to give, modify or withdraw any such direction is subject to the requirements set out in sections 49-49C of the Act.
- 2.19 Under section 49(2) of the Act, we can give, modify or withdraw a direction only where we are satisfied that that to do so is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories which the direction relates to;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what the direction or modification is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 2.20 We note that, pursuant to section 49(2A) of the Act, the objective justification requirement in section 49(2)(a) does not apply in relation to a direction affecting a GC. However, for completeness, we have explained in Section 3 why we consider that our decision to revoke the 2003 emergency planning direction and make a new emergency planning direction is objectively justifiable.

Impact assessment

- 2.21 The analysis presented in the September 2017 statement and consultation (paragraphs 4.115-4.121, 5.66-5.75 and 7.61-7.66) constituted an impact assessment as defined in section 7 of the Act. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making.

3. Emergency planning

Consultation proposals

- 3.1 The GCs require CPs to co-operate with central and local government departments and the authorities responsible for emergency operations to make arrangements for the provision or rapid restoration of the communications services which are needed in the event of disasters and major incidents.
- 3.2 As part of our review of the GCs, we have decided to retain this condition (currently, **GC 5**), re-number it as condition **A4**, and make a few minor drafting changes to simplify this condition.⁹
- 3.3 Condition A4.2 (as re-numbered) requires CPs to make arrangements for the restoration of communications services in disaster situations, on the request of the emergency organisations, or any department of central or local government that Ofcom directs. The revised condition, which will come in force on 1 October 2018, reads as follows:

“A4.2 Subject to **Condition A4.4, Regulated Providers** shall, on the request of and in consultation with:

(a) the authorities responsible for **Emergency Organisations**; and

(b) such departments of central and local government as **Ofcom** may from time to time direct for the purposes of this **Condition**,

make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in disasters (including in any major incident having a significant effect on the general public and in any incident of contamination involving radioactive substances or other toxic materials).”

- 3.4 For the purposes of condition A4.2, ‘Regulated Providers’ means:

“any **Communications Provider** who provides a **Publicly Available Telephone Service** and/or a **Public Electronic Communications Network** over which a **Publicly Available Telephone Service** is provided”.

- 3.5 The direction in force under the current GC 5.1(b) (the “**2003 Oftel Direction**”)¹⁰ was issued in 2003 by Oftel, one of Ofcom’s predecessors. It is now out of date in that it refers to central and local government departments that no longer exist, but does not refer to

⁹ See paragraphs 4.100-4.114 of the September 2017 statement and consultation.

¹⁰ On 30 July 2003, Oftel issued a direction which specifies a list of central and local government departments for the purposes of the current GC 5.1(b). The 2003 Direction is available here: http://webarchive.nationalarchives.gov.uk/20080715052813/http://www.ofcom.org.uk/static/archive/oftel/ind_info/licensing/determinations/2003/emergplan0803.pdf, p 8 – 19.

departments that may be relevant now, but which were formed after the date the 2003 Oftel Direction came into force.

3.6 In the September 2017 statement and consultation (paragraphs 4.115-4.121), we proposed to update the 2003 Oftel Direction, and that the revised direction would come into force on the same date as the revised GCs (i.e. 1 October 2018).

3.7 Specifically, we proposed to update and simplify the 2003 Oftel Direction by replacing the current lists of central and local government departments and local government authorities with a statement that all ministerial and non-ministerial government departments and all local authorities are covered. We said that this would have the effect of allowing any government departments or local authorities to request CPs to consult them for the purpose of making arrangements for the provision of the services which are necessary in the event of disasters and emergencies.

3.8 We explained that we considered this approach would be consistent with the approach taken by Oftel in the 2003 Oftel Direction, and would also simplify and shorten the direction. It would also mean that at any given time, all government departments and local authorities would be captured, meaning that if a new government department or local authority is established after the date of the revised direction coming into force, that department or authority would automatically be covered by the revised direction.

3.9 We proposed that the revised direction would list the following public bodies:

- a) all ministerial and non-ministerial departments of UK Government;
- b) in relation to England:
 - i) Metropolitan districts;
 - ii) London boroughs;
 - iii) the City of London;
 - iv) the Greater London Authority;
 - v) Local Government Regulation;
 - vi) Unitary authorities;
 - vii) the Council of the Isles of Scilly;
 - viii) County councils; and
 - ix) District councils;
- c) in relation to Wales:
 - i) a county council; and
 - ii) a county borough council;
- d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and
- e) in relation to Northern Ireland, a local council.

Stakeholders' comments and Ofcom's assessment

- 3.10 BT and Telecom2 provided comments on our proposals:
- a) BT said it has “no issues” with our proposal; and
 - b) Telecom2 said it had no objection to the change, but that it “would want “local authorities” to be more tightly defined”. Telecom2 added that: “While there is a generally recognised view of what constitutes a local authority this is open to challenge and misuse”.
- 3.11 We note that although we used the term “local authority” in the text of the September 2017 statement and consultation, we did not propose that this term would be included in the direction itself, but rather listed the specific types of public bodies which would be covered by the direction.

Ofcom's decisions

- 3.12 We have decided to implement the proposals concerning the emergency planning direction which we set out in the September 2017 statement and consultation (paragraphs 4.115-4.121).
- 3.13 The new emergency planning direction that will replace the 2003 Oftel Direction with effect from 1 October 2018 can be seen at Annex A1.

Legal test

- 3.14 We consider that the changes that we have decided to make to the 2003 Oftel Direction meet the test for setting or modifying directions set out in section 49(2) of the Act. These changes are:
- a) **objectively justifiable**, in that it remains necessary to ensure that CPs respond to requests from government departments to make arrangements for communications services in the event of disasters;
 - b) **not unduly discriminatory** in that all CPs affected by the direction will be under the same obligation;
 - c) **proportionate** in that the revised condition (condition A4.4, as re-numbered) will continue to allow for the recovery of the costs and for an indemnity to be sought from the emergency organisations, or other government departments; and
 - d) **transparent**, in that the revised direction, and its effect, have been set out in the September 2017 statement and consultation and in this final statement.

4. Ofcom's further power to withdraw number allocations

Consultation proposals

- 4.1 The GCs impose various obligations on CPs in relation to telephone numbers, including the circumstances in which Ofcom may withdraw a number allocation for the purpose of securing what appears to us to be the best and most efficient use of the numbers.
- 4.2 As part of our review of the GCs, we have decided to retain the condition setting out the circumstances in which Ofcom may currently withdraw a number allocation (currently, **GC 17.19**), re-number it as condition **B1.18**, and add that Ofcom may withdraw telephone numbers when a CP is unable to demonstrate either that numbers are currently assigned to a subscriber, or that numbers have been assigned to a subscriber within the previous 12 months, where the withdrawal would be made to secure what appears to Ofcom to be the best and most efficient use of the numbers.¹¹
- 4.3 In the September 2017 statement and consultation (paragraphs 5.66-5.75), we also consulted on a further extension of our power to withdraw telephone numbers where they are used inconsistently with condition B1, the Numbering Plan or otherwise misused on the following grounds:
- a) We noted that, in response to Ofcom's consultation of 20 December 2016,¹² Vodafone suggested that we should consider a further extension of our power to withdraw numbers where they are used inconsistently with the Numbering Plan or otherwise misused.
 - b) The current GC 17.4 (condition B1.5 as re-numbered) requires CPs to comply with all applicable restrictions and requirements as set out in the Numbering Plan, as well as any restrictions and requirements set out in a notification issued by Ofcom to that CP recording the allocation of the specific numbers to it. Furthermore, current GC 17 sets out additional requirements on CPs in connection with the adoption or otherwise use of telephone numbers, including securing that numbers are adopted or otherwise used effectively and efficiently (GC 17.5)¹³; not unduly discriminating against another CP or its customers (GC 17.6)¹⁴; and taking all reasonably practicable steps to secure that the

¹¹ See paragraphs 5.5-5.6 and 5.17-5.31 of the September 2017 statement and consultation.

¹² Ofcom's consultation of 20 December 2016 entitled 'Review of the General Conditions of Entitlement. Consultation on the general conditions relating to consumer protection'; https://www.ofcom.org.uk/data/assets/pdf_file/0032/95873/Review-of-the-General-Conditions-of-Entitlement-Consultation-on-the-general-conditions-relating-to-consumer-protection.pdf.

¹³ Condition B1.6, as re-numbered.

¹⁴ Condition B1.7, as re-numbered.

