
Promoting competition and investment in fibre networks

Measures to support Openreach's proposed trials in Salisbury and Mildenhall – migrating customers to fibre and withdrawing copper services

Non-confidential version – redacted for publication [X]



STATEMENT:

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1. Overview

Openreach plans to modernise its network to support the delivery of telephone services using internet protocol (IP) technology, and to upgrade its copper lines to fibre. As part of this, it will undertake two trials:

- The Mildenhall trial will test the processes for withdrawing Wholesale Line Rental (WLR), and migrating customers from legacy copper services to replacement copper services which will support the delivery of telephone services over broadband connections.
- The Salisbury trial will test the processes for migrating customers to fibre services and, ultimately, withdrawing legacy copper services.

Openreach has requested changes to existing regulation to facilitate these trials. This statement sets out our decision to make those changes, as proposed in consultations in July and November 2019.

What we have decided

To facilitate the Salisbury trial, we have decided to limit the application of our current rules which require Openreach to provide wholesale access to standard and superfast broadband on its copper network. In Salisbury, where fibre is available, Openreach will no longer be required to provide new copper services when customers move house, change service or switch provider. Instead, it will be able to offer broadband over its fibre network only.

To allow Openreach to vary its charges to encourage participation in the Salisbury and Mildenhall trials, we have also decided to limit the application of three of our rules in the trial areas.¹ These changes will enable Openreach to: waive selected wholesale connection charges for migration from legacy to replacement services; maintain wholesale rental charges at the legacy service rate for one year after migration; and waive certain ancillary charges associated with migration.

These amendments will apply only to certain charges offered by Openreach for the Salisbury and Mildenhall trials and for a limited time. Our rules will continue to apply in full elsewhere in the UK.

We will be working with industry to put appropriate safeguards in place for the protection of vulnerable customers during the trials, including the ability to pause their migration or to restore their copper services at short notice if necessary.

The trials are an important step in the transformation of the UK's digital networks

- 1.1 Demand for fixed and mobile broadband connections is growing rapidly, from both people and businesses. To meet this demand, sizeable investment is needed to upgrade the UK's

¹ Those rules are an obligation not to discriminate unduly when providing network access, including the requirement to provide identical wholesale services to all telecoms providers (an obligation known as 'equivalence of inputs'); and the rule which specifies that in areas where Openreach has deployed fibre and has withdrawn its copper-based broadband services, it must offer a 40 Mbit/s download, 10 Mbit/s upload (40/10) fibre based broadband service at the same regulated price it charges for the equivalent copper-based service elsewhere in the UK.

- broadband infrastructure. Whether to support fibre broadband to the premises, connections to 5G mobile stations, or seamless business connectivity, more fibre networks will be needed to support the next generation of services in the UK. Fibre connections provide a better service that can deliver much faster speeds and are more reliable.
- 1.2 Also, the technology used to provide traditional telephony services is becoming obsolete, and providers are moving telephony services to IP (over both copper² and fibre), which can be used to provide high quality telephony services and innovative voice services.
- 1.3 Overall, fibre services to the premises are currently available to 10% of homes.³ So far, Openreach has deployed fibre to 2 million UK homes and businesses. Openreach plans to cover 4 million homes by March 2021 and 15 million homes (around 50% of the UK) by 2025 under its Fibre First programme. In addition, competitors to Openreach have become increasingly active in recent years, announcing and taking forward plans to build fibre networks.
- 1.4 In accordance with its duties, as set out in Ofcom's Strategic Review of Digital Communications, one of Ofcom's goals is to encourage large-scale deployment of new fibre networks both to homes and businesses. Following on from this, and the publication of our strategic policy position in July 2018, this document is part of a suite of publications which set out our work to promote competition and investment in fibre networks.
- 1.5 Migration to fibre services and the ultimate withdrawal of copper services is central to avoiding the inefficient and costly parallel running of two networks, and therefore is important to Openreach's case for investment. Without an efficient migration, there may be less investment in new networks or customers may eventually face higher prices for their services.
- 1.6 We welcome Openreach's proposed trials in Salisbury⁴ and Mildenhall⁵ as steps to test approaches to efficient migration on the Openreach network and learning lessons that can then be applied more broadly across the country. The focus of the trials is the processes for migrating Openreach customers to new technology on Openreach's network. However, where there are competing networks already, and as competitors continue to build new networks, migrating customers may also have more choice, including to switch network providers. As part of our strategy to support investment and competition in fibre networks, we are also working to put in place regulation which supports migration between networks. We are currently consulting on changes to our regulations to implement the requirements of the European Electronic Communications Code (EECC) which specifies

² In this document, copper services include fibre to the cabinet (FTTC) services.

³ Ofcom, December 2019. *Connected Nations 2019*.

https://www.ofcom.org.uk/data/assets/pdf_file/0023/186413/Connected-Nations-2019-UK-final.pdf.

⁴ In this document when we refer to Salisbury, we mean the geographic area in Salisbury, Wiltshire, which is served by the telephone exchange represented by Openreach's exchange code 'STSALIS'.

⁵ In this document when we refer to Mildenhall, we mean the geographic area in Mildenhall, Suffolk, which is served by the telephone exchange represented by Openreach's exchange code 'EAMIL'.

new requirements for all types of switches including where customers switch fibre services and between different physical networks.⁶

- 1.7 Our discussions with industry and stakeholder responses to these consultations⁷ suggest there is broad recognition of the importance of the trials and stakeholders are engaged in making them successful and in learning how to deliver a good experience of migration for everyone, and doing so efficiently.
- 1.8 To succeed, the trials need the support of telecoms providers. They have an important role to play in explaining the benefits of new services to their customers, migrating them to new services, and ensuring that vulnerable customers receive the help they need, or retain – or are restored to – an appropriate copper-based service.
- 1.9 We also recognise that there are risks for customers in migrating from copper to fibre services, particularly to vulnerable customers, and will work to ensure that appropriate protections are put in place.

We are changing our regulation to support Openreach's trials in Salisbury and Mildenhall

- 1.10 The measures we are implementing in this statement are focused on removing some limited regulatory requirements that would otherwise force Openreach to continue to provide new copper-based services even when fibre was available and prevent Openreach amending its wholesale charges to encourage participation in the trials.
- 1.11 This statement is focused on enabling the Salisbury and Mildenhall trials rather than setting principles for withdrawal of copper services more broadly across the country. We have set out proposals that will apply more broadly as part of the Wholesale Fixed Telecoms Market Review (WFTMR)⁸ and expect any final decisions to take effect on 1 April 2021.
- 1.12 We are not making any other changes to pricing regulation, and the current cap on prices of copper-based wholesale superfast services will continue to apply in the trial areas.

⁶ Ofcom, December 2019. *Fair treatment and easier switching for mobile and broadband customers: Proposals to implement the new European Electronic Communications Code*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/proposals-to-implement-new-eecc>.

⁷ Ofcom, July 2019. *Promoting competition and investment in fibre networks - Measures to support Openreach's proposed trial in Salisbury* ('July 2019 consultation') https://www.ofcom.org.uk/data/assets/pdf_file/0028/158167/promoting-competition-and-investment-fibre-networks-consultation.pdf and Ofcom, November 2019. *Measures to support Openreach's trials in Salisbury and Mildenhall* ('November 2019 consultation') https://www.ofcom.org.uk/data/assets/pdf_file/0021/181551/consultation-openreach-trials.pdf

⁸ Ofcom, January 2020. *Wholesale Fixed Telecoms Market Review consultation – Volume 3: Non-pricing remedies*, Section 2. https://www.ofcom.org.uk/data/assets/pdf_file/0033/188970/wftmr-volume-3-non-pricing-remedies.pdf.

Next steps

- 1.13 In relation to the Salisbury trial, the consent limiting the application of the relevant Significant Market Power (SMP) Conditions, which will enable Openreach to stop providing new connections where fibre is available, takes effect from 1 December 2020.
- 1.14 In relation to the Salisbury and Mildenhall trials, the direction disapplying the relevant SMP Conditions, which will enable Openreach to offer its proposed commercial offers in the trial areas, takes effect for the period from 3 February 2020 to 4 May 2021.⁹
- 1.15 We intend to work with Openreach, telecoms providers and other stakeholders to monitor the trials and understand issues as they arise. We are keen to capture lessons from the trials that would apply to the national migration programmes that will follow. We also aim to ensure vulnerable customers remain protected in Salisbury and Mildenhall throughout the trials.

⁹ The direction will also apply to rental charges for a period not exceeding one year following migration where such migration was contracted within the trials period.

2. Introduction

- 2.1 Our work to promote investment in fibre networks supports our strategic priority of achieving better broadband and mobile – wherever you are. Investment in fibre is part of a wider transformation of the UK's telecoms infrastructure.
- 2.2 On the Openreach network, this transformation has two major parts:
- i) Migration of telephone services to IP technology and the withdrawal of traditional analogue telephony. This is known as 'PSTN switch-off', with PSTN standing for the legacy public switched telephone network; and
 - ii) Fibre rollout and subsequent migration of services to fibre and the withdrawal of copper-based services. This is known as 'copper retirement'.
- 2.3 With PSTN switch-off, Openreach is preparing to withdraw analogue telephone services by 2025. Communications networks are now built for data, and the PSTN is reaching the end of its life. IP technology (over copper or fibre) can be used to provide high quality telephone services and innovative voice services. Openreach expects that the PSTN Switch-off would happen nationwide in December 2025, rather than by stages, and has a programme to migrate customers off its legacy network ahead of that.
- 2.4 In contrast, Openreach is planning to retire its copper access network on an exchange area by exchange area basis, after it has deployed fibre (which supports ultrafast services) and customers have been migrated to the new network.¹⁰ This will involve rolling out fibre to contiguous areas, with initial areas consisting of tens of thousands of homes and businesses.
- 2.5 In most cases Openreach does not intend to retire its copper network in areas with fibre until after the PSTN switch-off. For areas that subsequently get fibre from Openreach, Openreach plans to retire copper services, on an area by area basis, several years after each area has fibre. Given the timeline for Openreach's fibre deployment, copper retirement is likely to progress at a much slower pace than migration to IP and subsequent PSTN switch-off. For most areas copper retirement will take place some years after PSTN switch-off, and the challenges of migrating vulnerable consumers to IP technology will already have been addressed.

