

A6. Revised guidance on GC C1 contract requirements

- A6.1 This annex sets out our revised guidance on contract requirements for GC C1 to align with the modifications we are making to implement the provisions of the EECC that will come into effect **in December 2021**. We discuss these changes in sections 4, 7 and 11 of the statement.¹
- A6.2 The modifications we are making to this guidance compared to the current guidance are shown as follows:
- a) The words underlined and highlighted indicate the insertions; and
 - b) The words marked in strike-through and highlighted indicate the deletions.²
- A6.3 Separately, we have set out new guidance for the provision of contract information at Annex 7 and revised guidance on contractual modifications at Annex 10, both of which will come into effect **in June 2022**. Therefore, from June 2022, the new guidance on contract information will be inserted into this guidance, and the revised guidance on contract modifications at Annex 10 will replace the guidance on contract modifications set out in this guidance. Our reasons for issuing the new contract information guidance and the revised guidance on contract modifications are set out in sections 5 and 8 of the statement respectively.
- A6.4 In addition, as set out in section 15, now that we have confirmed the changes we are making to the GCs to implement the end-user rights provisions of the EECC, we are consulting on a number of minor consequential changes to the terminology used in the remaining GCs to ensure clarity and consistency throughout the GCs. As part of this, we are proposing to replace references to small business customer with the new defined terms ‘Microenterprise or Small Enterprise Customer’ and ‘Not-for-Profit Customer.’ These proposed modifications are shown by square brackets, with deletions marked in strike-through.

~~Ofcom’s Guidance under General Condition C1 – contract requirements~~ Purpose of this document

- A6.5 This document sets out Ofcom’s guidance under General Condition C1 (Condition C1) in the following areas:

¹ Please note that the GC numbers referenced in the rest of this statement are those that will apply from June 2022. These may differ from those used in this guidance which covers the period December 2021 to June 2022. We explain when modifications to GC C1 will come into effect in the period between December 2021 and December 2022 and how GC C1 will therefore apply at relevant points in time in Table 2, part B at Annex 5.

² This includes new guidance on identifying business customers and non-coterminous linked contracts, which are discussed in sections 4 and 11 of the statement respectively.

- a) Identifying business customers;
- b) ~~Condition C1.3~~ Conditions and procedures for contract termination;
- c) ~~Condition C1.3~~ Automatically renewable contracts;
- d) ~~Conditions C1.6-1.9~~ Contractual modifications; and
- e) ~~Conditions C1.10-1.21~~ End-of-contract and annual best tariff notifications.

A6.6 This guidance does not form part of Condition C1. Its purpose is to assist Communications Providers (providers) to comply with the minimum requirements of Condition C1 by outlining Ofcom's likely approach to investigating compliance.

A6.7 This guidance is not binding on Ofcom, and while we will take it into account, we will determine compliance with Condition C1 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in Condition C1 shall have the same meaning when used in this guidance, unless otherwise indicated.

Identifying business customers

A6.8 We recognise that it may, at times, be difficult for providers to identify whether a business customer would fall within the category of Microenterprise or Small Enterprise Customer, ~~small business~~ or Not-For-Profit Customer. Providers have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales.

A6.9 We will take a pragmatic and flexible approach to compliance monitoring and enforcement. In assessing compliance, we will consider whether providers have taken reasonable steps to identify the different categories of customers to which the requirements apply.

A6.10 For example, providers might request headcount information from customers at the point of sale and use that information for the duration of the contract or until that contract is renegotiated. Other factors providers may use (but are not limited to) might include the annual communications spend of the customer and/or the number of lines taken by the customer.

Condition ~~C1.3~~ C1.8 - Conditions and procedures for contract termination

A6.11 This guidance does not form part of condition C1.3. Its purpose is to assist Communications Providers (CPs) to comply with the minimum requirements of condition ~~c1.3~~ by outlining This part of the guidance outlines Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination comply with Condition ~~C1.3~~ C1.8. It is not an exhaustive list of the types of conditions or procedures that Ofcom may consider under Condition ~~C1.3~~ C1.8.

A6.12 We have also included some examples of what we consider to be good practice, identified through our monitoring and enforcement work. **CPs Providers** may choose to adopt these, or similar, practices.

~~A6.13 The guidance is not binding on Ofcom and while we will take it into account, we will determine compliance with condition C1.3 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in condition C1.3 shall have the same meaning when used in this guidance.~~

A6.14 Customers should be able to exercise choice and take advantage of competition in communications markets by being able to switch provider easily. Unnecessary difficulties can give rise to consumers suffering harm, making switching difficult or preventing it entirely in some cases.

A6.15 To ensure that customers are able to change providers without being hindered by legal, technical or practical obstacles, Condition C1.8, says:

“Without prejudice to any Commitment Period, Regulated Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for Relevant Customers against changing their Communications Provider”.

A6.16 For the purposes of Condition C1.8, “Relevant Customers” are Consumers (i.e. residential customers), Microenterprise or Small Enterprise Customers and Not-For-Profit Customers. We refer to these as “customers” for this part of the guidance dealing with conditions and procedures for contract termination. “Regulated Providers” are providers of Public Electronic Communications Services.

A6.17 The rules in Condition C1.8 also apply to Bundles.³

Conditions or procedures for contract termination acting as a disincentive for customers against changing their **CP provider**

A6.18 We consider that “*conditions or procedures for contract termination*” should be interpreted broadly. In particular, we consider that, as well as covering industry practices and a **CP’s provider’s** contractual conditions, a **CP’s provider’s** internal processes may also be procedures that potentially provide a disincentive to switch providers. Such internal processes need not necessarily be in writing, as it is their effect that is relevant, rather than their form. In addition, we consider that behaviour of individual customer service agents that is inconsistent with a **CP’s provider’s** written or established conditions or procedures could itself amount to a breach of Condition **C1.3 C1.8** in certain circumstances; for example, if it demonstrated a failure by the **CP provider** to have sufficient procedures in place to ensure agents are properly trained, or for monitoring their compliance with the internal procedures.

³ GC C1.1(f).