CP's customers, in using numbers, comply (where applicable) with the provisions of GC 17, the Numbering Plan and the "Non-provider Numbering Condition" (GC 17.7).¹⁵

- c) Misuse of electronic communications networks and services involves using a network or service in ways which cause or are likely to cause someone else, especially consumers, to suffer harm. Misuse is persistent where it is repeated enough for it to be clear that it represents a pattern of behaviour or practice, or recklessness about whether others suffer the relevant kinds of harm.¹⁶
- d) Where Ofcom is made aware of instances of apparent misuse of electronic communications networks or services in relation to particular telephone numbers, Ofcom often, as a first step in addressing that apparent misuse, contacts the CP to whom we have allocated the numbers. This contact is not only a means for us to attempt to identify the end-user, but also, in appropriate cases, to enlist the help of the CP(s) involved to address the apparent misuse of the numbers. Responsible CPs have generally been responsive to our requests and their assistance helps to rectify the misuse being carried out by problematic end-users. However, our experience suggests that some CPs can be more reluctant to help and may take little or no responsibility for how their allocated numbers are used. In these cases, the relevant CP may be aware of, or even complicit in, the misuse being perpetrated by its end-user customers.
- e) While Ofcom has powers under sections 128 to 130 of the Act to take enforcement action against those who persistently misuse electronic communications networks and services, we are often unable to withdraw the numbers that have been misused. Similarly, Ofcom has the power to take enforcement action in respect of a contravention of condition GC 17, pursuant to sections 96A and 96C of the Act. However, we do not have the power to withdraw numbers from CPs that are not using them in accordance with the Numbering Plan and GC 17 (unless there have been serious and repeated contraventions of the numbering conditions and the taking of other steps is likely to prove ineffective for securing future compliance).¹⁷ This is because the current GC 17.19 enables Ofcom to withdraw those numbers that a CP has not adopted (and which have therefore not been misused), but does not permit Ofcom to withdraw numbers which have been adopted and subsequently used in contravention of the numbering conditions or to engage in persistent misuse of a network or service.
- f) Our powers to withdraw telephone numbers are set out in section 61 of the Act. This includes at section 61(2)(d) the withdrawal of numbers for the purpose of securing what appears to Ofcom to be the best and most efficient use of the numbers, in circumstances specified in the numbering conditions. We said that, to avoid the harm to consumers that might arise in the circumstances identified by Vodafone (e.g.

¹⁵ Condition B1.8, as re-numbered.

¹⁶ See Ofcom's statement of 20 December 2016 entitled "Persistent Misuse: a statement of Ofcom's general policy on the exercise of its enforcement powers" (paragraphs 1.1 and 1.4);

https://www.ofcom.org.uk/data/assets/pdf_file/0024/96135/Persistent-Misuse-Policy-Statement.pdf

¹⁷ Section 61(3) of the Act.

nuisance calls where the CP allocated the numbers knowingly facilitates persistent misuse; contraventions of the numbering conditions), we considered that it would be appropriate, in reliance on section 61(2)(d) of the Act, to amend the current GC 17.19 (condition B1.18, as re-numbered) to introduce additional grounds on which Ofcom may withdraw numbers.

- 4.4 Specifically, we proposed to add that Ofcom may withdraw a number allocation in these further circumstances:
- a) where the CP has used a significant proportion of a number allocation, or has used an allocation to a significant extent, inconsistently with condition B1, or to engage in fraud or misuse; or
 - b) where the CP has been advised by Ofcom in writing that a significant proportion of an allocation of numbers, or that an allocation of numbers has been used to a significant extent, to cause harm or a nuisance, and the CP has failed to take adequate steps to prevent such harm or nuisance.

4.5 We specified that any exercise of this proposed power of withdrawal would be subject to the safeguards in section 61(5) of the Act. Namely, the power would be exercisable only in a manner that does not discriminate unduly against particular CPs, against particular users of the allocated numbers or against a particular description of such CPs or users. In addition, section 3(3) of the Act requires Ofcom to have regard, in all cases, to principles of best regulatory practice, including proportionality, consistency and targeting activities only at cases in which action is needed.

4.6 We proposed to implement this policy proposal by adding the following paragraphs (i.e. paragraphs (d) and (e)) to condition B1.18 (as re-numbered):

“B1.18 Ofcom may withdraw an **Allocation of Telephone Numbers** from a **Communications Provider** where:

[(a)- (c)]

(d) the **Communications Provider** has used a significant proportion of those **Telephone Numbers**, or has used such **Allocation** to a significant extent, inconsistently with this **Condition**, or to engage in fraud or misuse; or

(e) **Ofcom** has advised the **Communications Provider** in writing that a significant proportion of those **Telephone Numbers**, or that such **Allocation** has been used to a significant extent, to cause harm or a nuisance, and the **Communications Provider** has failed to take adequate steps to prevent such harm or nuisance.”

Stakeholders' comments

- 4.7 The following stakeholders provided comments on our proposals: BT, Colt, Nexbridge, Telecom2, Three, UKCTA and Virgin Media.¹⁸
- 4.8 The majority of respondents agreed with our proposals in principle. However, respondents requested clarification on how withdrawal of allocated numbers would work in practice. They suggested that we should address some implementation issues around the impact of withdrawing the whole number block in cases of number misuse, particularly if there are genuine users of numbers in the same block and numbers ported to another CP. Below, we summarise stakeholders' responses by respondent.
- 4.9 Colt and UKCTA agreed with our proposal that numbers should be withdrawn for continuous breaches by a CP. UKCTA added that "this should be part of a fair and transparent enforcement process".
- 4.10 Three said that it welcomed Ofcom's efforts to tackle harm and nuisance arising from the misuse of numbers and supported our initiatives to prevent such behaviour. However, it stated that "Ofcom should make clear that it will only withdraw numbers where the relevant CP is complicit in the generation of nuisance calls and that Ofcom does not require CPs to police the behavior of their customers as B1.18(e) suggests".
- 4.11 Telecom2 agreed in principle with the proposal but added that "there may be circumstances where there is 'benevolent' misuse, for example to provide services to people who for political and/or personal safety reasons may not be able to access those services provided on numbers traditionally used for them, as currently takes place". Telecom2 also stated that it expected both an accompanying independent appeal procedure to ensure that "reasonable departures from the Numbering Plan are catered for" and "a high standard of evidence required" to prevent numbers being "withdrawn on the basis of unsound or malicious allegations by CPs".
- 4.12 Nexbridge also welcomed the proposed measures. However, on implementation, it provided the following comments: "Ofcom's proposal to potentially withdraw a rangeholder CP's entire number range(s) due to potential misuse has an adverse effect on genuine users of numbers in a range, however will obviously encourage a rangeholder CP to comply to address non-compliance within that range. Unfortunately, should Ofcom decide to withdraw a range due to no response from a rangeholder CP, any numbers that have been exported via number portability from the range(s) being withdrawn to a gaining communication provider (GCP), will also be disconnected by virtue of the number range being withdrawn."
- 4.13 BT fully supported the principle of withdrawing numbers when they are misused, but suggested two changes to our proposals.

¹⁸ Colt, Nexbridge and UKCTA provided comments in their response to our consultation on providing guidance about the provision of calling line identification facilities. Their responses are available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-for-cli-facilities>

- 4.14 Firstly, BT said that we must define “misuse” and outline the circumstances when we would consider withdrawing numbers. In particular, BT said that the “National Telephone Numbering Plan may not always be fully up to date to reflect recent technological or market changes” and that, for instance, “the current plan (Section B3.1.1) doesn’t appear to reflect the nature of the provision of IP numbers and instances where ‘Out of Area use of Geographic Numbers’ that BT would consider legitimate or unavoidable may occur”. BT suggested that we either clarify that our new power will not be used in such cases or update the Numbering Plan to reflect these developments.
- 4.15 Secondly, BT envisaged issues if we withdrew the whole number block when only some of the numbers in that block were misused. BT argued that “Ofcom should not withdraw whole number ranges in the same way it might when numbers aren’t utilised, unless all the numbers in use on that range are being misused”. BT suggested that, instead, we should withdraw only the individual numbers that are being misused. BT provided the following examples of cases where, in BT’s view, withdrawing the whole number block would not be an appropriate response since it might cause significant harm to legitimate users:
- a) when a single number or small quantity of numbers are being misused within a number block; and
 - b) when the number or numbers in question form part of a block where some numbers have been ported out to another CP, or sold via a reseller or dealer who sub-allocated these numbers.
- 4.16 In the above situations, BT stated that we should withdraw only the individual numbers that are being misused and indicated its willingness to “discuss with Ofcom the technical demands and possibilities that will ensure the withdrawal of numbers without creating an unintended wider impact”.
- 4.17 Virgin Media said that it does not have any policy objections to our proposals, but suggested that we need to consider the following “practical questions which concern implementation”:
- a) how we would manage cases where the misuse is not perpetrated by the end user, but rather by the CP, to ensure that the withdrawal does not negatively impact the end user;
 - b) the process that we would follow where a CP which is not aware of the misuse has ported in numbers from the block in question. Virgin Media suggested that in such cases Ofcom would need to notify all parties in the number supply chain and set out a reasonable timeframe for migration to a new number if the block was to be withdrawn;
 - c) whether we would consult on the proposed withdrawal of a number block;
 - d) whether we would expect other CPs to take action in response to our decision to withdraw an allocated number block. Virgin Media said that, for example, “Virgin Media operates a default routing system and in most cases would take no action if another CP had a range withdrawn (i.e. Virgin Media would not actively cease the range in our network)”; and

- e) whether Ofcom would put the withdrawn numbers into quarantine for a period of time before being reallocated to a new operator.