Openreach has proposed two trials

- 2.6 In support of its network transformation, Openreach has proposed to undertake two trials: in Salisbury (the Salisbury trial) and in Mildenhall (the Mildenhall trial).

¹⁰ By ultrafast services, we mean services over 300Mbit/s.

The Salisbury trial will test the fibre exchange upgrade processes

- 2.7 Openreach is proposing to trial its proposed approach to exchange upgrades and copper retirement in the main exchange serving the city of Salisbury, Wiltshire.¹¹ Salisbury has around 20,000 homes covered by a single exchange.¹² Openreach has started to deploy fibre in Salisbury and has now reached 75% coverage. It proposes to migrate customers to fibre services with a view to retiring its copper services in Salisbury at the end of 2022.
- 2.8 As part of this process, where fibre services are available, Openreach proposes to stop any new supply of copper-based wholesale access services. This will affect orders for new services arising out of a home move, where a consumer wishes to switch telecoms providers or upgrade their existing service. Openreach refers to this as 'stop sell'. Openreach gave 12 months' notice of its intention to stop sell copper access services in December 2019, with the stop sell coming into effect in December 2020.
- 2.9 Openreach's intention is to encourage customers with copper-based superfast or standard broadband to migrate to fibre services. It also intends to offer a fibre service capable of supporting a voice-only service at prices similar to WLR.¹³ This will enable telecoms providers to provide telephone services over fibre connections for customers who do not otherwise require a broadband service.
- 2.10 The purpose of the trial is to allow Openreach and telecoms providers to better understand customer reaction to focused promotion of fibre in an area and the steady withdrawal of copper services, to learn how to deliver a good experience of migration for everyone, to do so efficiently, and ultimately to test how to migrate the final customers before copper retirement. All of this will provide a learning experience for both end consumers and telecoms providers ahead of national copper retirement.¹⁴

The Mildenhall trial will test the arrangements for withdrawing analogue Wholesale Line Rental services

- 2.11 Openreach plans to withdraw its Wholesale Line Rental (WLR) services by 2025 in preparation for the withdrawal of BT's legacy public switched telephone network.
- 2.12 Openreach has proposed that WLR services, which support the current provision of analogue telephony, should be migrated to its 'Single Order' services. With these services, telephone services are provided over the broadband connection, rather than with traditional analogue presentation over a copper access circuit. Single Order services do not

¹¹ Openreach, September 2019. *Openreach Industry Consultation on: FTTP Exchange Upgrade and Single Order Exchange Upgrade trialling*.

¹² Sam Knows, see: <https://availability.samknows.com/broadband/exchange/STSALIS>.

¹³ Our regulation requires Openreach to provide a 40 Mbit/s wholesale service on fibre where it only has fibre services available. Openreach has indicated that it plans to provide a service capable of supporting voice-only services on its fibre network. Openreach, 2019. *Response to Openreach Industry Consultation on: An exchange-based approach to upgrading the UK's digital infrastructure with FTTP*, page 5.

¹⁴ For the avoidance of doubt, national copper retirement, and our proposals for this, are addressed separately in Ofcom, January 2020. *Wholesale Fixed Telecoms Market Review consultation*.

have to be ordered in conjunction with a legacy copper access circuit such as WLR or Metallic Path Facilities (MPF), hence 'single order'.

- 2.13 Openreach is proposing to trial this approach to migration of analogue WLR services in the main exchange serving the town of Mildenhall in Suffolk.¹⁵ The Mildenhall exchange serves approximately 7,500 homes. In December, Openreach notified its customers of its intention to apply a stop sell to MPF and related products, to take effect in Mildenhall on 4 May 2021, until the end of the trial on 16 December 2022.¹⁶
- 2.14 The Mildenhall trial will test the processes for migrating WLR services to Single Order copper-based services which will continue to be used to supply customers in locations where fibre has not yet been deployed. Those services are SOGEA-FTTC¹⁷ and SOGFAST¹⁸.

Ofcom's approach to copper retirement

- 2.15 In our view, as set out in our July 2018 Strategic Policy Position and supported in the UK Government's Future Telecoms Infrastructure Review, regulation must be able to support the smooth transition from Openreach's copper network to fibre networks otherwise we risk undermining the case for investment in networks to the long-term detriment of all consumers.
- 2.16 We are currently consulting on detailed proposals for the transition from Openreach's copper network to its fibre network, and the retirement of copper services, as part of our WFTMR consultation published in January. We propose a gradual transition from copper to fibre regulation, with the network access requirement, charge control and other supporting obligations moving from access based on copper to access based on fibre, over a set period, on an exchange by exchange basis. We expect to publish a draft statement in Q4 2020-21.
- 2.17 This statement relates to changes to existing regulation required to facilitate the trials in Salisbury and Mildenhall ahead of our final decisions in the WFTMR. Our decisions in this statement are distinct from our more detailed proposals on copper retirement generally.

Ofcom's approach to PSTN switch-off

- 2.18 Some people particularly rely on their landlines or are otherwise more vulnerable in the context of the migration process. Services that rely on analogue telephony may no longer work as effectively and alternatives that work using IP technology need to be available to consumers.

¹⁵ Openreach's wholesale digital telephone line services ISDN2 and ISDN30 are not included in the Trials Offer.

¹⁶ The stop sell waiver discussed in this statement applies to the Salisbury trial only, not the Mildenhall trial.

¹⁷ Single Order Generic Ethernet Access – Fibre to the Cabinet (SOGEA-FTTC) enables the provision of wholesale FTTC broadband without the need for MPF (or another copper voice service) to support it.

¹⁸ Single Order G.fast (SOGFAST) enables the provision of wholesale GEA-G.fast broadband without the need for MPF (or another copper voice service) to support it.

- 2.19 In February last year we set out measures that we expect telecoms providers to adopt to protect consumers migrating to IP based telephony services in connection with PSTN switch-off.¹⁹ Those measures are focused on the needs of vulnerable consumers, including those dependent on a landline and on telecare services and on addressing the potential implications for Critical National Infrastructure (CNI) that uses the PSTN.
- 2.20 We expect industry to have appropriate safeguards in place to prevent harm to vulnerable consumers during the trials. Later in this document we set out additional safeguards that we expect telecoms providers to put in place for the Salisbury and Mildenhall trials.

Regulatory support for the trials

- 2.21 In July 2019 we consulted on supporting the Salisbury trial by proposing to make the necessary regulatory changes Openreach requested to allow it to stop sell new copper services in Salisbury. We also emphasised that we would monitor the trial and work with telecoms providers to ensure that vulnerable consumers in Salisbury are protected.
- 2.22 In November 2019 we consulted on supporting both the Salisbury and the Mildenhall trials by proposing to make the additional regulatory changes Openreach requested to introduce commercial offers designed to incentivise early participation in the trials.
- 2.23 In our consultations we recognised that the trials were likely to be important to investment decisions to be made by Openreach and others in respect of the nationwide rollout of fibre and the PSTN switch-off. We considered that the trials would provide important information about copper retirement and PSTN switch-off, including on the telecoms providers' commercial and technical approaches, consumer responses, and telecoms providers' approaches to protect vulnerable consumers. The focused nature of the trials would mean that changes should take place in a controlled and monitored environment where Openreach and telecoms providers can quickly adapt their response to technical and commercial challenges and risks to consumers. We expected those lessons to inform the approach to copper retirement and PSTN switch-off more broadly across the country.
- 2.24 Accordingly, we considered that the potential benefits of the trials justified regulatory intervention to facilitate it.

¹⁹ Ofcom, February 2019. *The future of fixed telephone services*.
https://www.ofcom.org.uk/_data/assets/pdf_file/0032/137966/future-fixed-telephone-services.pdf.

3. Measures to support the Salisbury trial – stop sell

Background

- 3.1 In order to facilitate the Salisbury trial, in particular the migration of customers to fibre services, in 2019, Openreach requested that we remove the requirement for it to provide new wholesale access on copper lines in Salisbury where fibre is available. This was to allow Openreach to withdraw those services from new supply, or as Openreach refers to it, 'stop sell'.²⁰
- 3.2 Openreach requested this ahead of the WFTMR concluding, because it intended to start the trial in September 2019 and the stop sell in September 2020 (since then, Openreach notified the start of the trial and of the stop sell; the trial started in January 2020 and the stop sell will come into effect in December 2020).²¹ Although we are consulting on detailed proposals to support copper retirement as part of our the WFTMR, we do not expect any of these measures to be in place before April 2021. The changes to existing regulation set out in this document will facilitate the trial in the months between the intended start of Openreach's trial and April 2021, after which the regulation put in place by the WFTMR will apply.²²

Implementing the stop sell in Salisbury

Our consultation proposals

- 3.3 In the July 2019 consultation, we proposed to allow Openreach to apply stop sell for end users located in Salisbury, affecting orders for new services arising out of a home move, where a customer wishes to switch telecoms providers or upgrade their existing service. Where Openreach applies stop sell, instead of copper-based access services, only an alternative wholesale service using fibre would be offered to the telecoms provider serving those customers. We proposed that this would only apply to premises where a fibre service was available, and that it would come into effect from September 2020.