- A6.19 We consider that to act as a “*disincentive*” a condition or procedure does not necessarily have to prevent an end-user a customer from terminating (although it may do so). A condition or procedure could cause unreasonable effort, hassle or undue difficulty when seeking to terminate a contract such that it acts as a disincentive for a customer even if that end-user customer ultimately still completes a switch of provider.
- A6.20 We recognise that some end-users customers contacting CPs providers about ending their services will have chosen to do so in order to have a conversation about any offers or options available to them and to take advantage of any discounts that the CP provider might provide as a result of those conversations. This can be beneficial to the consumers customers concerned, and we are not seeking to prevent these conversations for those end-users customers who wish to have them. However, we are also aware that other end-users customers want to terminate their services without having these conversations and in those circumstances prolonged retention activity may act as a disincentive. CPs Providers should consider the needs of these end-users customers within their conditions and procedures to ensure that they do not act as a disincentive against changing CP provider.

Contractual conditions and procedures for ending a contract

Communication options and accessibility of contract termination procedures

- A6.21 CPs Providers should offer a range of communication options for end-users customers to terminate their contracts.
- A6.22 The full range of communication options should be clearly and prominently displayed on a CP's provider's website, along with information about the steps required to end a contract.

Good practice in this area includes:

- (a) To reflect different end-users customers' preferences and needs, offering options to end-users customers to terminate contracts which include both ‘real-time’ and ‘non-real-time’ communication options. For example, by phone and/or webchat, where the end-user customer would speak directly in real-time to a customer service agent or using non-real-time options, such as by letter, email or via an online account, where they do not need to speak directly to the CP provider.
- (b) Details of each communication option (i.e. phone number, email address, link to online accounts etc.) and how and when these can be accessed could be listed on a dedicated “terminations” page on a CP's provider's website.

Identification and verification procedures

- A6.23 Where CPs providers need to verify the identity of an end-user a customer prior to their contract being terminated, these verification procedures should not themselves act as a disincentive to switch providers.

Good practice in this area includes:

- (a) making **end-users customers** aware if they will need to provide information to verify their identity before their termination request will be processed.
- (b) being clear about the types of identification information that the **end-user customer** will need to provide before their contract will be terminated.
- (c) ensuring that any verification procedure relating to contract termination is the same as required to make any other substantive change **to an end-user's a customer's** account (e.g. a change requiring an additional financial commitment, such as an upgrade or contract renewal).
- (d) adopting identification and verification procedures that are consistent with the communication option that the **end-user customer** has selected to make their termination request. For example, if **an end-user a customer** has made a non-real-time request, then the **CP provider** could have procedures in place to verify the **end-user's customer's** identity in the same way or obtain the **end-user's customer's** consent to verification via a different method.

Maximum notice periods

- A6.24 Subject to any maximum technical limits or other regulatory requirements,⁴ **CPs providers** should allow **end-users customers** to reasonably give more than the minimum period of notice.
- A6.25 **CPs' Providers'** conditions or procedures should not suggest that exact notice must be given by **end-users customers**.

Good practice in this area includes **CPs providers** clearly referencing any maximum notice period and the ability of **end-users customers** to be able to give more than the minimum notice period in their internal guidelines for customer service agents.

Internal processes for customer service agents handling termination requests

- A6.26 As noted above, we recognise that **CPs providers** are likely to wish to seek to retain **end-users customers** that express an intention to switch providers, usually through a conversation (referred to throughout this guidance as “a retention conversation”). We note that some **end-users customers** will welcome a retention conversation, while others will not.
- A6.27 Where the retention conversation occurs, we expect **CPs providers** to have procedures in place to ensure that:

⁴ The changes introduced in our Mobile Switching Statement prohibited the charging of notice periods beyond the day on which the switch occurs (with effect from 1 July 2019). See Ofcom, [Consumer Switching: Decision on reforming the switching of mobile communications services](#), 19 December 2017.

- i) customer service agents' incentive schemes do not encourage poor agent behaviour that constitutes or otherwise gives rise to a disincentive for the ~~end-user~~ customer to switch.
- ii) ~~end-users'~~ customers' intentions are recorded and actioned correctly.
- iii) customer service agents understand what retention activity is appropriate, particularly in circumstances where it is evident that ~~an end-user~~ a customer does not want to have a retention conversation.

Good practice in this area includes:

- (a) incentive schemes that do not: (i) penalise customer service agents for terminating contracts in response to ~~an end-user's~~ a customer's request or for correctly identifying that ~~an end-user~~ a customer does not want to have a retention conversation; nor (ii) reward customer service agents for failing to process termination requests.
- (b) sending written confirmation to ~~end-users~~ customers once a termination request is processed.
- (c) ensuring customer service agents make clear notes on ~~an end-user's~~ a customer's file about any retention conversation or offers made so that they can be accessed, and taken account of, by other agents.
- (e) clear internal guidance, regular briefings and ongoing training for agents about how to identify if ~~an end-user~~ a customer making a termination request wants to do so without having a retention conversation, and what is appropriate retention activity in these circumstances. For example, making clear that in circumstances where ~~an end-user~~ a customer does not want to have a retention conversation, the agents understand it is not appropriate to engage in any further retention activity and that they should instead promptly process the request.
- (f) specific procedures in place for ~~end-users~~ customers who have made non-real-time requests as, given their preferred communication option, these ~~end-users~~ customers may be more likely to not want to have a retention conversation.
- (g) monitoring and quality assurance processes in place to ensure that their conditions or procedures do not act as a disincentive to switching. Advisors who fall short of the behaviours required of them are subject to an appropriate disciplinary process.
- (h) clear written internal policies and processes for customer service agents handling termination requests (e.g. training and briefings) and regular reviews of these to ensure changes are made as required. For example, if a pattern of poor behaviour is identified via monitoring procedures, CPs providers then take steps to ensure that it does not occur in the future, and any necessary changes are made to their internal policies and processes, including guidance, training and quality assurance procedures.