Ofcom's assessment

General comments on the proposal

- 4.18 We welcome stakeholders' support for our proposal to further extend our power to withdraw telephone numbers to when they are used inconsistently with condition B1, the Numbering Plan or otherwise misused. We consider this to be an important measure to help protect consumers from fraud, misuse and nuisance calls.
- 4.19 We understand stakeholders' concerns over practical implementation issues. We emphasise that Ofcom would use this power in a proportionate manner, on a case-by-case basis, taking into account all relevant information on number use. It is stressed that the withdrawal power relates to cases of significant misuse, i.e. where a significant proportion of numbers in an allocation have been misused, or where the allocation has been used to a significant extent inconsistently with condition B1, or to engage in fraud or misuse, or to cause harm or nuisance.
- 4.20 As set out in the September 2017 statement and consultation, any exercise of this power of withdrawal would be subject to the safeguards in section 61(5) of the Act (i.e. exercisable only in a manner that does not discriminate unduly against particular CPs, against particular users of the allocated numbers or against a particular description of such CPs or users) and section 3(3) of the Act (i.e. we will have regard, in all cases, to principles of best regulatory practice, including proportionality, consistency and targeting activities only at cases in which action is needed). We confirm, therefore, that we would exercise our discretion in a manner that does not give rise to undue discrimination and ensures proportionality. In doing this, the nature of the number misuse and/or the manner in which numbers are used inconsistently with condition B1 or the Numbering Plan will be taken into account when we assess whether the misuse is significant and when we consider any appropriate action.¹⁹
- 4.21 In proposing to withdraw numbers from a CP, Ofcom would seek information from the CP holding the allocation to confirm how the numbers in the block are being used, including whether any numbers have been ported to another CP. Ofcom would consider all relevant information when determining the appropriate action.
- 4.22 In terms of responsibility for ensuring that numbers are used consistently with condition B1, the Numbering Plan or are not otherwise misused, we remind CPs of the requirement

¹⁹ For instance, BT asked whether the extended power for Ofcom to withdraw numbers would be used in cases of number use inconsistent with the Numbering Plan but where the technology employed or particular services provided meant the use was "legitimate or unavoidable". Telecom2 referred to "circumstances where there is benevolent misuse" of numbers. We confirm that such cases would be considered within the context set out in paragraphs 4.19-4.20.

in GC 17.7²⁰ for them to “take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply (where applicable) with the provisions of this Condition, the provisions of the National Telephone Numbering Plan and the Non-provider Numbering Condition”. Furthermore, GC 17.8(b)²¹ requires that CPs “shall not transfer use of Telephone Numbers from the National Telephone Numbering Plan (...) unless the telephone numbers are used in accordance with the National Telephone Numbering Plan”. Therefore, CPs are already required to ensure that numbers allocated to them are not misused. Under condition B1.18(e) of the revised GCs, Ofcom will advise the CP in writing of the misuse and provide an opportunity for the CP to take adequate steps to prevent such harm or nuisance before Ofcom considers withdrawing the numbers. We also consider it to be the CP’s responsibility to notify its customers of a number withdrawal.

Withdrawal of number blocks

- 4.23 We will not withdraw numbers in units smaller than can be supported by CPs. In most cases, withdrawal would be at the block size at which the numbers were originally allocated. However, if the standard block size for allocation of the number type had changed since the numbers were allocated (e.g. geographic numbers in Conservation Areas, which are allocated in units of 1,000 numbers, whereas previously they were allocated in units of 10,000 numbers) withdrawal may be made at that level.
- 4.24 The reason for allocation and withdrawal of numbers in large blocks rather than individual numbers is a result of technical routing constraints in some long-established networks. Telephone networks analyse the digits of dialled phone numbers to extract (or ‘decode’) the necessary information for routing and tariffing of calls. Some older networks use equipment designed many years ago to perform this function and this equipment has limited capacity to decode digits. This means that the minimum size of number block that can be allocated to any CP must be sufficiently large to accommodate these restrictions, otherwise the older networks would not be able to route calls correctly. Similarly, we are unable to withdraw individual or small quantities of numbers and need to withdraw numbers in blocks.
- 4.25 We recognise that withdrawing numbers in blocks, rather than individually, could result in several impacts. Distribution of numbers from an allocated block to end users often takes place through various supply chains, including sub-allocation to other CPs and reselling arrangements. Therefore, although Ofcom’s allocation of a number block is to a single ‘range holder’ CP, there may be many other entities involved in number and service supply from a single number block. Number withdrawal, therefore, may impact entities who are not engaging in misuse of their numbers.
- 4.26 Also, the technical solution used for number portability in the UK means that calls to a ported number are routed to the range holder CP, who then ‘onward routes’ the call to the CP now providing service to the end user. Completion of calls to a ported number requires

²⁰ Condition B1.8 as re-numbered.

²¹ Condition B1.9(b) as re-numbered.

the block containing the number to be allocated and adopted. If a number block is withdrawn from a CP, then calls to ported numbers within that block cannot be routed to the recipient CP and will fail.

- 4.27 We will endeavour to minimise the impact of number block withdrawal on entities that are not misusing their numbers as far as possible, in terms of the size of number block that is withdrawn. We will discuss any ability for legacy networks to handle smaller blocks of numbers with the relevant CPs. We add that future migration to all IP networks should remove the routing restrictions associated with legacy networks and eradicate the need to allocate and withdraw numbers in large blocks.

Clarification on implementation issues

- 4.28 Telecom2 asked about the investigation and appeals procedure for withdrawals. We will follow our guidelines on how Ofcom approaches investigations into compliance with and enforcing regulatory requirements, including the numbering conditions.²² This includes information gathering. An appeals procedure exists for Ofcom’s numbering decisions, including decisions on number withdrawal.²³
- 4.29 BT requested that we define ‘misuse’ and outline the circumstances where we would consider withdrawing numbers. Section 128(5) of the Communications Act 2003 states that “a person misuses an electronic communications network or electronic communications service if (a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or (b) he uses the network to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety”. Circumstances where Ofcom might investigate the withdrawal of numbers could include those where the use of numbers has the effect or likely effect of causing annoyance, inconvenience or anxiety.
- 4.30 Virgin Media asked about any consultation process on the withdrawal of a number block. As mentioned, we will follow our enforcement guidelines on regulatory investigations and will engage with the CP holding the allocation, as well as any other stakeholders considered relevant to the investigation. We would not consult publicly on a proposal to withdraw a number block.
- 4.31 Virgin Media enquired about action to be taken by other CPs on the withdrawal of a number block. We remind CPs that the National Numbering Scheme, updated weekly on our website,²⁴ sets out the status of number allocations. CPs are responsible for ensuring that their records are updated to reflect the most recent changes to the National Numbering Scheme, including withdrawals, and for amending their routing plans accordingly.

²² Enforcement guidelines for regulatory investigations, 28 June 2017

www.ofcom.org.uk/_data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf

²³ See section 192 of the Communications Act 2003.

²⁴ <http://static.ofcom.org.uk/static/numbering/index.htm>

4.32 Virgin Media also asked if Ofcom would quarantine withdrawn numbers. We can confirm that number blocks withdrawn are protected from subsequent allocation for a minimum of six months, although generally the time before reallocation of a withdrawn number block is considerably longer.