²⁰ See letter from Openreach published alongside the July 2019 consultation.

²¹ On 9 December, Openreach gave a formal 28-day notification of the start of the trials in Salisbury and Mildenhall. Trials started on 6 January 2020 and will run through to 16 December 2022. Openreach also formally provided a notification of its products stop sell, to take effect in Salisbury on 1 December 2020 and Mildenhall on 4 May 2021.

²² We have proposed in our draft regulatory instruments published with the WFTMR consultation that our decisions in this statement will apply until the relevant date under the new regulatory instruments taking effect on 1 April. See Volume 5 of the WFTMR.

- 3.4 The relevant copper-based access services that Openreach plans to stop sell in Salisbury once consumers have access to Openreach fibre services²³ are MPF²⁴, SLU MPF²⁵, GEA-FTTC²⁶ and SOGEA/SOGFAST.²⁷
- 3.5 These services are currently subject to a number of regulatory requirements. In our 2018 review of the Wholesale Local Access market (2018 WLA) we considered the market for connections from the local telephone exchange to a home or business premises, which are used to provide broadband and other services at the retail level. In that review we required BT²⁸ to provide network access in the wholesale local access market to a third party upon reasonable request, which includes specific network access in the form of MPF, SLU MPF and VULA (which includes GEA-FTTC and SOFGEA/SOGFAST). These requirements are imposed except in so far as Ofcom may from time to time otherwise consent in writing.
- 3.6 Therefore, to enable Openreach to implement the stop sell in Salisbury, we proposed to amend our 2018 WLA requirements on BT: where a fibre service is available to the premise, to remove the obligation on BT to provide network access on reasonable request (SMP Condition 1) and remove the obligation to provide specific forms of network access for MPF, VULA and SLU services (SMP Condition 2).
- 3.7 In our July 2019 consultation, we explained that we understood Openreach also planned to stop sell SMPF, but as Openreach had no specific access obligation to provide SMPF, there was no need to change specific regulation to support this. We also explained that although SMPF fell within the scope of the general network access remedy, our proposed changes to the general network access requirement would also apply to SMPF, meaning that in effect BT would not have to provide SMPF when applying its stop sell in Salisbury. As SMPF is required to provide broadband over WLR, where it is withdrawn, new WLR lines can only be used to provide voice-only services.
- 3.8 We did not propose to lift the obligation to provide access to new WLR lines. Therefore, at this stage, Openreach will need to continue to provide the wholesale lines enabling the provision of new voice-only services if requested by telecoms providers in Salisbury.

²³ Openreach refers to these premises as those having a GEA-FTTP Technology Marker.

²⁴ Metallic Path Facility (MPF) is the copper wire connecting consumers to the BT network and is used to support voice and broadband services.

²⁵ Sub-Loop Unbundled MPF: Sub-loop unbundling (SLU) is a service offered by BT that allows communications providers to deploy their own equipment at a network distribution point (usually the location of the cabinet) and to use BT's lines from the cabinet to the customer. Communications providers can either rent the entire sub-loop (the connection between the cabinet and the customer) or share it with BT.

²⁶ Fibre To The Cabinet (FTTC) is a network structure in which optical fibre extends from the exchange to a street cabinet housing broadband equipment with the remaining part of the network, from the cabinet to the customer, provided by a copper wire; Generic Ethernet Access (GEA) is Openreach's wholesale service providing communications providers with access to its FTTC and FTTP networks in order to supply higher speed broadband services.

²⁷ Single Order GEA (SOGEA) enables the provision of wholesale superfast broadband without the need for MPF (or another copper voice service) to support it. Similarly, Single Order G.Fast (SOGFAST) enables the provision of wholesale G.Fast services without the need for MPF to support it. G.Fast: higher bandwidth (over 100Mbps) technology provided using a combination of fibre and then copper connections.

²⁸ We refer to BT here as our obligations apply to BT as the legal entity. In the rest of the document however we refer to Openreach as it operates the network and therefore implements our requirements.

Responses to our consultation

3.9 There were 11 responses to the July 2019 consultation – BT Group, Gamma, Openreach, TalkTalk, Virgin Media, Vodafone, the Campaign Against Removing Payphones (CARP), the Consumer Communications Panel (CCP), two individuals [redacted] and [redacted] and one organisation [redacted].²⁹

Implementing the stop sell

3.10 Most respondents were broadly in agreement with our proposals to enable a stop sell of copper-based access services in Salisbury, under certain conditions.³⁰ TalkTalk argued our regulatory amendments should dovetail with Openreach's notice period of its intention to stop sell, so if Openreach's notice is delayed, so should the application of the regulatory amendments.³¹

3.11 Vodafone expressed support for the trial succeeding, but argued that before the trial starts, stop sell is enabled and regulation amended, a set of pre-conditions³² should be met by Openreach before the trial can take place to both protect retail competition and consumers and ensure the trial is a success.³³ In addition to ensuring good consumer communications and zero connection costs, discussed below, Vodafone's concerns appeared to be to ensure all telecoms providers can participate in, and transparency about, the trials and the lessons learnt. Vodafone also suggested that the regulatory waivers should only be lifted once the vast majority of existing suppliers were in a position to offer fibre services in Salisbury.

3.12 Respondents also commented about Openreach's charges. [redacted]. Vodafone said clarity about charges for wholesale migration from copper to fibre is needed, and efforts made to minimise this cost to Openreach's wholesale customers.³⁴

²⁹ Non-confidential responses to the July 2019 consultation can be found at <https://www.ofcom.org.uk/consultations-and-statements/category-2/measures-support-openreach-trial-salisbury>

³⁰ CCP response to July 2019 consultation, page 2; TalkTalk response to July 2019 consultation, paragraph 2.1; Gamma response to July 2019 consultation, paragraph 7; [redacted] response to July 2019 consultation, page 2; Openreach response to July 2019 consultation, page 1; BT Group response to July 2019 consultation, paragraphs 1.1-1.3, 1.8.

³¹ TalkTalk response to the July 2019 consultation, paragraph 2.2.

³² Vodafone's set of preconditions are: 1) preserving retail competition (Ofcom should set a target of 90%+ of existing retail suppliers within the area to be able to offer Openreach FTTP ahead of regulation being released); 2) minimise costs for end users (wholesale charges set to zero for like for like products provisioned over fibre and encouraging migration of end users through compelling value offers for consumers); 3) commitment on end customer communication (Openreach's direct communications with consumers should be retailer neutral); 4) minimising costs for retail communication providers (Openreach should not be allowed to charge new connection fees where fibre is installed to replace copper); 5) trial plans published in full from the start (to help CPs plan for what lies ahead, with Openreach providing reporting progress on key thresholds); 6) spreading the learnings of the trial as widely as possible (with clear mechanisms in place to ensure learnings are captured); 7) keeping the trial open to all (to account for different states of readiness of CPs to join the trial, with joining CPs offered access to all trial material); 8) BT Wholesale supply/third party supplier (where a retail CP currently uses BT Wholesale or other third party solution, there should be an opportunity for the retail CP to replace this with Openreach FTTP).

³³ Vodafone response to July 2019 consultation, paragraphs 5, 13.

³⁴ [redacted]; Vodafone response to July 2019 consultation, paragraph 9.

3.13 Two respondents commented on the stop sell threshold that should apply for Salisbury. BT Group supported the idea of allowing Openreach to implement a stop sell for legacy products prior to 100% coverage (and broadly supported Openreach's 75% threshold).³⁵ However, an individual respondent supported stop sell only once fibre is available at all premises in Salisbury.³⁶ A confidential respondent also considered that retaining copper (once fibre has been rolled out) should be limited to 6 months.³⁷

Communications with customers

3.14 Respondents generally agreed about the need for effective communication and local stakeholder engagement to inform consumers about the trial and the migration to fibre, help protect consumers and ensure they are able to make informed decisions. Stakeholders also agreed that providers should collaborate on customer communications:³⁸

- BT Group noted there were benefits of telecoms providers having their own communications campaign in addition to a joint Openreach and industry information campaign but stressed both should be distinct and not confused with marketing.³⁹ The suggestion of keeping sales/marketing and trial information distinct were also comments echoed by Vodafone and TalkTalk.⁴⁰
- TalkTalk argued that Openreach should take the lead on these and collaborating with Ofcom, the Government and telecoms providers.⁴¹ BT Group suggested Ofcom could further assist in placing its logos on correspondence to consumers on the trial and hosting information on the Ofcom website, and that Ofcom should have a role in ensuring any common messaging was effective.⁴²
- Openreach acknowledged all stakeholders need to work together to decide the best approach of informing the public.⁴³ Both BT Group and TalkTalk suggested that one, or several, industry working group(s) should be created for the trial, which would assist in the common messaging of the trial to consumers.⁴⁴
- The CCP also commented that care needs to be taken that a full range of engagement techniques are used with local stakeholders and specific access needs considered.⁴⁵

³⁵ BT response to July 2019 consultation, paragraph 1.7-1.8.