Condition C1.8: non-coterminous linked contracts

- A6.28 This part of the guidance outlines the approach that Ofcom would expect to take when assessing the application and impact of certain types of bundled contracts with Commitment Periods that do not align under Condition C1.8.
- A6.29 It sets out when we consider such contracts may act as a disincentive to switch and, where we identify such contracts, the factors we would take into account in assessing whether to open an investigation under Condition C1.8. The factors identified below should not be seen as exhaustive and any decision to open an investigation would depend on the specific circumstances of each case and the matters we would generally consider as set out in our enforcement guidelines.⁵
- A6.30 The guidance does not amend or replace rules nor does it constitute legal advice on how to comply with Condition C1.8. Providers should take their own advice on compliance.

Non-coterminous linked contracts

- A6.31 This guidance is concerned with Bundles that have the following characteristics (we refer to these as '**non-coterminous linked contracts**')
- the contracts concerned are linked contracts, i.e. they present dependencies such that termination of one contract triggers an impact on another contract;
 - the Commitment Periods for the relevant contracts do not align (regardless of whether the contracts were taken up at the same or at different points in time); and
 - the contracts include the provision of at least one Internet Access Service or Number-Based Interpersonal Communications Service and the relevant dependency exists between one of these services and another element of the Bundle.
- A6.32 We focus on contracts that are separate but linked, because this is the most common form of non-coterminous Bundles that we see. But we would apply the same approach to Bundles of services and Terminal Equipment that are on the same contract, where the Commitment Periods do not align.
- A6.33 The following are examples of dependencies between different elements of a Bundle:
- **A technical dependency** where a customer would lose, or be impaired in using, one element of the Bundle when terminating a contract for another. For example, if a customer has a broadband service which only works if they also take a landline service from the same provider, this would mean that if the customer cancelled their landline service, they would no longer be able to use the broadband service.
 - **A contractual dependency** where there are links between the rights or obligations for the provision of different elements of the Bundle. One example would be where a customer might purchase both airtime and a mobile handset at the same time from the

⁵ Ofcom, June 2017, Enforcement guidelines for regulatory investigations, paragraph 2.5.

same provider under two different contracts but with terms that link those contracts.⁶ Another would be a customer purchasing landline, broadband and pay TV in a Bundle (triple play Bundle) under terms that link those contracts.

- **A financial dependency** where any prices, tariffs or charges for the provision of one element of the Bundle are contingent on taking another element, e.g. a monthly discount for mobile customers who also take fixed broadband from the same provider, which is then removed if the broadband contract is cancelled.

A6.34 These examples are non-exhaustive and more than one dependency might exist in the same Bundle. There might be other types of dependencies that exist; and new types of dependencies may appear in the future as communications markets evolve.

A6.35 This guidance applies to non-coterminous linked contracts for residential customers. It also applies in relation to other groups of customers who are likely to have similar bargaining positions, such as Microenterprise or Small Enterprise Customers and Not-For-Profit Customers which purchase such services on standard terms and conditions (as opposed to bespoke negotiated contracts).

Assessing whether non-coterminous linked contracts may act as a disincentive to switch

A6.36 Non-coterminous linked contracts can take many different forms and the likely impact of these contracts will vary. Some customers might value the flexibility of having different elements of a Bundle with Commitment Periods that end at different points in time. Under some circumstances however, non-coterminous linked contracts may act to disincentivise customers from switching provider.

A6.37 The likelihood and extent to which this disincentive might arise will depend on the specific circumstances in question. We set out below two key factors that we would expect to take into account in any assessment of whether there is a disincentive to switch:

- **The strength of dependencies.** Examples of strong dependencies include:
 - if the customer is not able to use one element of the Bundle without the other because of a technical dependency; and/or
 - if the customer is faced with a material financial impact, such as losing a discount or Early Termination Charges, if they switched to another provider for one of the elements in their Bundle before the end of the Commitment Period for another element of the Bundle.
- **The differences in the end of the Commitment Periods** between different elements of the Bundle. A significant difference between the end of the Commitment Periods for different elements of a Bundle with strong dependencies is more likely to cause harm because it is likely to raise switching costs compared to a situation where the

⁶ For mobile bundles for example, these terms may include a requirement that if the customer ends their airtime contract, they must also pay the remaining balance due under their handset contract in full as a lump-sum. There would also be a financial interdependency here too. We refer to these as 'linked split mobile contracts'.

difference in the Commitment Periods is minimal. For example, if a customer wanted to switch the whole Bundle while one element is still in its Commitment Period, they would have to pay higher Early Termination Charges the further they are from the end of that Commitment Period. This may raise the likelihood they would be disincentivised from switching the whole Bundle to an alternative provider.

A6.38 If non-coterminous linked contracts do not have both strong dependencies and significant differences between the end of the Commitment Periods, we consider they are less likely to act as a disincentive to switch.

Approach to potential enforcement action

A6.39 Where the factors at paragraph A6.37 apply, we would then consider the case for taking enforcement action by assessing the potential for, and extent of, any customer harm, taking into account the factors below.

A6.40 Our assessment would include consideration of the **conditions that arise when the customer reaches the end of the first Commitment Period for an element of their Bundle.** In particular, we are more likely to be concerned if:

- i) *customers are significantly worse off at the end of the first Commitment Period if they stay with their current provider* because, for example, they are moved onto a higher out-of-contract price. This will be particularly the case, for example, if the difference between the end-dates of the Commitment Periods for different elements of the Bundle is significant (such that customers would need to pay the higher out-of-contract price for a long period of time); and/or
- ii) *customers face limited options and are more likely to be 'locked-in' to their current provider for a material length of time.* For example, if a customer reaches the end of one Commitment Period, but is still tied into a Commitment Period on another service, two situations are possible. First, if the customer signs-up for a new Commitment Period and is unable to align the two contracts, this will extend the period of lock-in with their existing provider. Alternatively, where it is possible to align the Commitment Periods when re-contracting, this extended lock-in is avoided. The first situation is more likely to impede future switching than the second.

A6.41 We would also consider **whether the complexity of the non-coterminous linked contracts makes it harder for customers to compare deals** adding costs to the process of searching for a deal and increasing the risk that customers select a deal that is not good for them. We would consider the complexity both when the non-coterminous linked contracts were entered into and also the complexity facing customers at the end of the first Commitment Period.