Ofcom's decisions

4.33 We have decided to implement the proposals concerning a further extension of our power to withdraw telephone numbers where they are used inconsistently with condition B1, the Numbering Plan or otherwise misused, which we set out in the September 2017 statement and consultation (paragraphs 5.66-5.75).

4.34 The new paragraphs that will be added to condition B1.18 (as re-numbered) with effect from 1 October 2018 can be seen at Annex A2.

Legal test

4.35 We consider that the further changes that we have decided to make to condition B1 meet the test for setting or modifying conditions set out in section 47(2) of the Act. These changes are:

- a) **objectively justifiable**, as they will ensure that our powers to withdraw telephone numbers are consistent with our duty to secure the best and most efficient use of telephone numbers;
- b) **not unduly discriminatory**, in that all CPs that have been allocated telephone numbers will be subject to these changes;
- c) **proportionate**, as these changes are the minimum necessary to achieve the objectives outlined above; and
- d) **transparent**, as these changes are explained in this document and set out in full in Annex A2.

4.36 In addition, we consider that we are fulfilling our general duty in relation to our telephone numbering functions, as set out in section 63 of the Act, by **securing the best use of telephone numbers** and **encouraging efficiency and innovation** for that purpose. In particular, the new power of withdrawal will enable Ofcom to ensure that numbers are not used inconsistently with condition B1, the Numbering Plan or otherwise misused, thereby making better and more efficient use of numbers.

5. Guidance under condition C1 to cover termination procedures

Consultation proposals

- 5.1 The current **GC 9** (re-numbered as condition **C1**) requires CPs to include certain minimum specified terms when entering into a contract for communications services with consumers and other end-users. It also sets out requirements about contract duration, facilitating changes of CP and end-users' rights to terminate a contract, which are designed to ensure that end-users are treated fairly and able to switch to a different provider in appropriate cases.
- 5.2 In the September 2017 statement and consultation (paragraphs 7.61-7.66), we proposed to extend the guidance under condition C1 by outlining Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination comply with GC 9.3 (condition C1.3, as re-numbered). C1.3 provides that CPs must ensure that conditions or procedures for contract termination do not act as disincentives for end-users changing their CP.
- 5.3 The proposed guidance, shown at Annex A11 to the September 2017 statement and consultation:
- a) covered some examples of what we consider to be good practice in relation to several specific procedures, as identified through our monitoring and enforcement work; and
 - b) also incorporated, without any substantive changes, our previous guidance on automatically renewable contracts.²⁵
- 5.4 As part of our review of the GCs, in the September 2017 statement and consultation we decided to specify how the current GC 9.6 (condition C1.6, as re-numbered) applies to price rises in the condition itself (see conditions C1.7-C1.9), and retain the existing guidance in relation to some aspects of this condition (i.e. bundles and the content and form of communications concerning a price increase).²⁶ We proposed to consolidate this guidance (shown at Annex A10 to the September 2017 statement and consultation) into a single set of guidance under condition C1.3.²⁷

²⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0024/53763/guidance_on_compliance.pdf

²⁶ Ofcom's Guidance on "material detriment" under GC9.6 in relation to price rises and notification of contract modifications: https://www.ofcom.org.uk/data/assets/pdf_file/0027/29682/guidance.pdf

²⁷ We did not receive any submissions about our proposal to consolidate the condition C1 guidance.

Stakeholders' comments and Ofcom's assessment

5.5 The following stakeholders provided comments on our proposals: BT, Vodafone, Sky, Three, Virgin Media, Telecom 2 and Verastar. We have set out their comments, and our response, by topic area below.

Guidance on termination procedures

Need for proposed guidance

- 5.6 We received the following comments about whether Ofcom should, in principle, publish guidance about condition C1.3:
- a) the majority of responses²⁸ agreed that Ofcom should clarify how condition C1.3 applies in practice;
 - b) only Vodafone (p. 1-2) disagreed that guidance was needed and considered that Ofcom has not sufficiently explained its rationale for issuing guidance rather than amending the GC itself; and
 - c) BT (paragraphs 3, 9, 63), Sky (paragraphs 5-10, 1.1-1.10) and Vodafone (p. 1, 5) said that the proposed guidance was too prescriptive; Telecom 2 (p.1) suggested that it was not overly prescriptive; and Three (paragraphs 5, 10-12) sought a greater level of prescription in relation to some issues.
- 5.7 We consider that there is benefit in providing guidance on Ofcom's view about the application of condition C1.3. We have, however, amended the guidance to remove the detailed prescription and any duplication and instead focus on the consumer outcomes that we expect from CPs' termination procedure. We have also added a clear distinction between examples of good practice and the minimum requirements for compliance (paragraph 4).
- 5.8 Several responses requested further explanation about the background to the guidance and an additional impact assessment.²⁹ As explained at paragraph A11.2 of the proposed guidance in Annex 11 of the September 2017 statement and consultation ('**proposed guidance**'), we have drawn on our monitoring and enforcement work. In recent years, Ofcom has regularly engaged with CPs both informally and formally regarding compliance with GC 9.3. In particular, from June 2015 to December 2016, we conducted an industry-wide monitoring and enforcement programme into the cancellation and termination arrangements of CPs that offer fixed line telephony, mobile, broadband and pay TV services to customers.³⁰ As part of this programme, we examined, in detail, various CPs' cancellation and termination arrangements. On 7 August 2017, we also concluded a two-year investigation into Sky's conditions and procedures for cancellation and termination.³¹

²⁸ Sky (paragraphs 3 and 1.1); BT (paragraphs 2 and 63); Three (paragraph 3); Virgin Media (p.1); Telecom 2 (p.1).

²⁹ Sky (paragraphs 9, 3.5), Vodafone (p.1-2), Virgin Media (p.1).

³⁰ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01158

³¹ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01163

Through these pieces of work, we identified, and secured, a number of improvements to individual CPs' conditions and procedures for contract termination. We also identified examples of good practice. In light of our engagement in this area, we considered that guidance would be helpful.

- 5.9 We are required to undertake an impact assessment if a proposal involves a major change in Ofcom's activities or will have a significant impact on regulated entities or the general public.³² Condition C1.3 has been in place since 2011.³³ The underlying requirements of this condition remain unchanged as a result of the GC Review and the guidance in Annex A3 (the '**guidance**') does not form part of the GCs. The purpose of the guidance is to provide a greater understanding about how we have approached enforcement in recent times and set out the approach that we are likely to take in the future when enforcing condition C1.3. We are not introducing any important change in policy that would require an impact assessment.

Scope of condition C1.3

- 5.10 We received the following comments in relation to our view about the scope of 'conditions and procedures' and 'disincentives' within condition C1.3:
- a) BT (paragraphs 8-9) agreed with our proposal to interpret broadly 'conditions and procedures' as including CPs' internal processes (both written and unwritten) as well as their external terms and conditions. It agreed that when assessing whether these conditions and procedures act as 'disincentives' we should consider whether they resulted in 'unreasonable effort or hassle' for end-users;
 - b) Sky (paragraphs 6, 11.11-1.14) disagreed with our proposal and considers that 'conditions and procedures' should focus on external facing procedures and not internal processes. It also disagreed (paragraphs 6, 1.15-1.17) with our interpretation of 'disincentives', suggesting that unreasonable effort, hassle or undue difficulty was not sufficient and that a condition or procedure would need to actually prevent end-users from switching to breach condition C1.3.
- 5.11 We consider that the scope of 'conditions and procedures' and 'disincentives' within the proposed guidance should be retained.
- 5.12 While a 'condition' would capture external contractual conditions, a procedure is merely 'an established way of doing something'. We consider this definition is sufficiently broad to capture CPs' internal processes that may not be published externally but will still impact on the experience of end-users seeking to terminate their contracts. This is consistent with

³² https://www.ofcom.org.uk/_data/assets/pdf_file/0026/57194/better_policy_making.pdf

³³ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-authorisation-regime/background>

our position at the time of implementing GC 9.3 (in 2011) where we noted that ‘industry processes’ could act as disincentives.³⁴

- 5.13 Sky (footnote 2, p.3) references an EC staff working document to support its interpretation.³⁵ The relevant passage states:

“Article 30(6) also stipulates that conditions and procedures for contract termination should not act as a disincentive against changing service provider. As this formulation is quite vague, there are issues around contract termination that are not explicitly addressed, and which require further consideration: automatic roll-over of contracts (tacit extension), subscription to additional services that prolong the initial contract period, the notice period and termination fees.”

