

Notification of modifications to the General Conditions

NOTIFICATION MODIFYING THE GENERAL CONDITIONS UNDER SECTION 48(1) OF THE COMMUNICATIONS ACT 2003

MODIFICATION OF GENERAL CONDITION 18 OF PART 2 OF THE GENERAL NOTIFICATION REGARDING THE REQUIREMENT TO PROVIDE NUMBER PORTABILITY

BACKGROUND

- A. The Director General of Telecommunications published on 22 July 2003 a Notification setting general conditions under section 45 of the Act which took effect on 25 July 2003 (the “2003 Notification”). Since July 2003, the general conditions so set have been modified on several occasions and new general conditions have been set by Ofcom (collectively, the “General Conditions”).
- B. On 24 February 2011 Ofcom published a Consultation¹ (“the Consultation”), setting out its proposals to modify the General Conditions and Universal Service Conditions in order to implement the revised EU electronic communications framework² in the UK.
- C. Ofcom proposed in the Consultation to amend General Condition 18 in order to give effect to Article 30(1) of the Universal Service Directive³, whereby the right to Number Portability would be widened to apply to Subscribers with numbers in the National Telephone Plan.⁴
- D. Ofcom invited representations on the proposals contained in its Consultation by 7 April 2011.
- E. Ofcom received responses to the Consultation and considered every such representation made in respect of the proposals set out in the Consultation.
- F. On 25 May 2011 Ofcom published a Notification⁵ (and accompanying Explanatory Statement⁶ (“the Statement”)) under section 48(1) of the Act, implementing its policy decisions.
- G. Ofcom set out in the Statement that it is required to implement the requirements of Article 30(1) of the Universal Service Directive, applying the right to Number Portability to Subscribers with numbers from the National Telephone Numbering Plan.⁷

¹ “Changes to General Conditions and Universal Service Conditions, Implementing the revised EU Framework”, <http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/summary/gc-usc.pdf>

² The Framework consists of five Directives: the Framework Directive (2002/21/EC); the Authorisation Directive (2002/20/EC); the Access Directive (2002/19/EC); the Universal Service Directive (2002/22/EC); and the Privacy and Electronic Communications Directive (2002/58/EC); as amended by the Better Regulation Directive (2009/140/EC) and Citizens Rights Directive (2009/136/EC).

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0022:20091219:EN:PDF>

⁴ At paragraph 10.19 of the Consultation.

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/statement/Annex_2.pdf

⁶ “Changes to General Conditions and Universal Service Conditions, Implementing the revised EU Framework”, <http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/statement/Statement.pdf>

⁷ Paragraphs 10.3; 10.120(i) and 10.125 of the Statement.

H. Due to an unintended omission, the Notification published on 25 May 2011 did not include the decision to modify General Condition 18 in accordance with the decision made in the Statement, as set out in Recital G above.

I. This Notification now implements the decision set out in Recital G above by modifying General Condition 18.

J. As a result of the modifications made, a Subscriber with a number or numbers in the National Telephone Numbering Plan who is a party to a contract with the provider of Public Electronic Communications Services has a right to Number Portability, and the definition of "Publicly Available Telephone Service" has now been omitted from General Condition 18.

DECISION

1. In accordance with section 48(1) of the Act, Ofcom sets out the modifications to the General Conditions made in the Schedule to this Notification.
2. The effect of, and Ofcom's reasons for making, these modifications are set out in the Consultation and in the Statement.
3. Ofcom is satisfied that these modifications satisfy the test in section 47 of the Act.
4. In making these modifications, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
5. In this Notification:
 - (i) "2003 Notification" has the meaning ascribed in Recital A above;
 - (ii) "Act" means the Communications Act 2003;
 - (iii) "Consultation" means the Consultation described in footnote 1 to this Notification;
 - (iv) "General Conditions" have the meaning ascribed in Recital A above;
 - (v) "National Telephone Numbering Plan" has the meaning set out in section 56 of the Act;
 - (vi) "Notification" means a Notification published under section 48(1) of the Act;
 - (vii) "Number Portability" has the meaning set out in General Condition 18.11(h) of the Schedule to this Notification;
 - (viii) "Ofcom" means the Office of Communications;
 - (ix) "Public Electronic Communications Service" has the meaning set out in section 151(1) of the Act;
 - (x) "Subscriber" has the meaning set out in General Condition 18.11(n) of the Schedule to this Notification; and
 - (xi) "Statement" means the Statement described in footnote 6 to this Notification.
7. Except insofar as the context otherwise requires, 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.
8. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

9. The Schedule to this Notification shall form part of this Notification.

Signed by David Stewart

A handwritten signature in black ink, appearing to be 'D. Stewart', with a horizontal line crossing through the middle of the letters.

Competition Policy Director

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

9 July 2012

SCHEDULE

MODIFICATION TO GENERAL CONDITION 18 REQUIREMENT TO PROVIDE NUMBER PORTABILITY

This Schedule sets out the modification to General Condition 18.