A6.42 In addition, we would take into account **any other factors which might reduce the potential for harm from non-coterminous linked contracts**, for example:

- i) *whether the contractual arrangements provided efficiencies or other benefits for customers. We would, however, expect providers to be able to evidence that there were such efficiencies or other benefits to customers. We would also consider whether a provider could deliver those efficiencies or other benefits without the factors described at A1.37.*
- ii) *whether, when customers originally entered into non-coterminous linked contracts, they chose to take such contracts even though they were offered the option to take contracts with aligned Commitment Periods; and*
- iii) *whether customers were well-informed about the arrangements and their implications, when they entered into them. We would take account of the level of support providers give to customers to help them understand the implications of entering into these agreements, including what happens to prices at the end of the different Commitment Periods. However, even if customers were well-informed about non-coterminous linked contracts at the point of sale, this is unlikely to be sufficient on its own to allay potential concerns if there were no efficiencies or other benefits for customers.*

Condition **C1.3** **C1.10** - Automatically renewable contracts

A6.43 — This guidance, which does not form part of condition C1.3, sets out how we are likely to apply this condition. Condition C1.3 prohibits the use of Automatically Renewable Contracts (ARCs) in the provision of fixed voice and fixed broadband services to residential Consumers and Small Business Customers (together ‘customers’ for the purposes of this Guidance). A fixed commitment period is the period beginning on the first day a contract takes effect and ending on a day falling no more than 24 months thereafter (condition C1.4). These provisions mean that CPs cannot roll forward (or automatically renew) a customer contract to a new fixed commitment period following the expiry of an initial or subsequent fixed commitment period without having obtained the Express Consent of the customer.

A6.44 This part of the guidance sets out how we are likely to apply Condition C1.10 which prohibits the use of Automatically Renewable Contracts (ARCs) – these are contracts which automatically roll over into a new Commitment Period following the expiry of an initial or subsequent Commitment Period.

A6.45 Condition C1.10 says:

“Without limiting the extent of Condition C1.8, Regulated Providers must not, at the end of any Commitment Period, renew their contract with a Relevant Customer for a further Commitment Period unless they have first obtained the Relevant Customer’s Express Consent. Such Express Consent must be obtained in relation to each new Commitment Period.”

A6.46 ‘Express Consent’ is defined as follows:

“Express Consent” means the express agreement of a Domestic or Small Business Customer to contract with a Communications Provider in relation to each Fixed Commitment Period, where the Communications Provider has obtained such consent separately for each Fixed Commitment Period in a manner which has enabled the Domestic or Small Business Customer to make an informed choice;

A6.47 — The requirements of this definition are clear. However, we think it is important to clarify that the timing of Express Consent and method by which it is obtained are important in order for customers to be able to make an informed choice.

Method and timing for obtaining Express Consent

A6.48 Where Express Consent is given for a **fixed** Commitment Period initiated by a customer, we think it is likely to be reasonable for it to be given at any time in the process.

A6.49 In all other circumstances, **CPs providers** should ensure that customers have sufficient time to properly consider the deal they are being offered (including, for example, allowing them time to consider the market more generally) before setting deadlines requiring them to opt in to a further **fixed** Commitment Period.

A6.50 We have not set out specific time frames with which **CPs providers** must comply, however, there are certain types of behaviour that are unlikely to satisfy the requirements of Condition **C1.3 C1.10**. These include (but are not limited to) the following examples where:

- a) A **CP provider** has asked a customer to provide a “one off” consent which purports to cover all **fixed** Commitment Periods that that Consumer or **[Small Business Microenterprise or Small Enterprise Customer or Not-for-Profit] Customer** may subsequently enter into (“stacking”);
- b) Consent is sought at a time which is too far in advance of the ending of the **fixed** Commitment Period for a customer to reasonably know what other offers may be available at that time;
- c) A **CP provider** contacts a customer either on the day that their **fixed** Commitment **Period is due to expire, or very shortly before that day, and requests their consent to** enter into a further **fixed** Commitment Period in circumstances where that customer has not been given an opportunity to consider what other offers may be available.

A6.51 We expect **CPs providers** to have reasonable steps in place to prevent stacking and to ensure reasonable and appropriate timing for obtaining Express Consent. Therefore, other things being equal, it is generally likely to be reasonable for Express Consent to be obtained by **CPs providers** no sooner than six months before the end of each **fixed** Commitment Period.

Small Business Customers

A6.52 — The definitions of a Domestic and Small Business Customer and Domestic or Small Business Customer for the purposes of condition C1.3 are consistent with the definition of Domestic

and Small Business Customer in Section 52(6) of the Communications Act 2003 which is reproduced here for ease of reference.

“Domestic and Small Business Customer” means, in relation to a Communications Provider, a Customer of that Provider who is neither:

(a) himself a Communications Provider; nor

(b) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

A6.53 — This means that the prohibition in condition C1.3 applies to small business customers with 10 or less employees (the ‘10 employee threshold’).

A6.54 — We recognise that it may, at times, be difficult to identify whether or not a customer has 10 employees or less. CPs have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales. We accept, therefore, that estimates as to whether or not a customer falls within the 10 employee threshold may not be precise.

Approach to **Enforcement** assessing compliance

A6.55 — We note that other regulatory requirements also apply to small business customers as defined by Section 52(6) of the Act. For example, condition C4 requires that an alternative dispute resolution (ADR) scheme be made available to small business customers. We note also that we have indicated elsewhere that we will take a pragmatic and flexible approach to compliance monitoring and enforcement for these requirements. For example, in guidance on condition C4 we said “...we would be satisfied if, rather than having to contact the Complainant to determine whether they have ten or fewer employees (and is therefore potentially ‘eligible’ to take a case to ADR), a CP instead had reasonable processes in place for determining whether business customers are likely to be small businesses for the purpose of this obligation (for example, making an assessment based on annual communications expenditure of that customer).”

A6.56 — We will take an approach consistent with this to enforcement of condition C1.3. In assessing compliance, we will consider whether CPs have taken reasonable steps to identify business customers to whom the prohibition applies. For example, they may (but not be limited to):

i) Identify the size of the business by the annual communications spend and ensure that packages without ARCs are targeted to low spending small business customers.

ii) Identify the size of the business by the number of lines it has, and ensure that packages without ARCs are targeted to small business customers with few lines.

iii) Ensure that where customers self select an ARC (for example, by purchasing online), they may easily identify themselves as being ‘eligible’ for an ARC.