- 5.14 We consider that this supports the need for further guidance about the interpretation of this provision. Therefore, we have made no substantive change to paragraph A11.4 of the proposed guidance. In addition to their contractual conditions and the application of industry processes, we will look at the effect, rather than form, of CPs’ external and internal procedures when assessing compliance with condition C1.3 (paragraph 5).
- 5.15 The dictionary definition of ‘disincentive’ uses phrases such as ‘discourage’ and ‘dishearten’. This does not amount to preventing end-users from switching. We consider that the wording ‘unreasonable effort, hassle or undue difficulty’ is consistent with the dictionary definition and a proper interpretation of condition C1.3. Therefore, we have made no substantive change to paragraph A11.5 of the proposed guidance. The guidance states that we will consider whether “*a condition or procedure could cause unreasonable effort, hassle or undue difficulty...even if that end-user ultimately still completes a switch of provider*” (paragraph 6).

Recognition of the potential benefit of save conversations while safeguarding against potential negative effects for some end-users

- 5.16 We received the following comments about our recognition in paragraph A11.6 of the proposed guidance that some end-users may benefit from having a conversation about offers or options available from their existing CP, but others may not want to do this:
- a) BT (paragraphs 10-11) and Three (paragraph 4) welcomed our recognition of the need to balance these competing interests. BT (paragraphs 5, 11, 26) agreed that CPs should not prolong unwanted retention conversations;

³⁴ Ofcom’s consultation regarding the implementation of the Universal Service Directive https://www.ofcom.org.uk/_data/assets/pdf_file/0027/37746/statement.pdf, p.46.

³⁵ ‘Evaluation of the regulatory framework for electronic communications accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast)’, European Commission staff working document, SWD/2016/0313 final. (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0313&from=EN>), page 186.

- b) Virgin Media (p.1) agreed that the removal of the prohibition of reactive save should not be abused by unwarranted conversations that prevent switching;³⁶
 - c) Three (paragraphs 6-9) agreed with the need for guidance as it remained concerned about reactive save activity; and
 - d) Vodafone (p.1) disagreed with the need for guidance as there is no longer any prohibition against reactive save activity in the GCs and it considered that the mobile switching reforms were sufficient to address any residual harm.
- 5.17 In the September 2017 statement and consultation, we removed the reactive save prohibition from GC 22.15 (condition C7) to bring regulation in line with our reduced concern about the effects of reactive save activity.³⁷ This prohibition applied in the specific circumstances where a customer was switching via the Gaining Provider Led process. We are not referring to this specific scenario in the proposed guidance.
- 5.18 The guidance relates to the customer experience where they are seeking to terminate directly with their CP, rather than following the switching process set out in GC22 (condition C7).³⁸ We consider that it is important for the guidance to acknowledge the benefit that some end-users derive from save conversations (which is consistent with our reduced concern about the effects of save activity in the switching process outlined above) but encourage CPs to ensure that any end-user who does not want to have these conversations can choose not to (which is one reason for introducing our mobile switching reforms discussed further below).³⁹ Therefore, we have made no substantive change to paragraph A11.6 of the guidance (now paragraph 7).

Communication options and accessibility of contract termination procedures

- 5.19 We received the following comments in relation to our proposals about ensuring that CPs offer a range of communication options for end-users to terminate their contracts and that these options were equally prominent and accessible to end-users:
- a) BT (paragraph 27) agreed with our proposal to require CPs to publish the communication options prominently on their website rather than in their contractual conditions. However, BT disagreed with our proposal that options should be “equally” prominent as it wants the flexibility to sign-post more efficient methods to end-users. BT (paragraphs 4, 12-27) also disagreed with any requirement solely to use non-real-time communication methods as it considers that a real-time conversation is necessary to verify a customer’s identity, explain the consequences of terminating services and to improve customer service;

³⁶ Virgin Media (p.1).

³⁷ Paragraph 4.5, 14.19, 14.30-31, 14.46. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf

³⁸ We provide further explanation about the context of this guidance at paragraphs 5.7-5.9.

³⁹ We provide further explanation about the consistency of the guidance with the mobile switching reforms at paragraphs 5.33-5.36.

- b) Sky (paragraphs 1.7-1.8, 3.3-3.10) disagreed with our proposals suggesting that these areas were not conditions or procedures within the scope of condition C1.3. It suggested that CPs should be allowed flexibility in website design, including the ability to sign-post more efficient methods to end-users, and that prescription by Ofcom could lead to poor customer experiences;
- c) Vodafone (p.3) did not consider guidance was necessary and pointed to other requirements about communication methods for fixed providers and the mobile switching proposals but agreed that communication options should be clearly displayed on CPs' websites;
- d) Three (paragraphs 5-9) agreed with our proposals regarding communication options, including the requirement to offer end-users non-real-time options. It sought further guidance requiring end-users who make non-real-time requests to consent to retention activity; and
- e) Virgin Media (p.2) was concerned that our proposals required additional channels to be made available for termination purposes over and above a CP's standard communication channels and that this may result in poor customer experience.

5.20 The methods by which end-users can terminate contracts are prescribed by CPs either within their contractual terms or as part of the procedures that end-users are required to follow to make a termination request. Therefore, we consider that the communication options available to end-users are an important condition and procedure for contract termination that falls within the scope of condition C1.3. The communication methods available to end-users may act as a disincentive to switching if the range of options does not allow for different end-user preferences and needs, or is too obscure or difficult for end-users to navigate. For example, a limited range, lack of clarity or inaccessibility of options may cause unreasonable effort, hassle or undue difficulty for certain end-users.

5.21 We note that prescribed communication methods for fixed providers referred to by Vodafone⁴⁰ only apply to cancellations during the cooling off period and not to termination requests made at other times.

5.22 In response to concerns raised about the level of prescription and allowing CPs some flexibility, as well as the need for consistency with the mobile switching reforms,⁴¹ we have made changes to paragraphs A11.7 and A11.8 of the proposed guidance (see paragraphs 8 and 9) to:

⁴⁰ Condition C7.5 (previously GC 22.6) states that Regulated Providers must allow customers to terminate by telephone, email or post.

⁴¹ See paragraphs 5.32-5.37 below for further explanation about the impact of the mobile switching reforms.

- a) ensure that, as a minimum, all CPs offer a range of different communication options and display these on their website;⁴²
- b) remove the requirement that CPs give equal prominence to options;⁴³ and
- c) clarify which aspects of the guidance are examples of good practice.

Verification procedures

5.23 We received the following comments in relation to our proposed guidance to ensure that CPs' verification procedures should not act as a disincentive to switch providers:

- a) BT (paragraph 28) and Vodafone (p.3) agreed with the general principle that verification should not act as a disincentive to switch providers;
- b) BT (paragraphs 28) and Three (paragraph 9) agreed with our proposal that there should be parity in verification procedures used for terminations and other types of contacts; however, Sky (paragraphs 2.4-2.7) disagreed suggesting that it would cause inconvenience for customers if there was as strict a level of verification for upgrades as for terminations;
- c) BT (paragraphs 17, 32-38) and Sky (3.11-3.14) disagreed with our proposal that non-real-time requests should be verified using non-real-time communication. BT considered that the most effective way to verify a customer's identity is in real-time. Sky did not want to encourage customers to share sensitive data over insecure channels. Vodafone (p.3) and Three (paragraphs 9-10) agreed with the principle that the verification method should be appropriate to the channel but sought guidance about whether it was acceptable to use a multi-channel or double-authentication approach to non-real-time requests;
- d) BT (paragraphs 35-36) agreed that it should be clear to customers that verification information will be required, however, BT did not consider it possible to publish exhaustive details due to risk of fraud;
- e) BT (paragraph 39) disagreed with our proposed guidance that any verification procedure for contract termination should not delay the start of an end-user's notice period because it was not commercially or technically feasible. Three (paragraph 9-10) agreed with the aim of processing an end-user's request as soon as possible but was concerned about fraud.

5.24 A CP's verification procedures impact on the end-user's experience when trying to switch providers as many CPs currently require this process to be followed before any termination can be requested or processed. Therefore, we consider verification procedures are relevant to considering compliance with condition C1.3 and should not act as a disincentive to switch providers (paragraph 10). We note that there was disagreement between

⁴² This is consistent with the requirement in condition C7.5 for fixed CPs and the Auto Switch requirement from the mobile switching reforms that must be implemented by mobile CPs by no later than 1 July 2019.