18. NUMBER PORTABILITY⁸

- 18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.
- 18.2⁹ In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, the Donor Provider shall:
- (a) allow Subscribers to request a PAC over the phone; and
 - (b) where a Subscriber contacts the Donor Provider by phone, provide the PAC immediately over the phone where possible or by SMS within two hours of the request or by another reasonable mechanism if requested by the Subscriber and consented to by the Donor Provider.
- 18.3 The Communications Provider shall ensure:
- (a) in the case of Mobile Number Portability, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the Recipient Provider of the Subscriber Request to Port from its new Subscriber.
 - (b) In all other cases, porting of these numbers and their subsequent activation shall be completed within one business day once all necessary validation processes have been completed, the network connection is ready for use by the Subscriber, and the Donor Provider has received a request to activate the porting of these numbers from the Recipient Provider.
- 18.4 Subject to paragraph 18.3(a), the Recipient Provider shall request porting from the Donor Provider as soon as it is reasonably practicable after receiving the Subscriber Request to Port from its new Subscriber.

⁸ On 22 July 2003, Oftel published a document, "Changes to the number portability functional specification to meet the new regime published by Oftel on 22 July 2003", http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun_final0703.pdf. This statement set out the number portability functional specification Issue No. 5 at Annex B (also known as the "Functional Specification" for the purposes of General Condition 18). Further amendments made as a result of Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, replacing previous General Conditions 18.1 and 18.3 with revised wording, inserting new General Conditions 18.5(e), 18.8, 18.9 and 18.10 and making consequential changes to definitions. A further Notification was published on 9 July 2012, making additional changes to the definitions in line with the Statement.

⁹ 'Changes to the Mobile Number Porting Process', Statement, dated 8 July 2010, with effect from 11 April 2011, inserted Conditions 18.2, 18.3 and 18.4, and renumbered the following Conditions. See also the first footnote to Condition 18.5 below.

18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms¹⁰. Any charges for the provision of such Portability shall be made in accordance with the following principles:

- (a) subject always to the requirement of reasonableness, charges shall be cost oriented and based on the incremental costs of providing Portability unless:
 - (i) the Donor Provider and the Recipient Provider have agreed another basis for the charges, or
 - (ii) the Office of Communications¹¹ has directed that another basis for charges should be used;
- (b) the Donor Provider shall make no charge in relation to System Set-Up Costs or Additional Conveyance Costs;
- (c) in respect of Mobile Portability, the Donor Provider shall make no charge or annual fee for ongoing costs relating to registration of a ported Telephone Number or a Subscriber;
- (d) charges levied by the Donor Provider shall be based on the reasonable costs incurred by it in providing Portability with respect to each Telephone Number;
- (e) any direct charges to Subscribers for providing Number Portability do not act as a disincentive to Subscribers against changing their Communications Provider.

18.6 Where the Communications Provider provides Portability in accordance with paragraph 18.5:

- (a) the Recipient Provider; and
- (b) the Transit Provider,

shall, as appropriate, provide Portability on reasonable terms¹².

¹⁰ Number Portability and technology neutrality, Statement, 30 March 2006, removed wording “and in accordance with the Functional Specification”.

“Arrangements for porting phone numbers when customers switch supplier, a review of General Condition 18”, Statement and Further Consultation, 17 July 2007, inserted into Condition 18.5 after “reasonable terms” the following wording: “In the case of Mobile Portability, where the request is for porting a total of less than 25 Telephone Numbers, the total period for providing Portability in respect of those Telephone Numbers shall not exceed two business days” with effect from 31 March 2008.

“Telephone number portability for consumers switching suppliers”, Statement, 29 November 2007 replaced “two business days” with “two hours” with effect from 1 September 2009. As a result of the Competition Appeal Tribunal’s judgment in *Vodafone v Ofcom*, of 18 September 2008, the modifications made to General Condition 18 of Part 2 of the General Conditions of Entitlement by Ofcom’s concluding statement entitled “Telephone number portability for consumers switching suppliers” dated 29 November 2007 have been set aside (see

<http://www.ofcom.org.uk/consult/condocs/gc18review/updateoct08/>).

‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, replaced the modifications made on 17 July 2007 with Condition 18.3 above.

¹¹ ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, replaced references to “the Director” with “the Office of Communications” in Conditions 18.5 and 18.7.