- A6.57 ~~In addition, in~~ In assessing compliance, we will expect ~~CPs providers~~ to take reasonable steps to inform staff ~~and existing ARCs customers affected by the amendment to condition C1.3 of these new regulations~~ of the regulations in Condition C1.10. For example, ~~CPs providers~~ may:
- a) ensure that sales staff are comprehensively briefed on the regulations;
 - b) provide clear information to customers about the regulations on ARCs; and
 - c) ensure that sales scripts and contract negotiations include necessary information about, for example, ~~migration process,~~ key dates and charges, and any termination procedures.
- A6.58 We also expect that ~~CPs providers~~ will take a reasonable approach to redress in cases where a ~~[Microenterprise or Small Enterprise Customer, or Not-For-Profit Customer small business customer]~~ has been sold an ARC inadvertently. ~~Generally, we would expect the CP to enable the customer to exit the contract or move to another package penalty free in such cases (after the ending of any fixed commitment period). We believe this flexible approach is an appropriate way to monitor compliance and enforce the small business prohibition for businesses with 10 or less employees. While Condition C1.22 requires providers to ensure that customers have the right to exit the contract with a maximum one month notice period when a contract is automatically prolonged, in circumstances where a customer has been inadvertently sold an ARC, we would expect the provider to proactively alert the customer of their right to exit the contract and allow them to exit the contract after a maximum one month notice period.~~

Conditions C1.14 - C1.17 - ~~Guidance on contractual modifications~~⁷ under conditions C1.6-C1.9

- A6.59 The guidance below, which does not form part of Conditions ~~C1.6-C1.9-C1.14-C1.17~~, sets out how we are likely to apply Conditions ~~C1.6-C1.9-C1.14-C1.17~~ in relation to changes CPs make to their consumer and ~~[Microenterprise or Small Enterprise Customer, or Not-For-Profit Customer small business]~~ contracts.
- A6.60 Condition ~~C1.6 C1.14~~ states:

⁷ As noted above, from June 2022 these provisions will be replaced by those set out at Annex 10 of the statement.

C1.6C1.14 Regulated Providers shall:

- (a) give their Subscribers adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to that Subscriber;
- (b) allow their Subscribers to withdraw from their contract without penalty upon such notice; and
- (c) at the same time as giving the notice in Condition **C1.6C1.14**(a), inform the Subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the Subscriber.

A6.61 Conditions **C1.6 C.1.9 C1.14-C1.17** set out increases in price that are contractual modifications likely to be of material detriment to a Consumer or [~~Small Business Customer~~ Microenterprise or Small Enterprise Customer or Not-For-Profit Customer] for the purposes of Condition **C1.6C1.14**.

Changes to contractual prices

Application to bundles

A6.62 In some circumstances, communications services may be marketed and sold to subscribers together as part of a bundle. Such a bundle may include some services subject to Conditions **C1.6 C.1.9 C1.14-C1.17** and some not. It will be a question of fact and proper contractual construction as to whether all the services comprised in any such bundle are:

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

A6.63 In the first two circumstances, Ofcom is likely to treat Conditions **C1.6 C.1.9 C1.14-C1.17** as applying to the whole contract even if there are elements within it which, on their own, are not subject to that condition. We would be likely to regard any mid-contract increase in the agreed Core Subscription Price to be materially detrimental (or likely to be materially detrimental) for the purposes of Conditions **C1.6 C.1.9 C1.14-C1.17**.

Notification of contract modifications

A6.64 We expect **CPs providers** to actively communicate to their subscribers any proposed contractual modifications. **CPs Providers** need to ensure that subscribers know how such changes will be communicated to them. For example, the terms and conditions should state the method(s) used to communicate contractual modifications and timescales for doing so.

Notification methods

- A6.65 Notifications should be set out with due prominence in order to attract the subscriber's attention. They should be in a form which subscribers can reasonably be expected to read. Letters and emails (if that is the means of communication chosen by the subscriber) are the most obvious examples of notifications.
- a) Hard copy notifications should be clearly marked as such in a prominent manner e.g. on the front of the envelope/communication material/the subscriber's bill, and possibly in more than one place in order to attract the subscriber's attention.
 - b) Providers should consider issuing the modification notification on a separate piece of paper from any marketing material. This could help to ensure that the notification does not get lost in other communications that the subscriber receives from the provider but may not necessarily read.
 - c) Other printed material, such as pamphlets or magazines, may be used but whether this would be deemed sufficient will depend on how transparent it is made to the subscriber upfront that such publications may contain important information. Not all customers read pamphlets and magazines sent by their **CP provider**.
 - d) Email notifications of contract modifications should be clearly marked as such in the subject line of the email.
 - e) We do not consider that asking subscribers regularly to check their **CP provider's** website for possible changes to their contract is acceptable.

Content of notification

- A6.66 The notification must be clear and easy to understand. For example, it should make the subscriber aware of the nature of the contract modification, the likely impact on him/her, and, where relevant, set out clearly what action the subscriber can take to avoid the impact, should he/she wish to.
- A6.67 Information about the subscriber's termination rights should be made clear upfront. For example, on the front page of a hard copy notification, in the main email message rather than via a link in the message or on the actual webpage of the modification notification rather than via a link to another page.

Notification of termination rights

- A6.68 Where it arises, a subscriber's right to terminate their contract must be real and capable of effective exercise in practice.
- A6.69 To that end, where the subscriber does have the ability to terminate, this should be made clear in the main body of the notification rather than in a footnote or a reference to the relevant clause of the terms and conditions.