³⁶ [redacted] response to July 2019 consultation, page 2.

³⁷ [redacted] response to July 2019 consultation, page 2.

³⁸ CCP response to July 2019 consultation, page 2; Vodafone response to July 2019 consultation, paragraph 12c; Openreach response to July 2019 consultation, page 4; BT Group response to July 2019 consultation, paragraphs 2.5-2.14; TalkTalk response to July 2019 consultation, paragraphs 3.6-3.8.

³⁹ BT Group response to July 2019 consultation, paragraphs 2.5-2.9.

⁴⁰ Vodafone response to July 2019 consultation, paragraph 12c; TalkTalk response to July 2019 consultation, paragraph 3.7.

⁴¹ TalkTalk response to July 2019 consultation, paragraph 3.7.

⁴² BT Group response to July 2019 consultation, paragraphs 2.10-2.13.

⁴³ Openreach response to July 2019 consultation, page 2.

⁴⁴ BT Group response to July 2019 consultation, paragraphs 2.10-2.13; TalkTalk response to July 2019 consultation, paragraphs 3.7-3.9.

⁴⁵ CCP response to July 2019 consultation, page 3.

- A confidential respondent commented that a detailed area by area work programme would assist communication between Openreach, consumers and telecoms providers, and noted "every effort must be made to keep to programme timescales".⁴⁶

Impact on competition

- 3.15 Respondents commented about the potential impact of our proposals on competition. A respondent disagreed with our proposal to allow stop sell, saying that it would limit competition and lead to an effective monopoly for BT, as other operators using Openreach products would be unlikely to develop their fibre infrastructure during the trial period.⁴⁷ Vodafone's preconditions for the trial also referred to the need to ensure that as many retail providers as possible are ready to sell Openreach's FTTP services to maintain retail competition for fibre services.⁴⁸

Other comments

- 3.16 Gamma was concerned that Openreach had stated that in some circumstances it may not repair copper services in areas where fibre is available. It noted that copper services are used to provide Ethernet First Mile (EFM) services which would typically be subject to service level agreements with end-users. It therefore considered that Openreach should continue to repair these lines.⁴⁹
- 3.17 A number of other comments were made by consultation respondents. BT Group [X] said that it is important Ofcom recognises that copper retirement is an important part of their own fibre business cases, as well as being important to Openreach's business case.⁵⁰

Our reasoning

Implementing the stop sell

- 3.18 We agree with TalkTalk that the consent limiting the application of the relevant network access condition to enable stop sell should dovetail with the notice period. As Openreach gave notice of the stop sell in Salisbury in December 2019, we agree we should allow the stop sell from December 2020.
- 3.19 In regard to Vodafone's view that pre-conditions should be met prior to regulation being amended, we do not support the imposition of additional criteria for the start of the trial. As several stakeholders acknowledged, it is key for the trial to start as soon as possible to enable lessons to be learnt ahead of national copper retirement, and the trial will test those cases which are difficult or unanticipated. However, we agree with Vodafone's objectives of consumer information and support, telecoms providers' ability to participate in the trials and transparency for providers. We have set out our measures aimed at

⁴⁶ [X] response to July 2019 consultation, page 2.

⁴⁷ [X] response to July 2019 consultation, page 2.

⁴⁸ Vodafone response to July 2019 consultation, paragraph 12a.

⁴⁹ Gamma response to July 2019 consultation, paragraph 9.

⁵⁰ [X]; BT Group response to July 2019 consultation, paragraphs 1.4-1.6.

protecting vulnerable consumers, our objectives to monitor the trials and, as discussed later in this statement, supported commercial offers made by Openreach to encourage participation in the trials.

- 3.20 We note respondents' comments concerning the wholesale charges of Openreach being an important part of the Salisbury trial. In this regard, we note that, as part of our decision in this statement (Section 4), we have amended our regulation to allow Openreach to implement commercial offers to encourage migration, and that Openreach has since notified these offers to industry.
- 3.21 Regarding the stop sell threshold, we did not propose a specific coverage threshold for the stop sell to apply in Salisbury. Openreach has already given a year's notice before the introduction of the stop sell. Given that this is a trial, we consider that the sooner the stop sell can take effect, the sooner industry can apply the lessons from the trial to subsequent widespread deployment. This is different from our proposals for copper retirement in the WFTMR. In the WFTMR, we proposed to allow stop sell once an exchange reaches 75% rather than 100% ultrafast coverage in order to avoid the risk of undue delay or of reducing the certainty of copper retirement, which might otherwise reduce the incentive to invest.
- 3.22 In relation to the length of the trial, it is a matter for Openreach and telecoms providers using its network to design the trial so that lessons can be learnt. We note that the trial is already on a shortened timescale compared with nationwide deployment. In addition, telecoms providers highlighted to Openreach the need for more time to prepare for the trials; in response, Openreach decided to postpone the start of the trials by a few months.⁵¹

Communications with customers

- 3.23 We agree that an effective information and communications campaign is needed to ensure customers are fully aware of the trials and how they might be affected, and that Openreach, telecoms providers and all other relevant stakeholders, including the WLR working group convened by the Office of the Telecoms Adjudicator (OTA2) and Openreach, need to work together towards effective customer communications. In its consultation on the trials, Openreach has stated that it will create a public webpage with information for both telecoms providers and consumers in Salisbury, as well as conducting small scale trials on raising public awareness.⁵² Ofcom is also working to raise awareness of the trials with other stakeholders such as the Government and public bodies so that they can consider the implications and take appropriate action.

⁵¹ Openreach, 13 September 2019. *Response to Openreach Industry Consultation on FTTP Exchange Upgrade and Single Order Exchange Upgrade trialing* ('Openreach response to Openreach consultation'), (Openreach log in required), section 2.3.

⁵² Openreach response to Openreach consultation, paragraphs 107-109.

Impact on competition

- 3.24 A respondent was concerned that our proposals limit network competition because other operators using Openreach products are unlikely to develop their fibre infrastructure during the trial period. We consider that the trials will facilitate faster fibre take-up nationwide which will promote investment from both Openreach and its competitors.
- 3.25 In regard to Vodafone's concern that the different stages of preparedness of retail providers in offering FTTP services over the Openreach network may impact retail competition, we agree that it is important that all retail providers engage with the trial. Openreach's proposed commercial offers (see section 3) are intended to encourage early participation in the trials.

Other comments

- 3.26 In relation to Openreach continuing to repair EFM services, Openreach has a strong incentive to make sure the trial is a good experience for all its customers and, ultimately, end-consumers. As part of our quality of service metrics from Openreach for Salisbury, set out in Annex 4, we will continue to monitor the performance of copper prior to migration to fibre. Therefore, we do not expect the performance of EFM to decline significantly as a result of the migration to fibre.
- 3.27 In relation to stakeholders' comments relating to our proposed nationwide policy on copper retirement, we will consider those as part of the WFTMR.

Impact of the stop sell on people and businesses

Our proposals

- 3.28 We noted that our proposals would only affect consumers who move to a new property, who seek to upgrade their service or who seek to switch providers, and that such consumers would no longer be able to purchase a copper-based broadband service. We also noted this would only apply where fibre services are available at the consumers' premises, and only from Autumn 2020 onwards.
- 3.29 We stated that our proposals particularly impacted vulnerable consumers who rely on analogue telephony services, those using special services (e.g. for care alarms) and those who may struggle migrating to IP services. We also noted that customers currently on standard broadband services would be impacted by possibly higher prices for fibre services.
- 3.30 We considered that the impact on businesses would be similar in nature to the impact on residential consumers, but would be likely to be smaller as we expected a higher proportion of businesses to have their voice services provided using IP technology.
- 3.31 We also noted there was a small impact on other telecoms providers – namely, in no longer being able to offer copper services any more.

Responses to our consultation

Impact on SMEs

- 3.32 There was broad agreement on our assessment of the impact of our proposals on residential consumers but some respondents considered that we had not sufficiently considered the impact of the trial on small and medium enterprises (SMEs). Specifically, BT Group suggested that the issues faced by SMEs, and the migration itself, would be more complex, complicated and costly and also noted that with ISDN switch-off not occurring until 2023, businesses might not be as prepared for copper retirement as Ofcom expects. Therefore, BT Group suggested we should remain engaged with businesses and industry, working collaboratively where further intervention may be required.⁵³
- 3.33 TalkTalk commented that with over [3K] partners in Salisbury using a wide variety of products and technologies, all parts of the value chain need to be considered.⁵⁴
- 3.34 Gamma expressed concern that the network architecture adopted by Openreach for its fibre network would potentially result in larger excess construction charges (ECCs) for connections to previously unserved properties than is the case for its copper access network. This is because the serving node, the point from which ECCs are applicable, is typically located further from customers premises in the fibre network than the copper network.⁵⁵
- 3.35 Openreach recognised that extra help will be needed for SMEs and outlined its proposed extra measures for these customers.⁵⁶

Impact on customers

- 3.36 As part of pre-conditions for the trial, Vodafone commented that consumers should not be worse off financially as a result of the trial, especially if they are migrating onto a like for like product/basis.⁵⁷ The CCP expressed a similar view about residential consumers not suffering financially or otherwise as a result of extra equipment or works required for migration.⁵⁸
- 3.37 TalkTalk noted that MPF lines are used to deliver voice-only services by LLU providers and their partners, and that the availability of the FTTP voice-only product to support new requests once the stop sell on MPF is in place will be vital as this will be a more efficient long-term solution than requesting a new WLR line. TalkTalk argue that the potential impacts on MPF voice-only customers must be considered alongside the impacts on WLR

⁵³ BT Group response to July 2019 consultation, paragraphs 2.16-2.20.