- 18.7 The Communications Provider shall, on the written request of the Office of Communications, provide the Office of Communications with a record of each Telephone Number in relation to which it is providing Portability, specifying the relevant Recipient Provider in each case.
- 18.8 The Communications Provider shall inform the Subscriber of the date when Number Portability will be provided to that Subscriber.
- 18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.
- 18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.
- 18.11 For the purposes of this Condition:
- (a) “Additional Conveyance Costs” mean any costs incurred by the Donor Provider associated with resources used in:
 - (i) effecting the switch-processing required to set up each ported call; and
 - (ii) providing the switch and transmission capacity for any part of the duration of each ported call,additional to the costs of conveyance of non-porting calls from the Donor Provider’s network to the Recipient Provider’s network;
 - (b) “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;
 - (c) “Donor Provider” means a Communications Provider whose Subscriber Numbers are in the process of being, or have been passed or ported to a Recipient Provider¹³;
 - (d)¹⁴ “Mobile Communications Service” means any Public Electronic Communications Service consisting in the conveyance of Signals by means of a Public Communications Network where every Signal that has been conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a Public Communications Network which is designed or adapted to be capable of being used in motion;

¹² Number Portability and technology neutrality, Statement, 30 March 2006, removed wording “and in accordance with the Functional Specification”.

¹³ Number Portability and technology neutrality, Statement, 30 March 2006, removed definition “Functional Specification”.

¹⁴ ‘Changes to the General Conditions and Universal Service Conditions’ (Implementing the revised EU Framework), Statement, 25 May 2011 removed ‘Publicly Available Telephone Services’ (“PATS”) and replaced with ‘Public Electronic Communications Service’ (Notification published on 9 July 2012). The definition of PATS, previously paragraph 18.11(l), was also removed.

- (e)¹⁵ “Mobile Number” means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;
- (f)¹⁶ “Mobile Number Portability” means Number Portability relating to Mobile Numbers;
- (g) “Mobile Portability” means Portability relating to Telephone Numbers Allocated for use with Mobile Communications Services;¹⁷
- (h) “Number Portability” means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Communications Network, independently of the person providing the service at the Network Termination Point of a Subscriber¹⁸ provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;
- (i)¹⁹ “PAC” means Porting Authorisation Code, which is a unique code used to signify the Donor Provider’s consent to the Subscriber being entitled to request and have their Mobile Number ported to another Communications Provider;
- (j) “Point of Connection” means a point at which one Public Communications Network is connected to another;
- (k) “Portability” means any facility which may be provided by a Communications Provider to another Communications Provider²⁰ enabling any Subscriber who requests Number Portability to continue to be provided with any Public Electronic Communications Service²¹ by reference to the same Telephone Number irrespective of the identity of the person providing such a service;
- (l) “Recipient Provider” means a Communications Provider to whom Subscriber Number(s) are in the process of being, or have been passed or ported from a Donor Provider;

¹⁵ ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted the definition of “Mobile Number” and renumbered the following definitions.

¹⁶ ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted the definition of “Mobile Number Portability”.

¹⁷ Number Portability and technology neutrality, Statement, 30 March 2006, removed definition “Non-geographic Number”.

¹⁸ Number Portability and technology neutrality, Statement, 30 March 2006, removed wording “in the case of Geographic Numbers, at a specific location” and “in the case of Non-geographic Numbers, at any location”.

¹⁹ ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted the definition of “PAC”.

²⁰ ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted “Communications Provider” after the words “to another”.

²¹ ‘Changes to the General Conditions and Universal Service Conditions’ (Implementing the revised EU Framework), Statement, 25 May 2011 removed ‘Publicly Available Telephone Services’ (“PATs”) and replaced with ‘Public Electronic Communications Service’ (Notification published on 9 July 2012).

- (m)²² “SMS” means Short Message Service, which is a text message delivered to a Subscriber’s handset or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the Subscriber’s handset;
- (n)²³ “Subscriber” means any person with a number or numbers from the National Telephone Numbering Plan who is party to a contract with the provider of Public Electronic Communications Services for the supply of such services in the United Kingdom;
- (p) “Subscriber Number” means the Telephone Number (or Telephone Numbers) which any Communications Provider’s Public Communications Network recognises as relating to a particular Subscriber of that Communications Provider;
- (q)²⁴ “Subscriber Request to Port” means the request by a Subscriber to transfer their Mobile Number which occurs when the Subscriber submits their PAC to the Recipient Provider;
- (r) “System Set-Up Costs” mean costs of the Donor Provider incurred—
- (i) in the course of making network and system modifications, configuration and reconfiguration, including adapting or replacing software;
 - (ii) in the course of testing functionality within that provider’s network and in conjunction with any Recipient Provider’s network,
 - (iii) thereby establishing the technical and administrative capability to provide Portability;
- (s) “Transit Provider” means a Communications Provider providing, by agreement, Interconnection between a Donor Provider and Recipient Provider via Points of Connection with both Communications Providers.

²² ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted the definition of “SMS”..

²³ ‘Changes to Changes to the General Conditions and Universal Service Conditions’ (Implementing the revised EU Framework), Statement, 25 May 2011, inserted references to ‘numbers in the National Telephone Numbering Plan’ and ‘Public Electronic Communications Services’ (Notification published on 9 July 2012)

²⁴ ‘Changes to the Mobile Number Porting Process’, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted the definition of “Subscriber Request to Port”.