- A6.70 The minimum timescale that **CP providers** should give subscribers the ability to exit the contract for any relevant changes is 30 days. This is to enable subscribers to consider the proposed contractual modification and give them time to research their options.
- a) When this 30 day period for termination starts and ends should be made clear to the subscriber in the notification they receive from the **CP provider** of the proposed changes.
 - b) When the cancellation of the services actually takes effect following a subscriber's request to terminate should also be made clear.
 - c) **CP Providers** may give their customers a period of more than 30 days in which to withdraw from the contract if they wish to do so.
- A6.71 The terms and conditions or other practices **CPs providers** apply (whether in contracts for bundled services or other contracts relating to that in respect of which a relevant price rise occurs) in respect of contract termination are also important considerations. Terms and/or practices which frustrate the practical effect of Condition **C1.6C1.14** are liable to attract suspicion of non-compliance with the relevant rules.⁸
- A6.72 **CPs Providers** should also keep in mind the need to comply with all their obligations under the General Conditions, including as to switching processes. This is particularly relevant where the rules provide for a gaining provider-led process under which a subscriber is able to switch providers by contacting a new provider and without needing to contact their existing one.
- A6.73 Neither Condition **C1.6C1.14** itself nor this guidance requires that a subscriber must exercise their rights under that condition by contacting their existing provider. One way the **CP provider** making contract modifications could meet its obligations in a relevant case is by telling the subscriber that the Condition **C1.6C1.14** termination rights may be exercised by contacting a new provider.

Guidance on Conditions **C1.10-1.21 C1.23 – C1.36 - End-of-Contract and Annual Best Tariff Notifications**

A6.74 ~~This guidance goes not form part of the General Conditions. Its purposes is to assist Communications Providers (CPs) to comply with Conditions C1.10-C.21 by outlining This part of the guidance outlines Ofcom's expectations as to what information should be included in the notifications sent to Consumers in compliance with those conditions Conditions C1.23-C1.36, and how those notifications should be sent. In particular, This guidance does not contain an exhaustive list of the information to be included in notifications for Consumers (this is set out in Conditions C1.11 C1.24 and C1.18 C1.33).~~

~~A6.75 Words and expressions used in Conditions C1.1–C1.21 have the same meaning when used in this guidance.~~

⁸ In this regard, Condition **C1.38** is also relevant.

A6.76 This guidance only applies to notifications sent to Relevant Customers who are Consumers in accordance with Conditions ~~C1.10 - C1.21~~ C1.23 - C1.36.

Conditions ~~C1.11~~ C1.24 and ~~C1.18~~ C1.33 – Content of End-of-Contract and Annual Best Tariff Notifications

Details of services provided under the contract

A6.77 Conditions ~~C1.11(b)~~ C1.24(b) and ~~C1.18(e)~~ C1.33(c) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include “*details of the services provided by the Regulated Provider to the ~~Subscriber~~ Relevant Customer under that contract.*”

A6.78 In complying with these requirements, we expect the CP provider to give the Subscriber a comprehensive list of all services ~~and Terminal Equipment~~ which form part of the contract subject to the notification. This would include:

- a) all ancillary services currently provided under that contract; and
- b) any service supplied by a third party, if the provision of that service to the subscriber forms part of that contract.

A6.79 The full list of all services does not need to be listed in the notification itself, provided that:

- a) the Subscriber’s main services, and aspects of those services, are listed in the notification itself;
- b) the full list of all services is provided in a single location;
- c) that location is easily accessible to the Subscriber; and
- d) a reference to the location of that list is included in the notification.

A6.80 For example, mobile and broadband CPs providers provide call, SMS and data services, with associated connection speeds and allowances. We consider these to be the main services which, combined with the associated aspects of those services, form the service package the Subscriber receives from their CP provider. They must be listed in the notification itself.

A6.81 The CP provider may also provide other services to the Subscriber as part of the contract, for example over-the-top content services for music and video streaming or cloud storage, but we would not consider these to be the Subscriber’s main services. These services can be listed in another location provided that the conditions above are met. The other location could be, for example, an annex to the notification. The annex should then be referenced in the main part of the notification. Alternatively, the CP provider could provide the full list of services in an online location and provide a link to that location in the notification.

A6.82 Where a provider is required to list Terminal Equipment, it should consider whether this forms part of the Subscriber’s main services under the contract. This may differ depending on the type of contract and the importance which Subscribers attach to the Terminal

Equipment. For example, a mobile handset is likely to form part of the Subscriber's main services and should be listed in the notification itself.

Details of any changes to services provided under the contract because the ~~fixed~~ Commitment Period is ending

- A6.83 Condition C1.11(i) C1.24(j) requires an End-of-Contract Notification to include “*details of any changes to the services referred to in Condition C1.11(b) C1.24(b) that will come into effect because the ~~Fixed~~ Commitment Period for that contract is ending.*”
- A6.84 In complying with this requirement, CPs providers should apply the principles described above in paragraphs 1.47-1.51 A6.77-A6.82 to set out the changes to the listed services that will come into effect because the ~~fixed~~ Commitment Period is ending. Any changes to the main services provided under the contract, and the associated aspects of those services, should be included in the notification itself. A full list of changes to the services provided under the contract may be listed elsewhere (subject to compliance with the requirements described above).

Details of other contracts taken with the same provider and/or as part of a Bundle

- A6.85 Conditions C1.11(e) C1.24(e) and C1.18(e) C1.33(e) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include “*details of other contracts for Public Electronic Communications Services between the Regulated Provider and the ~~Subscriber Relevant Customer.~~*”
- A6.86 Conditions C1.24(f) and C1.33(f) require End-of-Contract and Annual Best Tariff Notifications, respectively, to include “details of other contracts between the Regulated Provider and the Relevant Customer which form part of a Bundle with the contract for the Relevant Communications Service.”
- A6.87 We expect the “details of other contracts” to comprise a list of the following contracts:
- a) if termination of the contract subject to the notification (the “primary contract”) triggers an impact on another contract for public electronic communications services between the CP and the subscriber (the “secondary contract”), then the secondary contract must be listed; and
 - b) if termination of a secondary contract would trigger an impact on the primary contract, then the secondary contract must be listed.
 - a) in relation to C1.24(e) and C1.33(e), linked contracts for Public Electronic Communications Services (i.e. linked to the contract subject to the notification); and
 - b) in relation to C1.24(f) and C1.33(f), contracts that form part of a Bundle with the contract subject to the notification.
- ~~A6.88 An impact from primary to secondary contract (or vice versa) could be a financial or other type of impact (e.g. the loss of a discount, automatic termination, changes to terms and conditions or change to services or allowances).~~

A6.89 By “linked contracts”, we mean two or more contracts which present a dependency such that:

- a) termination of a contract (the “primary contract”) triggers an impact on another contract (the “secondary contract”); and/or
- b) termination of a secondary contract triggers an impact on the primary contract.