⁴³ As set out in paragraph 4.53 of the Mobile Switching Statement, however, we do expect equal prominence with respect to the three communication routes for consumers to request a PAC/N-PAC from 1 July 2019.

stakeholders about whether parity between verification procedures for termination and making other substantive changes to an account (e.g. upgrades or contract renewal) was a necessary requirement. We consider that, where verification procedures are required, parity is good practice as it ensures that customers receive a consistent experience when seeking to make a substantive change to their account. Therefore, we have clarified paragraph A11.9 of the proposed guidance to make clear that this is an example of good practice (10(c)).

- 5.25 In view of stakeholder concerns about the level of prescription in the guidance and to allow CPs some flexibility, we have removed the further specifications about verification procedures in paragraph A11.10 of the proposed guidance. We have clarified in the guidance that providing non-real-time verification to customers who have expressed a preference for this means of communication is an example of good practice (10(d)). The guidance gives CPs flexibility to decide, where needed, how they implement verification across different channels and to tailor procedures to suit end-user's preferences. This could include multi-channel approaches to verification.
- 5.26 In the guidance, we consider it to be good practice to be clear about the types of identification information that end-users will need to provide (10(a)-(b)). As this is a good practice example, we consider there is sufficient flexibility for CPs to meet transparency outcomes while mitigating against fraud risks.
- 5.27 In relation to our proposed guidance that any verification procedure for contract termination should not delay the start of an end-user's notice period, this is not incompatible with a verification procedure that protects against fraud. Our proposal was that, once an end-user's identity has been verified, their notice should be backdated so that it takes effect from the date that the end-user made their request rather than being delayed by the verification procedure. However, having reviewed stakeholder comments, we consider that any assessment of this issue will depend on the facts of the individual case. We have therefore removed this point from the guidance.

Maximum notice periods

- 5.28 We received the following comments in relation to our proposal that end-users should be allowed to give more than the minimum period of notice required:
- a) Sky (paragraphs 3.15-3.17) agreed with the principle. However, Sky and BT (paragraph 44) considered it too prescriptive for guidance to require CPs to reference the maximum notice period in their terms and conditions;
 - b) BT (paragraphs 6, 40-45) understood that insisting on exact notice could cause consumer harm but considered that a balance should be struck between technical considerations and customers' needs. It said BT Consumer allows landline and broadband customers to give notice up to 90 days, but suggested that longer notice periods are more problematic for mobile customers;
 - c) Vodafone (p.3-4) considered it would be technically possible to implement our proposal but questioned whether customers need this. It suggested that a maximum

notice period of 90 days was sufficient and that we consider the interaction with the mobile switching process;

- d) Three (paragraph 11) wanted guidance about the duration of the maximum notice period.
- 5.29 In response to these comments, we have revised paragraphs A11.11-A11.13 of the proposed guidance to remove specificity and focus on the outcomes that we would expect from compliant conditions and procedures (paragraphs 11-12). We have, however, retained some of the previous detail within the example of good practice.
- 5.30 Our monitoring and enforcement work (see paragraph 5.8) highlighted that requiring customers to give exactly the prescribed notice period (and not allowing them to give longer notice) can cause unreasonable effort, hassle or undue difficulty in that customers are unable to make their termination request at their preferred time, and are required to contact their CP at a later date. We consider a strict requirement to give exactly the prescribed notice period (and no longer) would be a condition or procedure that is likely to act as a disincentive to switch providers. Therefore, in the guidance we have set out that, as a minimum, CPs' termination conditions or procedures should not suggest or require that exact notice must be given by end-users. To reflect the comments received about customers' needs, the guidance now sets out our view that the effect of CPs' procedures for contract termination should be sufficiently flexible for end-users to "reasonably" give more than the minimum notice period.
- 5.31 We have also clarified that paragraph 11 of the guidance applies "subject to any maximum technical limits or other regulatory requirements."⁴⁴ We consider that this is consistent with the mobile switching reforms, as we explain in the next section.

Consistency with mobile switching proposals and the implementation period for the guidance

- 5.32 We received the following comments about consistency between the proposed guidance and Ofcom's mobile switching reforms:
- a) BT (paragraphs 7, 13-14) and Vodafone (p.1, 3-5) felt it was important to ensure consistency with the new mobile switching rules and the proposed guidance about communication options and maximum notice periods; and
 - b) BT (paragraphs 15, 43) and Vodafone (p.2) suggested coordinating implementation dates, as it was disproportionate for mobile CPs to make multiple system changes to comply with the guidance and mobile switching rules. Sky (paragraph 1.2) wanted us to specify a date when the guidance would start to inform our enforcement approach.
- 5.33 In response to these comments we have provided further explanation below about consistency between the guidance and the mobile switching reforms.

⁴⁴ We note that the Mobile Switching Statement prohibits the charging of notice periods beyond the day on which the switch occurs from 1 July 2019. See Ofcom's document entitled *Consumer Switching: Decision on reforming the switching of mobile communications services* of 19 December 2017 (the '**Mobile Switching Statement**') at https://www.ofcom.org.uk/_data/assets/pdf_file/0023/108941/Consumer-switching-statement.pdf.

- 5.34 The Mobile Switching Statement was published on 19 December 2017. These reforms impose new requirements on mobile CPs that must be in place no later than 1 July 2019.
- 5.35 The mobile switching reforms introduce Auto-Switch which will allow customers to contact their current provider by text, via their online account, or by phone, to request a code (i.e. a ‘PAC’) which they can give to their new provider when switching. This allows consumers to control the degree of contact with their provider and avoid any unwanted ‘save’ conversation. The guidance provides that at a minimum we would expect that CPs offer a range of communication options and display these on their website, which is consistent with the availability of the Auto-Switch option. We explain further our decision regarding communications options at paragraphs 5.20-5.22 and the guidance is set out at paragraphs 8-9.
- 5.36 The mobile switching reforms also ban the charging of notice periods beyond the day on which the switch occurs. As noted at paragraph 5.31, the wording of the guidance is sufficiently flexible to allow for the requirements of the Auto-Switch process, including the fact that there are technical limitations which mean that the PAC is automatically generated to be valid for 30 days. The guidance regarding maximum notice is outlined at paragraphs 5.29-5.31 and considered at paragraphs 11-12.
- 5.37 The guidance will take effect from 1 October 2018, and we will start taking it into account in our enforcement work from that date. The guidance is not, however, binding on Ofcom and, as set out in our Enforcement Guidelines,⁴⁵ we make decisions about our enforcement work on a case-by-case basis having considered the relevant factors which are set out in the guidelines.⁴⁶ We recognise that if mobile service providers need to make changes to their systems to take account of the guidance it may, in some cases, be practical for those changes to be made at the same as implementing changes needed for the mobile switching reforms.

Internal processes for customer service agents

- 5.38 We received the following comments in relation to our proposed guidance about CPs’ internal processes about termination:
- a) BT (paragraphs 3, 8) agreed with our proposal that the effect of **internal processes** is relevant when considering compliance with condition C1.3; while Sky (paragraphs 6, 1.17, 3.31) disagreed that internal processes affecting agent behaviour fall within the scope of condition C1.3;
 - b) BT (paragraph 46) agreed that terminating customers should not face longer **wait times** than other customers; Sky (paragraphs 6, 2.1-2.3, 2.8-2.9) disagreed that parity was required or relevant to condition C1.3 suggesting that our proposal would reduce

⁴⁵ Ofcom, Enforcement guidelines for regulatory investigations, 28 June 2017:

https://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf

⁴⁶ See paragraph 2.5 of Ofcom’s Enforcement Guidelines.

customer service levels; Vodafone (p.4) noted that wait times are likely to differ between teams and will vary based on demand;

- c) BT (paragraphs 47-49) and Virgin Media (p.2-3) agreed with the principle that **incentive schemes** should not encourage poor behaviour that could constitute a disincentive to switch but felt there was no need for any further guidance on the details of such schemes; Sky (paragraphs 3.18-3.22) questioned whether this was a minimum requirement or good practice and whether our proposed guidance would achieve good customer outcomes; and Vodafone (p.4) considered that no guidance was required;
- d) BT (paragraphs 50-54) agreed that **customers' intentions should be recorded and actioned** and that written confirmation should be sent once termination is processed; Three (paragraph 12) sought additional guidance about the form of this written confirmation; Sky (paragraphs 3.23-3.26) disagreed that it was necessary for agents to keep file notes of calls;
- e) BT (paragraphs 5, 59-61) agreed that there should be high level guidance that CPs should have sufficient **monitoring and quality assurance** procedures, however, felt that no additional detail about the content of these procedures was required; Sky (paragraphs 3.29-3.32) agreed that our proposed guidance outlines reasonable steps for providers to take but disagreed that they are required for compliance with condition C1.3.