⁵⁴ TalkTalk response to July 2019 consultation, paragraph 2.5.

⁵⁵ Gamma response to July 2019 consultation, paragraph 8.

⁵⁶ Openreach response to July 2019 consultation, page 4.

⁵⁷ Vodafone response to July 2019 consultation, paragraphs 7-8.

⁵⁸ CCP response to July 2019 consultation, page 4.

customers, and equivalent protections for vulnerable consumers put in place, when assessing the prospect of MPF withdrawal.⁵⁹

- 3.38 One individual noted that fibre installation will require digging works, which would cause delays to consumers moving in the area, and further noted that consumers switching may find themselves exceeding switch periods and incurring extra charges.⁶⁰

Other comments

- 3.39 TalkTalk also suggested that further trials, both in different locations with Openreach, and different locations where network operators other than Openreach have 100% FTTP, would be welcome and are needed to further understand the impact before full national switchover.⁶¹ This view was also expressed by another stakeholder.⁶²
- 3.40 Vodafone stated that as copper and Fibre to the Home (FTTH) networks are overlaid, there is a risk that removing copper may cause inadvertent damage to FTTH assets, and therefore the trial was important to develop and test copper removal techniques.⁶³
- 3.41 The Campaign to Retain Payphones asked how copper retirement in Salisbury would affect public payphones.⁶⁴

Our reasoning

- 3.42 We continue to believe that the number of customers negatively affected by the proposal to stop selling new copper services in the copper retirement trial will be low, and we expect that most migrations will be voluntary, with consumers actively electing to adopt the new services. We address our concerns about vulnerable consumers in the next section.

Impact on SMEs

- 3.43 We acknowledge the points made by respondents that migrating business customers is likely to be complex, given the number of services and providers purchased by some business customers, in some cases in different locations. However, we consider that this is one of the main reasons for enabling the trial to take place, so that lessons can be learnt at a small scale, ahead of the national roll out of fibre services and eventual copper retirement.
- 3.44 As several stakeholders commented more widely on these trials, we agree there is a need for stakeholders to work together to develop the right processes for small businesses. In that regard, we note that Openreach is planning to work with industry to fully understand

⁵⁹ TalkTalk response to July 2019 consultation, paragraphs 1.12, 2.5.

⁶⁰ [redacted] response to July 2019 consultation, page 2.

⁶¹ TalkTalk response to July 2019 consultation, paragraphs 1.12-1.13.

⁶² [redacted] response to July 2019 consultation, page 1.

⁶³ Vodafone response to July 2019 consultation, paragraph 10.

⁶⁴ CARP response to July 2019 consultation, page 1.

the requirements of business customers, such as out of hours support and parallel running options during migration.⁶⁵

- 3.45 We consider that Gamma's comments about ECCs are more relevant to our proposals under the WFTMR than the Salisbury trial since ECCs only apply to properties not currently served by the copper network, whereas the focus of the Salisbury trial is migration of existing services from copper to fibre connections.

Impact on customers

- 3.46 Openreach's commercial offers for the trial have the aim of encouraging voluntary migration to fibre. This would mean that in Salisbury, for the first year of rental of the new fibre service, wholesale services used to provide services to consumers and businesses would be charged the same as the legacy service for an equivalent service over fibre. We set out in section 4 the measures we are taking to enable this approach. We expect that retail providers would want to encourage voluntary migration of their own customers by reflecting the same approach in their pricing.
- 3.47 In our WFTMR consultation we have set out our proposals that will apply more broadly for copper retirement, in that the fibre 40/10 service will be subject to a charge control from when stop sell is applied, with no connection charge and wholesale rental charges set slightly higher than if the 40/10 service was delivered over the copper network to reflect the additional customer benefits, such as speed and reliability, that fibre offers over copper. If these proposals come into effect, then once Openreach's trial commercial offers expire, the wholesale charge for fibre services in Salisbury will be subject to this fibre charge control.
- 3.48 Customers with a standard broadband service that uses MPF or SMPF will have to migrate onto a fibre service. Once Openreach's commercial trials offer expires, the wholesale prices to support these customers will be higher than they were to support a standard broadband service, but these customers will benefit from a fibre-based superfast service.
- 3.49 We agree with TalkTalk that the availability of the FTTP voice-only product to support new voice-only is crucial, and note that Openreach is planning to make this service available for the trial at a price similar to WLR. We note TalkTalk's concerns about voice-only consumers on MPF and welcome further engagement on the Mildenhall trial. More generally, we agree that it is important that Openreach and telecoms providers put in place processes designed to ensure a good migration of vulnerable consumers regardless of the underlying wholesale service.
- 3.50 More widely, we acknowledge that the trial may result in some disruption to consumers and businesses. However, we believe any short term potential disruption, such as a greater amount of digging work, is significantly outweighed by the long term benefits of more widespread availability of fibre.

⁶⁵ Openreach consultation response to July 2019 consultation, page 4.

- 3.51 In addition, the stop sell will affect a minority of customers, who move to a new property, who seek to upgrade their service or who seek to switch providers. We expect the majority of migration to be voluntary, as retail providers seek to incentivise migration of their customers ahead of December 2022.
- 3.52 As explained in further detail below, we will be monitoring the trials and facilitating industry development of best practice to address any issues that arise. We expect to discuss progress with industry, local stakeholders and consumer groups. We also plan to collect metrics from both Openreach and other telecoms providers to understand consumers experiences in Salisbury and Mildenhall, and as part of this, are considering whether to undertake market research in the trial areas.

Other comments

- 3.53 We agree there may be potential benefits of further trials. However, any trial of migration for Openreach copper services to an alternative network operator that has 100% fibre coverage would require a commercial arrangement between Openreach and that provider. Were there to be the prospect of such arrangement we would consider the need for changes to our regulation.
- 3.54 Public payphones (PCBs) will need to be upgraded either to fibre/IP or to mobile to continue to operate in Salisbury and Mildenhall. BT has a universal service obligation in relation to PCBs that require it to ensure the 'adequate provision of PCBs to meet the reasonable needs of end users' and BT will need to consult with the local authority before removing the last box from a site.⁶⁶
- 3.55 We understand that the trial will test a number of technical challenges, but at this stage we are not aware that Openreach has any plans to dig out copper lines as part of the Salisbury trial.

Protection of vulnerable consumers

Our proposals

- 3.56 In our July 2019 consultation we noted that we had previously⁶⁷ set out the measures we expect telecoms providers to adopt to protect consumers migrating to IP-based telephony services as part of PSTN switch-off. Because the Salisbury trial will take place before the PSTN switch-off, we stated that we expected telecoms providers to apply these measures during the trial.
- 3.57 We also noted that despite there being wider protection in place, there was still a possible risk to vulnerable consumers posed by the trial. Therefore, we proposed a series of

⁶⁶ Ofcom, March 2006. *Review of the Universal Service Obligation*.
https://www.ofcom.org.uk/_data/assets/pdf_file/0021/34266/statement.pdf

⁶⁷ Ofcom, 2019. *The future of fixed telephone services*.

additional measures that we expected Openreach and telecoms providers to implement during the trial, in addition to the measures set out in Annex 1.

Responses to our consultation

3.58 There was general support from stakeholders about protecting vulnerable consumers and, broadly, our proposed commitments. However, there were some mixed views on the strength of the measures proposed, with some stakeholders agreeing with our additional extra protections for vulnerable consumers, some stakeholders considering there should be stronger measures ahead of the trial, while others disagreed with the origin or scope of our proposals.

Robust processes to support vulnerable consumers

3.59 A number of responses highlighted the need for robust processes to support vulnerable consumers:

- The CCP stated that Ofcom may wish to consider working directly with specific consumer groups with disabilities and to consider a specific contact system for vulnerable people to contact their providers and express their specific access requirements and issues.⁶⁸
- BT Group supported a joint Ofcom-industry 'consumer charter', setting out general principles of how migrations are handled and how customers and vulnerable consumers are treated during migration.⁶⁹
- Vodafone stated that maintaining a copper fall back service, until such time that vulnerable consumers are able to transition to fibre, is key to ensure continuity of supply.⁷⁰
- TalkTalk wanted more prescriptive measures on security for home visits and quality of installation for vulnerable consumers.⁷¹
- One stakeholder noted there is a significant risk of consumers being unable to access emergency services during the trial (e.g. during mobile outages, etc).⁷² TalkTalk sought clarification that customers who are dependent on their landline for access to emergency services would not lose service, i.e. can be migrated to FTTP (i.e. onto a VoIP service).⁷³
- Gamma said whilst it supported the measures we expected telecoms providers to implement, it thought Ofcom should impose regulatory obligations instead of setting voluntary measures.⁷⁴

⁶⁸ CCP response to July 2019 consultation, page 3.

⁶⁹ BT Group response to July 2019 consultation, paragraph 4.6.

⁷⁰ Vodafone response to July 2019 consultation, paragraph 10.

⁷¹ TalkTalk response to July 2019 consultation, paragraph 3.4.

⁷² [S&C] response to July 2019 consultation, page 3.

⁷³ TalkTalk response to July 2019 consultation, paragraph 3.3.

⁷⁴ Gamma response to July 2019 consultation, paragraphs 10, 13-14.