A6.90 We consider the following types of dependencies to be relevant in this context:

- a) **Technical dependency** – where a customer would lose, or be impaired in using, an element of one contract when terminating the other contract.
- b) **Contractual dependency** – where there are links between the rights or obligations in the primary and secondary contracts.
- c) **Financial dependency** – where any prices, tariffs or charges for the provision of one contract are contingent on taking the other contract.

A6.91 This is not an exhaustive list and there may be other types of dependency that would fall within the definition of a “linked contract”.

In the remainder of this guidance, we refer to these secondary contracts described in paragraph 55(a) and (b) as “financially linked or interdependent”.

How to terminate that contract

A6.92 Condition C1.11(f) C1.24(g) requires an End-of-Contract Notification to include information on “how the Subscriber Relevant Customer may terminate that contract”.

A6.93 In complying with this requirement, we expect CPs providers to take account of our guidance in relation to Condition C1.3 C1.8 on conditions and procedures for contract termination.⁹

Options available to the subscriber Relevant Customer

A6.94 Condition C1.11(k) C1.24(l) requires an End-of-Contract Notification to include “details of the options available to the Subscriber Relevant Customer at the end of the Fixed Commitment Period for that contract”.

A6.95 Condition C1.18(g) C1.33(h) requires an Annual Best Tariff Notification to include “details of the options available to the Subscriber Relevant Customer”.

A6.96 We expect “details of the options available” in both contexts to include advice to Subscribers that they can:

- a) stay on their existing contract;
- b) switch to a new contract with the same CP provider (including but not limited to those referred to as part of the provider’s best tariffs);

⁹ Paragraphs 1.2 1.14 A6.11-A6.27 above.

- c) switch to a new contract with a different **CP provider**; and
- d) for Subscribers on **bundled** handset and airtime mobile contracts **only that form part of a Bundle**, switch to a SIM-only deal.

A6.97 The advice should also inform Subscribers that some **CPs providers** may offer new customers better deals and that they may get a better deal if they **bundle the purchase multiple** services **they have with together from** that or any other **CP provider**.

The Provider's best tariffs

A6.98 Conditions **C1.11(l)** **C1.24(m)** and **C1.18(h)** **C1.33(i)** require End-of-Contract and Annual Best Tariff Notifications, respectively, to include "*the Regulated Provider's best tariffs.*"

A6.99 For Subscribers who are Consumers, we expect this to consist of the following tariffs, where applicable:

- a) a tariff, based on the services the Subscriber receives, that is the cheapest available to that Subscriber;
- b) a tariff, based on the services the Subscriber receives, that is the cheapest tariff available to any Subscriber (if not the same as in (a));
- c) unless the **CP provider** can demonstrate that it is not relevant to the Subscriber's service(s), a tariff based on the Subscriber's usage, that is the cheapest available to that Subscriber (if not the same as (a));
- d) where the Subscriber has **a bundled** mobile handset and airtime contracts **that form part of a Bundle**, the cheapest available SIM-only tariff based on the services the Subscriber currently receives; and
- e) where a **CP provider** chooses to include one, an upgrade tariff.

A6.100 Where a tariff is based on the services the Subscriber receives, **CPs providers** should give a tariff consisting of a package of services that, in relation to the Subscriber's main services and the associated aspects of those services,¹⁰ are most similar to the services the Subscriber currently receives.

A6.101 Where a tariff is based on the Subscriber's usage, **CPs providers** should give a tariff consisting of a package of services that takes into account the Subscriber's likely usage of their main services and the associated aspects of those services.

A6.102 The cheapest available tariff means that at the lowest cost published by that **CP provider** and generally available to the public, for example on its website or in its stores. However, the **CP provider** may choose instead to present an alternative tariff to the Subscriber as the cheapest available, provided that it is lower cost than the cheapest generally available tariff.

¹⁰ We discuss at paragraphs **1.50-1.51** **A6.80-A6.82** what we mean by a Subscriber's main services, and the associated aspects of those services.

- A6.103 Tariffs presented as available to a Subscriber must be available to them as of the date of the notification. In relation to End-of-Contract Notifications, they should remain available at least until the end of the Subscriber's **fixed** Commitment Period. In relation to Annual Best Tariff Notifications, they should remain available for at least 30 days from the date of the notification.
- A6.104 **CPs Providers** should state clearly if a Subscriber is not eligible for a tariff, explain why they are not eligible and why the tariff is being shown to them.
- A6.105 If **CPs providers** choose to include an upgrade tariff, it should be one which, with reasonable objective justification, they consider to represent a Subscriber's best tariff.
- A6.106 If multiple Public Electronic Communications Services are provided under the contract subject to the notification (e.g. a dual or triple play contract), **the tariffs the CP provider presents should be for a bundle in relation to those services should consider all of those services when determining its best tariffs in accordance with paragraph A6.99.**
- A6.107 **Where:**
- a) the **CP provider** provides multiple Public Electronic Communications Services to the Subscriber, but some are provided under the contract subject to the notification and some under a **financially linked or interdependent other linked** contract(s)¹¹; **or**
 - b) **the contract subject to the notification forms part of a Bundle with another contract(s), the tariffs the CP provider presents should be for a bundle in relation to those services consider the services / Terminal Equipment provided or sold under all of the contracts when determining its best tariffs in accordance with paragraph A6.99** in the following circumstances:
 - a) in an End-of-Contract Notification, if either:
 - i) the 31-day window¹² for the **financially linked or interdependent** contract subject to the notification overlaps with the 31-day window for the **other** contract(s) **subject to the notification**; or
 - ii) the **financially linked or interdependent other** contract(s) is **(are)** not subject to a **fixed** Commitment Period when the notification is sent,
 - b) in an Annual Best Tariff Notification, if the **financially linked or interdependent other** contract(s) is **(are)** not subject to a **fixed** Commitment Period when the notification is sent.