5.39 As outlined at paragraphs 5.11-5.12, we consider that CPs' internal processes are relevant 'conditions or procedures' within the scope of condition C1.3. As set out in paragraph 5 of the guidance, it is the effect of internal processes that are relevant rather than their form and therefore the behaviour of customer services agents is also a relevant consideration. We have, however, responded to stakeholder comments by removing duplication and specificity about the detail of internal processes contained in paragraphs A11.15-A11.17 of the proposed guidance. The guidance now lists the minimum outcomes that we expect from CPs' procedures under condition C1.3 and only refers to additional detail as examples of good practice to assist CPs.

5.40 While we consider parity in terms of service levels expected from customer agents is an important factor when assessing compliance with condition C1.3, we acknowledge that wait times will vary based on demand for different teams at different times, therefore, we have removed any reference to wait times from the guidance.

5.41 We have retained a provision in the guidance which sets out the principle that internal processes or procedures should not encourage behaviours that may act as a disincentive for customers to switch (paragraph 14(i)). We have clarified that the additional details about scheme design are examples of good practice; for example, that CPs may want to consider measures that will only reward genuine and appropriate retention activity (good practice example 14(a)).

5.42 Similarly, we consider that compliance with condition C1.3 requires an end-user's intention to be recorded and actioned correctly (paragraph 14(ii)); however, in response to stakeholder concerns about the level of prescription in the guidance, we have clarified that

the additional detail about written confirmations and file notes are examples of good practice (good practice examples 14(b)-(c)).

- 5.43 The guidance now sets out that a minimum outcome for compliance with condition C1.3 is for CPs to ensure their customer service agents understand what type of retention activity is appropriate (paragraph 14(iii)). As an example of good practice, we suggest that it would be useful for CPs to have ongoing training, monitoring and quality assurance processes (good practice example 14(e)).

Vulnerable customers

- 5.44 We received the following comments in relation to our proposal to require specific guidance about treating termination requests from vulnerable customers with greater care:
- a) Sky (paragraphs 3.27-3.28) and BT (paragraphs 57-58) agreed that vulnerable customers should be treated with greater care, but felt that this requirement was captured by condition C5 and that there was no need for specific guidance regarding condition C1.3;
 - b) Virgin Media (p. 3) disagreed with this proposal.

- 5.45 We consider that consumers who have informed CPs about circumstances which make them vulnerable should be treated with greater care and that this is a relevant consideration when looking at the effect of termination procedures under condition C1.3. We have, however, removed any specific provisions about vulnerable customers from the guidance⁴⁷ as we consider it unnecessary to add further specificity to the requirements in condition C5.

Guidance on automatically renewable contracts and definition of fixed commitment period

- 5.46 We received the following comments in relation to our proposal to consolidate our existing guidance on automatically renewable contracts ('ARCs') within the proposed guidance:
- a) BT (paragraph 62) agreed with our proposals and noted that we have not made any substantive changes to the existing guidance;
 - b) Verastar (p.1) suggested that we had changed the scope of the guidance to apply to small business customers;
 - c) Vodafone (p.4-5) said that in relation to the guidance on the timing of obtaining express consent (paragraph A11.22 of the proposed guidance) it was unclear what the

⁴⁷ For example, we have deleted paragraph A11.6 of the proposed guidance.

purpose was of the distinction between a fixed commitment period and offering an upgrade or different deal.

- 5.47 As noted in the September 2017 statement and consultation, in consolidating the ARCs guidance into our proposed guidance on terminations procedures, we did not make any substantive changes to the ARCs guidance. To be clear, the ARCs provision has applied to both individual consumers and small business customers since it was introduced in 2011.⁴⁸
- 5.48 We acknowledge Vodafone’s comment that offers of upgrades and different deals will be made in the context of contract renewal and therefore no distinction should be drawn with the “fixed commitment period”. The term “fixed commitment period” is defined in the revised GCs as a period of no more than two years “*during which the Subscriber is required to pay for services and facilities provided under the contract and the Communications Provider is bound to provide them and in respect of which the Subscriber may be required to pay a charge to terminate the contract.*” We note that this definition is more expansive than that used for the term “*initial commitment period*” in the current GC 9.4, which makes reference to the period during which the customer may be required to pay compensation in the event of early termination. To the extent that GC 9.4 allows for a contract to continue beyond the initial commitment period provided the requirement to pay early termination charges lasts for no more than two years,⁴⁹ this will not be the case when condition C1.4 (renumbered from GC 9.4 in the current GCs) comes into force in October 2018. It will require customer contracts for communications services to terminate with the end of the fixed commitment period. This is consistent with the relevant requirement of the underlying EU Directive which GC 9.4 (condition C1.4 as renumbered) implements.⁵⁰

Ofcom’s decisions

- 5.49 We have decided publish guidance under condition C1, which we set out in the September 2017 statement and consultation (paragraphs 7.61-7.66), with the following changes, as outlined above:
- a) we have amended paragraphs A11.2, A11.7-8, A11.11, A11.12, A11.15, A 11.17 of the proposed guidance to remove the detailed prescription; focus on the consumer outcomes that we expect from CPs’ termination procedures; and to clearly distinguish between examples of good practice and the minimum requirements for compliance; and
 - b) we have deleted paragraphs A11.10, A11.13, A11.16 of the proposed guidance to remove some of the detailed prescription.

⁴⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0028/41869/Automatically-renewable-contracts-statement.pdf

⁴⁹ We noted this at the time of implementing GC 9.4 in our May 2011 Statement titled “*Changes to General Conditions and Universal Service Obligations*”, paragraph 7.63. Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0027/37746/statement.pdf

⁵⁰ In particular, GC 9.4 (renumbered as condition C1.4) implements Article 30(5) of the of the Universal Service Directive 2009/136/EC. See also recital 47 of that Directive.

5.50 The new consolidated guidance concerning conditions C1.3 and C1.6 (as re-numbered) can be seen at Annex A3, which is published as a separate annex.

A1. Notification of Ofcom’s decision under section 49A of the Communications Act 2003 to revoke the 2003 Oftel direction and give a new emergency planning direction

Background

- A1.1 On 19 September 2017, Ofcom issued a notification (the “**2017 Notification**”)⁵¹ pursuant to section 49A of the Act setting out its proposals for:
- a) the revocation of the 2003 Oftel Direction from 1 October 2018 or such later date as specified in the final notification; and
 - b) the giving of a New Emergency Planning Direction, which was set out in draft form in the Schedule to the 2017 Notification.
- A1.2 A copy of the 2017 Notification was sent to the Secretary of State in accordance with section 49C(1) of the Act.
- A1.3 Ofcom invited representations about any of the proposals set out in the 2017 Notification and accompanying consultation document by 14 November 2017.
- A1.4 By virtue of section 49A(6) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification under section 49A, with or without modifications, where Ofcom has:
- a) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
 - b) had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- A1.5 Ofcom received responses to the 2017 Notification and has considered every such representation made to it in respect of the proposals set out in the 2017 Notification and the accompanying explanatory statement; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
- A1.1 From 1 October 2018, the General Conditions will be revoked and replaced by the Revised General Conditions, which will continue to include the relevant direction-making power which is currently set out in condition 5.1(b) of the General Conditions (condition A4.2(b) of the Revised General Conditions).

⁵¹ Annex A9 to the September 2017 consultation.

Decision

- A1.6 Ofcom has decided to revoke the 2003 Oftel Direction and give the New Emergency Planning Direction, with effect from 1 October 2018. The New Emergency Planning Direction is set out in the Schedule to this Notification.
- A1.7 Ofcom's reasons for making these decisions, and the effect of these decisions, are set out in Section 3 of this document.
- A1.8 Ofcom considers that the decisions comply with the requirements of sections 49, 49A and 49C of the Act, insofar as they are applicable.
- A1.9 Ofcom considers that these decisions are not of EU significance pursuant to section 150A(2) of the Act.
- A1.10 In making these decisions, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- A1.11 The New Emergency Planning Direction shall enter into force on **1 October 2018**.
- A1.12 A copy of this Notification and the statement is being sent to the Secretary of State in accordance with section 49C(1) of the Act.
- A1.13 In this Notification:
- a) **"2017 Notification"** means the notification set out in Annex A9 to Ofcom document of 19 September 2017 entitled "Review of the General Conditions of Entitlement. Statement and consultation";
 - b) **"2003 Oftel Direction"** means the direction made by Oftel on 30 July 2003 for the purposes of General Condition 5.1(b)⁵²;
 - c) **"Act"** means the Communications Act 2003;
 - a) **"General Conditions of Entitlement"** or **"General Conditions"** means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
 - d) **"New Emergency Planning Direction"** means the direction set out in the Schedule to this Notification;
 - e) **"Ofcom"** means the Office of Communications; and
 - b) **"Revised General Conditions of Entitlement"** or **"Revised General Conditions"** means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.