- Both Gamma and [S<] also stated that the new European Electronics Communications Code requires users of legacy telecommunications services to be protected when legacy infrastructure is migrated by an operator with SMP.⁷⁵
- 3.60 The CCP said landline only consumers should not be worse off as a result of migration to an equivalent product, stating that the fibre equivalent product at prices “similar to” current voice only services was insufficient, and that retail prices should be the same as currently.⁷⁶ As alluded to above, Gamma also expressed concerns about the cost of FTTP for SMEs taking copper-based products.⁷⁷
- 3.61 BT Group argued that vulnerable consumers and those with complex needs should not be exempt from the trials, stating that their involvement was key for the trial to be representative ahead of national copper switch off and testing new products.⁷⁸ Likewise, Vodafone said it was crucial the trial tested all possible consumer transitions.⁷⁹

Other comments

- 3.62 Virgin Media argued that it was not proportionate for Ofcom to impose regulation on communication providers based on devices (i.e. telecare alarms) outside the telecoms sector, and sought clarification from Ofcom on the basis on which it is requiring telecoms providers to treat customers in a specific way based on a device outside the general authorisation regime. Virgin Media also commented that it is not appropriate to commence the trial given not all users will be identified before migration.⁸⁰
- 3.63 Some stakeholders highlighted specific applications for WLR and other services which should be protected:
- [S<] highlighted that longer term, the removal of WLR threatens its business, which offers a direct freephone service to taxi companies in certain locations. [S<] considered that this service is heavily used by vulnerable consumers who have no alternative but to use its freephone services and that there is no technical or economic replacement for WLR, which should therefore continue to operate in Salisbury.⁸¹
 - Gamma also said that it is especially important that voiceband data (VBD) applications should continue to operate during the trials as these applications included essential services used by vulnerable consumers. It therefore considered that the proposed measures to enable stop sell required qualification to ensure that an appropriate product remains available to those users.⁸² It also considered that in order to ensure the integrity of VBD applications, we should impose obligations on, or obtain commitments

⁷⁵ [S<] response to July 2019 consultation, page 4; Gamma response to July 2019 consultation, paragraph 5, 19.

⁷⁶ CCP response to July 2019 consultation, page 4.

⁷⁷ Gamma response to July 2019 consultation, paragraph 8.

⁷⁸ BT Group response to July 2019 consultation, paragraphs 4.3-4.5.

⁷⁹ Vodafone response to July 2019 consultation, paragraph 3.

⁸⁰ Virgin Media response to July 2019 consultation, pages 3-4.

⁸¹ [S<] response to July 2019 consultation, pages 2-3.

⁸² Gamma response to July 2019 consultation, paragraphs 11-14.

from, BT Enterprise, as they are responsible for the network assets used to provide WLR services.⁸³

Our reasoning

Robust processes to support vulnerable consumers

- 3.64 As highlighted by respondents, robust processes to support vulnerable consumers are essential for the trials. We recognise that the issues raised by stakeholders are an important part of developing the detailed processes that Openreach and its customers will need to have in place. We welcome the work already progressing by industry as part of the WLR working group. As mentioned earlier, we will seek to engage with industry to make sure providers have taken all reasonable steps to protect vulnerable consumers.
- 3.65 We do not believe it would be proportionate at this stage to impose additional regulation or specific processes to support the migration of vulnerable consumers. We expect Openreach and telecoms providers to be fully committed to protecting vulnerable consumers and we will engage with industry to monitor progress and ensure that processes to support vulnerable consumers migration are in place.
- 3.66 We recognise the concern from the CCP about ensuring that landline only prices are the same as current prices when the service is migrated to fibre. Openreach has already committed to provide a fibre product that can support the provision of voice-only services. When Openreach launches this service, it will fall within the scope of the regulation in the wholesale local access market and will therefore be required to be provided on fair and reasonable terms, conditions and charges. We would expect retail providers to reflect the intention to maintain prices at similar levels, as they will have an incentive to migrate their consumers voluntarily to fibre services. We will also work with Openreach and monitor this through our monitoring programme on the trials.
- 3.67 In regard to the cost of the new fibre services, and the prices consumers have to pay, as stated in our WFTMR consultation, we recognise that fibre services would bring consumers greater benefits in terms of speed, reliability and quality of service. We proposed that there should be a fibre premium on Openreach wholesale charges at a national level for its 40 Mbit/s service reflecting the higher quality and reliability of the fibre service. The extent to which this is passed to consumers will depend upon the extent to which higher wholesale costs are offset by lower costs for providers and the extent of retail competition.
- 3.68 In regard to Gamma's comments about voiceband data services, we agree that it is important that vulnerable consumers using those services have appropriate protection during the trial. As mentioned above, we expect industry to work together to achieve this.
- 3.69 We note the comments made by BT Group and Vodafone that all consumer outcomes (including for vulnerable consumers) are tested during the trial. Whilst we agree that it is important that the trial tests all consumer outcomes so that any lessons learned can be

⁸³ Gamma response to July 2019 consultation, paragraphs 6, 15-18.

applied to the national PSTN switch-off, that switch-off will not have occurred by the time the trial has started in Salisbury. So whilst we fully expect systems to be in place to protect vulnerable consumers for PSTN switch-off, we believe it is important there remains additional protection for vulnerable consumers – such as checking their new fibre service works, pausing the migration if their device does not work on their new fibre connection, and rapid reversion to a copper line if required. These are all issues that Openreach has recognised in its separate consultation, and we understand Openreach is continuing to liaise with industry, via the WLR working group, to agree on these procedures.⁸⁴

3.70 Accordingly, given that the trials precede PSTN switch-off by a number of years, we consider that it remains appropriate for Openreach and telecoms providers to take measures to protect customers, additional to those set out in our statement on the Future of Fixed Telephone Services⁸⁵ (also Annex 1 of this document). Recognising that the trials should involve as many customers as possible in order to provide meaningful information for the national roll-out, we consider these measures should be focussed on providing information and support and having the ability to restore services rapidly, namely that Openreach and telecoms providers should:

- take all reasonable steps to ensure that customers using telecare, other safety-of-life services and textphones do not lose access to those services as a result of migration, in particular providing advice and support around the reconnection of those services as part of the installation process.
- provide for the rapid restoration of former communications services in the case of failure of telecare, other safety-of-life services or textphones.
- have robust information campaigns and security procedures for home visits to avoid the risk of harm to consumers.
- engage with local stakeholders at an early stage to ensure they are aware of the change and the potential implications.

3.71 Moreover, as stated further below, as part of our monitoring programme, we will continue to work with Openreach and the telecoms providers to emphasise the importance of these measures. We intend to engage regularly with Openreach and the telecoms providers involved in the trial in order to understand how they are implementing the above measures and monitor progress as part of our wider monitoring of the trial.

Other comments

3.72 We recognise that telecare alarms are part of a different sector. However, the trial is focussed on the retirement of copper services - on which telecare devices are based - which is within our regulatory scope. The risk of telecare alarms not functioning is an unintended consequence of upgrading the network, and therefore we believe telecoms providers have a responsibility to protect vulnerable consumers at risk of harm due to the upgrade they are carrying out. We believe a careful and effective migration to fibre

⁸⁴ Openreach response to Openreach consultation, paragraph 127.

⁸⁵ Ofcom, 2019. *The future of fixed telephone services*, paragraph 2.19.

services is an industry-wide responsibility and that industry should take all reasonable steps to ensure that when consumers migrate from copper to fibre, there is no risk to health or life because of unintended consequences.

- 3.73 We also note Gamma's and [X]'s comments about the services that [X] provide to vulnerable consumers, and the impact of WLR withdrawal on this business. Our proposals to enable the stop sell in Salisbury do not include WLR, therefore any regulatory requirements applying to WLR will continue to apply until any change is made by the WFTMR in March 2021.
- 3.74 Importantly, we would fully expect Openreach to engage with their customers to understand specific concerns for their end-users and potential alternatives. More widely, we understand the concerns of [X] in regard to similar businesses in the longer term. We would expect that such businesses would engage with their telecoms providers to consider alternatives and adapt to the latest technological solutions available, or adopt solutions which minimise the need for further electrical work – for instance, siting the terminal adaptor remotely from the telephone. Whilst we accept that this a service valued by some vulnerable consumers, any potential negative impact on these consumers is likely to be mitigated by access to potential alternatives.

Other issues raised by stakeholders and our reasoning

- 3.75 Gamma commented that BT's inability to be able to split numbering blocks would need to be addressed as part of the trial, citing that BT's process to split number blocks is manual and not scalable for large-scale deployment that Gamma may require with many customers in the trial area.⁸⁶ Currently, BT does have a process in place to split number blocks, as required by the OTA,⁸⁷ but we are unaware of any further planned automation processes.
- 3.76 One respondent commented that our consultation did not provide a lot of information as to why Openreach decided on Salisbury for the trial, or the types of migration issues likely to be identified, and requested more specific information/data on the infrastructure in Salisbury to respond constructively to the consultation.⁸⁸ Further information on both these questions, and a variety of other topics on the trial, can be found in Openreach's

⁸⁶ Gamma response to July 2019 consultation, paragraph 4.