¹¹ See paragraphs **1.55-1.57 A6.89-A6.91** for an explanation of this term.

¹² See paragraph **1.75 A6.109** for an explanation of this term.

Conditions C1.13 C1.27 and C1.14 C1.28 – how to send End-of-Contract Notifications

Timing

- A6.108 Condition C.13 C1.27 requires CPS providers to send End-of-Contract Notifications in “a timely manner, before the end of the Subscriber Relevant Customer’s Fixed Commitment Period.”
- A6.109 In complying with this requirement in relation to Subscribers who are Consumers, we expect CPS providers to send notifications between 10 and 40 days before the end of the fixed Commitment Period (we refer to this time period elsewhere in this guidance as the “31-day window”).¹³
- A6.110 Where a Consumer is approaching the end of the fixed Commitment Period of more than one contract, we expect CPS providers to aggregate the End-of-Contract Notifications into a single message if:
- the contracts subject to the notifications are financially linked or interdependent linked contracts; ¹⁴ and
 - the 31-day windows for those contracts overlap.¹⁵
- A6.111 The aggregated notification should then be sent within the earlier of the 31-day windows.

Prominence

- A6.112 Condition C1.14 C1.28 requires CPS providers to send End-of-Contract Notifications in “a prominent manner.”
- A6.113 In complying with this requirement in relation to Subscribers who are Consumers, we expect CPS providers to provide information in an End-of-Contract Notification with the following given first:
- the date on which the fixed Commitment Period for that contract will end;
 - the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the fixed Commitment Period ends.
- A6.114 The provider’s best tariffs should come at the end of the notification and should be given equal prominence to one another.
- A6.115 Where an End-of-Contract Notification is sent via an SMS, we expect the following information to appear in the SMS message:

¹³ This is subject to an exception in relation to aggregated notifications, as set out in paragraph 1.77 A6.111.

¹⁴ See paragraphs 1.55-1.57 A6.89-A6.91 for an explanation of this term.

¹⁵ CPS Providers may also choose to aggregate notifications (including aggregating an End-of-Contract and Annual Best Tariff Notification) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.

- a) the date on which the **fixed** Commitment Period for that contract will end;
- b) the monthly subscription price currently paid by the Subscriber;
- c) the monthly subscription price that will come into effect once the **fixed** Commitment Period ends;
- d) details of the options available at the end of the **fixed** Commitment Period; and
- e) a message that further information is available, including tariffs that the provider is required to tell the Subscriber about, and an indication of where that information is available.

A6.116 The remaining information required by Condition **C1.11-C1.24** should be made available to the Subscriber in a single location, which is referred to in paragraph **A6.115e)1.76e)**.

A6.117 Condition **C1.14 C1.28** also requires that “[i]f the **Subscriber Relevant Customer** is a Consumer, the End-of-Contract Notification must also be separate and distinct from any other communication”. This does not prevent a **CP provider** from aggregating notifications in line with this guidance.

Condition **C1.19 C1.34** and **C1.20 C1.35** – how to send Annual Best Tariff Notifications

Timing

A6.118 Condition **C1.19 C1.34** requires **CPs providers** to send an Annual Best Tariff Notification to a Subscriber who is a Consumer “at least once in every 12-month period”.

A6.119 We expect **CPs providers** to comply with this requirement as follows:

- a) For contracts that **are were** already in force at ~~the date of entry into force of Condition **C1.19**~~ **15 February 2020** (i.e. the date of entry into force of Condition **C1.34**), the first Annual Best Tariff Notification should be sent within 12 months of that date. An exception to this is where the contract **is was** subject to a **fixed** Commitment Period ~~when Condition **C1.19** enters into force on 15 February 2020~~. The Subscriber will in this case receive an End-of-Contract Notification prior to the end of their **fixed** Commitment Period. The first Annual Best Tariff Notification should then be sent within 12 months following the date on which the End-of-Contract Notification was sent.
- b) For contracts entered into after ~~the date of entry into force of Condition **C1.19**~~ **15 February 2020**, the first Annual Best Tariff Notification must be sent within 12 months of the date on which the **CP provider** has sent an End-of-Contract Notification in relation to that contract.
- c) Second and subsequent Annual Best Tariff Notifications should then be sent within 12 months of the previous one.

- d) If a Subscriber has two or more contracts that are not subject to a **fixed** Commitment Period and those contracts are **financially linked or interdependent linked contracts**¹⁶, the **CP provider** should aggregate the Annual Best Tariff Notifications for those contracts into a single communication (we would still expect the **CP provider** in these circumstances to observe the guidance at a) to c) above).¹⁷

Prominence

- A6.120 Condition **C1.20 C1.35** requires **CPs providers** to send Annual Best Tariff Notifications to Subscribers who are Consumers in “*a prominent manner.*”
- A6.121 In complying with this requirement, we expect **CPs providers** to provide information in the Annual Best Tariff Notifications with the following given first:
- the message that the contract is not subject to a **fixed** Commitment Period; and
 - the current monthly subscription price under that contract.
- A6.122 The provider’s best tariffs should come at the end of the notification and should be given equal prominence to one another.
- A6.123 Where an annual best tariff notification is sent via an SMS, we expect the following information to appear in the SMS message:
- a message that the **fixed** Commitment Period for that contract has ended;
 - the current monthly subscription price paid by the Subscriber under that contract;
 - details of the options available to the Subscriber;
 - a message that further information is available, including tariffs that the provider is required to tell the Subscriber about, and an indication of where that information is available.
- A6.124 The remaining information required by Condition **C1.18 C1.33** should be made available to the Subscriber in a single location, which is referred to in paragraph **1.84d) A6.123d)**.
- A6.125 Condition **C1.20 C1.35** also requires **CPs providers** to send Annual Best Tariff Notifications to Subscribers who are Consumers via a Durable Medium “*that is separate and distinct from any other communication*”. This does not prevent **CPs providers** from aggregating notifications in line with this guidance.

¹⁶ See paragraphs **1.55-1.57 A6.89-A6.91** for an explanation of this term.

¹⁷ **CPs Providers** may also choose to aggregate notifications (including aggregating an End-of-Contract and Annual Best Tariff Notifications) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.