⁵² The 2003 Oftel Direction is available at the Annex to this statement:
http://webarchive.nationalarchives.gov.uk/20080715052813/http://www.ofcom.org.uk/static/archive/oftel/ind_info/licensing/determinations/2003/emergplan0803.pdf

- A1.14 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- A1.15 For the purposes of interpreting this Notification:
- a) headings and titles shall be disregarded; and
 - b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- A1.16 The Schedule to this Notification shall form part of this Notification.



Steve Unger

Group Director of the Strategy, International, Technology and Economist Group

A person authorized by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

26 March 2018

SCHEDULE

The Emergency Planning Direction

Introduction

Condition A4.2 of the Revised General Conditions of Entitlement states that:

“A4.2 Subject to **Condition A4.4**, **Regulated Providers** shall, on the request of and in consultation with:

- (a) the authorities responsible for **Emergency Organisations**; and
- (b) such departments of central and local government as **Ofcom** may from time to time direct for the purposes of this **Condition**,

make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in disasters (including in any major incident having a significant effect on the general public and in any incident of contamination involving radioactive substances or other toxic materials).”

Pursuant to Condition A4.2(b), this Direction sets out those departments of central and local government, on whose request and in consultation with which, CPs may be required to make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in disasters (including in any major incident having a significant effect on the general public and in any incident of contamination involving radioactive substances or other toxic materials).

The Direction

Those central and local government departments with whom the Regulated Provider shall be required to consult pursuant to Condition A4.2 of the Revised General Conditions and who may make a request for the arrangements specified in that paragraph to be made shall be:

- a) all ministerial and non-ministerial departments of UK Government;
- b) in relation to England:
 - i) Metropolitan districts;
 - ii) London boroughs;
 - iii) the City of London;
 - iv) the Greater London Authority;
 - v) Local Government Regulation;
 - vi) Unitary authorities;
 - vii) the Council of the Isles of Scilly;
 - viii) County councils; and

- ix) District councils;
- c) in relation to Wales:
 - i) a county council; and
 - ii) a county borough council;
- d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and
- e) in relation to Northern Ireland, a local council.

In this Direction:

- a) “**Regulated Provider**” has the meaning given to it in Revised General Condition A4.1;
- f) “**Revised General Conditions of Entitlement**” or “**Revised General Conditions**” means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018;
- g) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has in the Revised General Conditions of Entitlement; and
- h) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

A2. Notification of modifications to condition B1 of the revised GCs to further extend Ofcom's power to withdraw numbers

Background

- A2.1 On 19 September 2017, Ofcom issued a notification (the “**2017 Notification**”)⁵³ pursuant to sections 48(1) and 48A(3) of the Act setting out its proposals for modifying condition B1 of the Revised General Conditions with effect from 1 October 2018, or such later date as specified in the final notification. The proposed changes were set out in draft form in the Schedule to the 2017 Notification.
- A2.2 A copy of the 2017 Notification was sent to the Secretary of State in accordance with section 48C(1) of the Act.
- A2.3 Ofcom invited representations about any of the proposals set out in the 2017 Notification and accompanying consultation document by 14 November 2017.
- A2.4 By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification, with or without modifications, where Ofcom has:
- a) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
 - b) had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- A2.5 Ofcom received responses to the 2017 Notification and has considered every such representation made to it in respect of the proposals set out in the 2017 Notification and the accompanying explanatory statement; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
- A2.6 From 1 October 2018, the General Conditions will be revoked and replaced by the Revised General Conditions, which will continue to include a condition on the allocation, adoption and use of telephone numbers (condition B1 of the Revised General Conditions).

Decision

- A2.7 Ofcom, in accordance with sections 45 and 48(1) of the Act, has now decided to modify condition B1 of the Revised General Conditions of Entitlement.
- A2.8 The modifications that Ofcom has decided to make to condition B1 of the Revised General Conditions of Entitlement are set out in the Schedule to this Notification.

⁵³ Annex A12 to the September 2017 consultation.

- A2.9 Ofcom's reasons for making these decisions, and the effect of these decisions, are set out in Section 4 of this document.
- A2.10 Ofcom considers that these decisions comply with the requirements of sections 45 to 48C and 51 of the Act, insofar as they are applicable.
- A2.11 Ofcom considers that these decisions are not of EU significance pursuant to section 150A(2) of the Act.
- A2.12 In making these decisions, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act, the six Community requirements set out in section 4 of the Act and its general duty as to telephone numbering functions under section 63 of the Act.
- A2.13 The modifications to condition B1 of the Revised General Conditions that Ofcom has decided to make shall enter into force on 1 October 2018.
- A2.14 Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 48C(1) of the Act.
- A2.15 In this Notification:
- a) "**Act**" means the Communications Act 2003;
 - b) "**General Conditions of Entitlement**" or "**General Conditions**" means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
 - c) "**Ofcom**" means the Office of Communications;
 - d) "**Revised General Conditions of Entitlement**" or "**Revised General Conditions**" means the general conditions set under section 45 of the Act by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.
- A2.16 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- A2.17 For the purposes of interpreting this Notification:
- a) headings and titles shall be disregarded; and
 - b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- A2.18 The Schedule to this Notification shall form part of this Notification.



Brian Potterill

Competition Policy Director

A person authorized by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

26 March 2018

SCHEDULE

Modifications to condition B1 of the Revised General Conditions

The modifications that Ofcom has decided to make to condition B1 of the Revised General Conditions are set out below. The words marked in red text and highlighted indicate the insertions and the words marked in strike-through and highlighted indicate the deletions.

B1. Allocation, adoption and use of telephone numbers

[Paragraphs B1.1 – B.17 are not reproduced for the purposes of this Notification.]

Withdrawal of a number allocation

B1.18 Ofcom may withdraw an **Allocation of Telephone Numbers** from a **Communications Provider** where:

- (a) the **Communications Provider** has not **Adopted** those **Telephone Numbers** within six months, or such other period as **Ofcom** may from time to time direct, from the date on which the **Telephone Numbers** were **Allocated**;
- (b) in relation to an **Allocation** of a series of **Telephone Numbers**, the **Communications Provider** has not **Adopted** those **Telephone Numbers** to any significant extent within six months, or such other period as **Ofcom** may from time to time direct, from the date on which the series of **Telephone Numbers** was **Allocated**; ~~or~~
- (c) the **Communications Provider** is unable to demonstrate to **Ofcom's** reasonable satisfaction either:
 - (i) that those **Telephone Numbers** are assigned to a **Subscriber** (or **Subscribers**); or
 - (ii) if those **Telephone Numbers** are not so assigned, that they were so assigned within the preceding twelve months, and
the withdrawal is made for the purpose of securing that what appears to **Ofcom** to be the best and most efficient use is made of the numbers and other data that are appropriate for use as **Telephone Numbers**;
- (d) the **Communications Provider** has used a significant proportion of those **Telephone Numbers**, or has used such **Allocation** to a significant extent, inconsistently with this **Condition**, or to engage in fraud or misuse; or
- (e) **Ofcom** has advised the **Communications Provider** in writing that a significant proportion of those **Telephone Numbers**, or that such **Allocation** has been used to a significant extent, to cause harm or a nuisance, and the

Communications Provider has failed to take adequate steps to prevent such harm or nuisance.

[Paragraphs B1.19 – B.29 are not reproduced for the purposes of this Notification.]

A3. Ofcom's Guidance under General Condition C1 – contract requirements

Published as a separate document:

https://www.ofcom.org.uk/_data/assets/pdf_file/0016/112282/Guidance-under-General-Condition-C1-contract-requirements.pdf

A4. List of respondents

BT

Colt

Nexbridge

Telecom2

Three

UKCTA

Sky

Verastar

Virgin Media

Vodafone