⁸⁷ http://www.offta.org.uk/_data/assets/pdf_file/0018/145710/App.-Q-WLR-DDI-Block-Split.pdf

⁸⁸ [X] response to July 2019 consultation, page 1.

consultation with industry,⁸⁹ and some stakeholders noted in their consultation responses it was a suitable location for the trial.⁹⁰

- 3.77 Several stakeholders stated there was a need for there to be, both during and after the trial, a mechanism in place to ensure learnings from the trials could be developed and shared.⁹¹ In addition to our internal monitoring programme on the trials, which we discuss further below, we would expect telecoms providers and Openreach to use appropriate mechanisms, such as the WLR working group, to share learnings of the trial.

Our decision

- 3.78 Having considered stakeholder responses, we have decided to consent to allowing BT to implement the stop sell, as outlined in our July 2019 consultation. Openreach will therefore be able to refuse new requests for copper-based network access services (MPF, SLU MPF, GEA-FTTC and SOGEA/SOGFAST) in respect of end users located in Salisbury. This will only apply to premises where a fibre service is available. Our regulatory waiver will come into effect on 1 December 2020 and is set out in Annex 3.

Legal tests

- 3.79 As explained above, we have decided to consent to certain network access requirements not applying in respect of new requests for copper-based network access in respect of end users located in Salisbury. For the reasons we set out below, we are satisfied that this consent meets the various tests set out in the Communications Act 2003 (the Act).
- 3.80 Section 49 of the Act provides that where an SMP condition has effect by reference to a consent given by Ofcom, and Ofcom proposes to give such a consent that affects the operation of an SMP condition, Ofcom must not give that consent unless it is satisfied that to do so is: objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; not such as to discriminate unduly against particular persons or against a particular description of persons; proportionate to what it is intended to achieve; and in relation to what it is intended to achieve, transparent.
- 3.81 We are of the view that our decisions are:
- a) objectively justifiable, in that these facilitate the Salisbury trial which should allow BT and telecoms providers to better understand the investment risks and challenges in rolling out fibre networks on a large scale. Moving customers to new fibre networks

⁸⁹ Openreach Industry Consultation on: FTTP Exchange Upgrade and Single Order Exchange Upgrade trialling, chapters 3 and 4 respectively. Notably, Openreach selected Salisbury using the following criteria: Medium-sized city where FTTP build is already well underway; Single exchange area which covers the majority of the city; Support from local government; Exchange that is representative in terms of the CPs present and a typical range of services consumed from Openreach. Openreach selected Mildenhall using the following criteria: Exchange that is representative in terms of the CPs present and a typical range of services consumed from Openreach; Reasonable size (c.8-10k lines); Mix of business and consumers lines; Locations with edge case technologies; Long lines/low speed lines; EVOTAM or LLU TAM present; CNI organisations present; Non Standard lines/Non Served premises present; Avoid Openreach Handover Point locations

⁹⁰ Vodafone response to July 2019 consultation, paragraph 2.

⁹¹ Vodafone response to July 2019 consultation, paragraph 12f; TalkTalk response to July 2019 consultation, paragraph 3.8.

will bring benefits to consumers and retiring existing copper networks is important to the business case for some companies building fibre networks. By removing some of these uncertainties, investment and innovation is promoted, ultimately for the benefit of consumers;

- b) not unduly discriminatory, in that the decisions apply by reference to objective factors; that is, stop sell only applies to requests for new copper-based network access, and only where the premise is fibre enabled;
- c) proportionate, in that these are targeted and confined to a limited geographic area in the UK, and limited to what is necessary to run the trial; and
- d) transparent, in that the decisions are clear in their intention to ensure that BT is only allowed to refuse requests for new copper-based network access in the Salisbury Area and our consent is published as part of this statement.

3.82 We also consider that our decisions meet our duties under section 3 and 4 of the Act. We consider that the early but controlled withdrawal of copper-based network access services in the Salisbury Area will assist BT and telecoms providers to better understand the processes involved in successfully and efficiently rolling out fibre on a large scale. For this reason, we consider that our decisions further the interests of citizens in relation to communications matters and of consumers in relevant markets, where appropriate by promoting competition. In reaching our decision we have also had regard, in particular, to encouraging investment and innovation in relevant markets.

3.83 With regard to the Community requirements set out in section 4 of the Act, we believe that our decisions are in accordance with these requirements; in particular, by helping to ensure that BT, telecoms providers and stakeholders better understand and put into place well-identified measures for the copper retirement process and the future PSTN switch-off, we believe our decisions are in accordance with the fifth Community requirement. Ultimately our decisions aim to facilitate network competition which is in accordance with the first Community requirement.

4. Pricing measures to support the Salisbury and Mildenhall trials

Background

- 4.1 In November 2019 Openreach informed us that it wished to amend its wholesale prices for fibre services and Single Order copper-based services to incentivise and encourage early participation in the Salisbury and Mildenhall trials. The amended prices (the Trials Offer) would be available only for services provided in the Salisbury and Mildenhall trials and would be available from 3 February 2020 to 4 May 2021. The revised terms are:
- Certain connection charges for transfers from WLR and MPF (and Shared Metallic Path Facilities (SMPF), GEA-FTTC and GEA-G.fast broadband services provided in conjunction with those services) to FTTP and Single Order services would be waived.
 - Rental charges for FTTP and Single Order services would remain at the legacy service rental charge for one year after migration. Prevailing national charges would apply thereafter.
 - Some charges associated with the cessation of copper-based services would be waived.⁹²
- 4.2 In January 2020 Openreach notified its customers of the introduction of these offers, which would commence on 3 February 2020.
- 4.3 Openreach considers that elements of the Trials Offer would be contrary to certain obligations imposed on BT in the 2018 Wholesale Local Access (WLA) Market Review (the 2018 WLA).⁹³ Those elements are:
- In the Salisbury trial, customers migrated from WLR/SMPF or MPF would be paying lower rental charges for the FTTP 40/10 service than for the FTTC 40/10 service for the term of the offer. BT is required to provide the 40/10 FTTP at the same rental charge as the FTTC 40/10 (and MPF) service where FTTC is not available at a location.
 - In both trials, customers would be paying different charges for the same service, since the migrated customers would continue to pay the rental charges for the legacy services from which they have migrated for one year post migration. BT is required not to discriminate unduly against Third Parties when providing network access and in particular to not apply different prices in different geographic areas. BT is also required to provide network access on an Equivalence of Inputs basis.

⁹² Those charges are left-in jumper recovery, tie cable ceases and associated early termination charges.

⁹³ Ofcom, March 2018, *Wholesale Local Access Market Review*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/wholesale-local-access-market-review>.

4.4 Accordingly, Openreach requested that we waive the relevant regulations for the duration of the Trials Offer (SMP Conditions 4.1, 4.4, 5 and 7B.5 (a)(i)).⁹⁴ We describe these SMP conditions in more detail in the next section.

Proposed regulatory measures to support the Trials Offer

Our proposals

4.5 Following consideration of Openreach's request, on 29 November 2019 we published a consultation in which we proposed to disapply certain aspects of our regulations to facilitate the Trials Offer (the November 2019 consultation).⁹⁵ We sought comments on our proposals by 6 January 2020.

4.6 We proposed to disapply certain obligations we imposed in the 2018 WLA. In the 2018 WLA we considered the market for connections from the local telephone exchange to a home or business premises, which are used to provide broadband and other services at the retail level. In this review we required BT⁹⁶ to provide network access in the wholesale local access market to a third party upon reasonable request, which includes specific network access in the form of MPF, SLU MPF and VULA (which includes GEA-FTTC, GEA-FTTP, and SOGEA/SOGFAST)).

4.7 In the 2018 WLA, we also imposed certain other obligations in connection with these network access obligations. Several of these obligations are relevant to our consideration of Openreach's request, specifically its intention to maintain rental charges at the pre-migration rates for a period of one year following migration. Those obligations are:

- Condition 4 (No Undue Discrimination);
- Condition 5 (Equivalence of Inputs); and
- Condition 7B (VULA Charge Control).

4.8 We consider each in turn below.

Condition 4 No Undue Discrimination

4.9 Condition 4.1 imposes an obligation requiring BT not to discriminate unduly in the provision of network access in the Wholesale Local Access Market. Condition 4.4 specifies that providing VULA rental services (other than VULA-FTTP) or rental services for other services provided in conjunction with such VULA services, may be deemed to be unduly discriminatory if BT charges different prices in different geographic areas. These obligations are imposed except in so far as Ofcom may from time to time otherwise consent in writing.

⁹⁴ See letter from Openreach published alongside the November 2019 Consultation -

https://www.ofcom.org.uk/data/assets/pdf_file/0020/181550/openreach-letter-ftp-exchange-wlr-withdrawal.pdf

⁹⁵ Ofcom, November 2019. *Measures to support Openreach's trials in Salisbury and Mildenhall*.

⁹⁶ We refer to BT here as our obligations apply to BT as the legal entity. In the rest of the document however we refer to Openreach as it operates the network and therefore implements our requirements.

Condition 5 Equivalence of Inputs

- 4.10 Condition 5 specifies that BT must provide network access in the Wholesale Local Access Market (except certain types which are explicitly exempted) on an Equivalence of Inputs (EOI) basis. EOI is a form of non-discrimination obligation which requires BT to provide the same service to all Third Parties and to itself. These requirements are imposed except in so far as Ofcom may from time to time otherwise consent in writing.

Condition 7B VULA Charge Control

- 4.11 Condition 7B imposes various controls on BT's charges for VULA services. Those conditions include condition 7B.5 which requires that in locations where GEA-FTTC is not available, in each Relevant Year, BT must ensure that the rental charge for a 40/10 GEA-FTTP service is the same as the sum of its rental charges for 40/10 GEA-FTTC and MPF SML1⁹⁷ elsewhere. These requirements are imposed except in so far as Ofcom may direct otherwise.

Scope of the regulatory waiver

- 4.12 We defined the geographic scope of the proposed consents and direction by reference to areas that area currently served by the Salisbury and Mildenhall exchanges with their copper access networks.
- 4.13 As previously noted, Openreach has proposed that the Trials Offer would maintain rental charges at legacy service rates for a period of one year following migration. Thus, some customers would continue to pay the trials prices for up to a year after the Trials Offer closes in May 2021. We therefore proposed that the consents and direction should apply for the duration of the Trials Offer (3 February 2020 to 4 May 2021) and thereafter in relation to rental charges for a period not exceeding one year following migration where such migration was contracted within the trials period.⁹⁸

Responses to our consultation

- 4.14 We received responses from BT Group, The Federation of Communications Services (the FCS), Openreach, TalkTalk⁹⁹, Vodafone, [X] (a telecoms provider) and [X] (a member of the public who asked us not to publish his name).

⁹⁷ Metallic Path Facilities, Service Management Level 1 (MPF SML1)

⁹⁸ As noted in paragraph 1.10, we set out proposals for regulation that will apply from 1 April 2021 as part of our Wholesale Fixed Telecoms Market Review. In the draft regulatory conditions, we proposed that the consent and direction to waive specific regulations made in this statement would be reflected in the relevant regulatory conditions made as part of the Wholesale Fixed Telecoms Market Review from 1 April 2021.

⁹⁹ TalkTalk response to the November 2019 consultation, paragraphs 1 and 2.

- 4.15 Overall BT Group¹⁰⁰, the FCS¹⁰¹, Openreach¹⁰², TalkTalk¹⁰³ and Vodafone¹⁰⁴ supported our proposals. They supported Openreach's plans to conduct trials to test how best to migrate customers to fibre services, to withdraw WLR services, and recognised the need to relax regulation to accommodate the Trials Offer.
- 4.16 In contrast, [X] did not support our proposals, arguing that Openreach had not adequately justified its request, and that our proposals were inconsistent with our strategy of promoting infrastructure competition, because we had not considered the impact of our proposals on infrastructure competition in the trials areas and the UK as a whole.¹⁰⁵ We detail and address [X]'s comments on infrastructure competition in our section on the impacts of our decisions.
- 4.17 [X] was also concerned about the disapplication of the non-geographic pricing restrictions as a potential precedent for Ofcom's nationwide policy on geographic pricing.
- 4.18 [X] also considered that we had not demonstrated that our proposals met the statutory tests in Section 49 of the Act.¹⁰⁶ In particular:
- We had not demonstrated that our proposals would not be unduly discriminatory. Whilst we had explained that our proposals related to two small geographic areas and would be time-limited, we had not considered the risk of discriminatory conduct by Openreach within those areas. We address this point alongside the argument that we have not considered the impact of our proposals on infrastructure competition.
 - In relation to objective justification and proportionality, we had not considered whether the proposals were strictly necessary and relatedly whether the requisite experience [of migration] could be obtained by other means.¹⁰⁷
- 4.19 [X] commented on the importance of copper switchover processes generally, beyond the trials, and in particular their importance to the business case for investment in fibre networks. It considered it was essential that the processes should provide a level playing field and be competitor-neutral so that Openreach does not foreclose rivals. It also discussed the Government's position on cross platform switching as set out in the Government's Future Telecoms Infrastructure Review (FTIR)¹⁰⁸ and argued that there

¹⁰⁰ BT Group response to the November 2019 consultation, page 1.

¹⁰¹ FCS response to the November 2019 consultation, page 1.

¹⁰² Openreach response to the November 2019 consultation, page 3.

¹⁰³ TalkTalk response to the November 2019 consultation, page 2.

¹⁰⁴ Vodafone response to the November 2019 consultation, page 2.

¹⁰⁵ [X] response to the November 2019 consultation, paragraphs 4.1 to 4.10

¹⁰⁶ Section 49 specifies that Ofcom must not give that direction or consent unless it is satisfied that to do so is: objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; not such as to discriminate unduly against particular persons or against a particular description of persons; proportionate to what it is intended to achieve; and in relation to what it is intended to achieve, transparent.

¹⁰⁷ [X] response to the November 2019 consultation, paragraphs 4.18 to 4.20.

¹⁰⁸ Department for Culture, Media and Sport, July 2018. *Future Telecoms Infrastructure Review*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf

should be a cross platform switching process to enable copper-based customers to migrate to other fibre networks than Openreach's.¹⁰⁹

4.20 Vodafone and the FCS suggested that there should be further consideration on the sharing of costs between Openreach and telecoms providers, as Openreach was the instigator of the migration to fibre and WLR withdrawal programmes:

- Vodafone opposed the imposition of connection charges for fibre migration and WLR withdrawal (both in connection with the trials and national rollout) given that the changes are being instigated by Openreach. Vodafone urged Ofcom to set out a national policy concerning connection charges.¹¹⁰
- Vodafone noted that telecoms providers would incur significant costs managing their customers through the migration programmes and that further consideration should be given as to whether Openreach should bear some of those costs since much of the benefit of the transition would accrue to Openreach.¹¹¹
- The FCS considered that migration costs should not be borne by service providers and end-users. It therefore considered that the Trials Offer should be extended to the national migration programmes.¹¹²

4.21 TalkTalk [§<].¹¹³

4.22 Vodafone suggested that Ofcom should consider in advance how the proposed consents and direction could be extended should the trials be extended.¹¹⁴

4.23 [§<] noted that the November 2019 consultation appeared similar to the July 2019 Consultation, the only difference being the addition of the Mildenhall trial. He therefore considered his response to the July 2019 consultation to be relevant to the November 2019 consultation.¹¹⁵

4.24 TalkTalk suggested that the proposed direction and consents should be amended to align with the dates of the finalised Trials Offer.¹¹⁶

4.25 Openreach suggested some clarifications and amendments to the legal instruments, namely:

- to clarify that the proposed consents relating to Condition 4 (obligation not to discriminate unduly) and Condition 5 (obligation to provide network access on an Equivalence of Inputs basis) would apply to connection charges;
- to replace references to SOGEA Voice Access with SOGEA Low Bandwidth product;

¹⁰⁹ [§<] response to the November 2019 consultation, page 1 and paragraphs 3.1 to 3.21.

¹¹⁰ Vodafone response to the November 2019 consultation, page 3.

¹¹¹ Vodafone response to the November 2019 consultation, page 4.

¹¹² FCS response to the November 2019 consultation, page 1.

¹¹³ TalkTalk response to the November 2019 consultation, paragraph 3.

¹¹⁴ Vodafone response to the November 2019 consultation, page 2.

¹¹⁵ [§<] response to the November 2019 consultation, page 1]

¹¹⁶ TalkTalk response to the November 2019 consultation, page 2.

- to replace references to Generic Ethernet Access (FTTP) Voice Access with Generic Ethernet Access (FTTP) Low Bandwidth product; and
- to correct an erroneous reference to the closing date of the Trials Offer in paragraph 8 of the legal instrument from 1 May 2011 to 1 May 2021.¹¹⁷

Our reasoning

Justification for the Trials Offer

- 4.26 In March and June 2019 Openreach consulted on its approach to migration to fibre and WLR withdrawal.¹¹⁸ In feedback during the consultation process and associated industry engagement, telecoms providers told Openreach that connection charges for migrations and higher rental charges for destination services and ancillary charges¹¹⁹ would present a significant commercial barrier to their participation in the trials and would in turn make it difficult for them to offer terms to end-users which would encourage participation in the trials.
- 4.27 Openreach developed the Trials Offer in response to the feedback to address the commercial barriers to telecoms providers participation in the trials and to encourage early migrations. As previously noted, the key elements of the Trials Offer are waiving certain connection charges for migration and maintaining rental charges at legacy service rates for a year after migration.
- 4.28 As previously noted, Openreach considered that elements of the Trials Offer would be contrary to certain obligations imposed on BT in the 2018 WLA and it therefore requested that we waive the relevant regulations for the duration of the Trials Offer.

Regulatory support for the trials

- 4.29 Given the importance of the trials, described in Section 2, we consider it is important that they proceed in a timely manner so that lessons learned can be used to inform and refine the processes for nationwide migration.
- 4.30 We consider that the trials may not be completed successfully within the proposed timescales absent the Trials Offer and the regulatory waivers to enable it. Given telecoms providers' feedback to Openreach, absent the Trials Offer, there is a risk that telecoms providers would delay or object to their participation in the trials to limit their costs, and/or would pass on some or all of the costs to end-users. Either approach would be likely to reduce the proportion of end-users migrated during the trials. In our view this would significantly reduce the value of the trials, a key element of which is to migrate all end-users to gain experience of the more challenging cases, not just early adopters.

¹¹⁷ Openreach response to the November 2019 consultation, annex 1. Subsequently, on 6 January 2020, and subject to the appropriate regulatory waivers being in place, Openreach notified its customers that the Trials Offer would run from 3 February 2020 to 4 May 2021.

¹¹⁸ Openreach, June 2019. *Openreach Industry Consultation on: FTTP Exchange Upgrade and Single Order Exchange Upgrade trialling*.

¹¹⁹ Charges for left-in jumper recovery and ceasing tie cables.

- 4.31 As to whether lessons about migration could be obtained by other means than the trials, the specific implementation of trialling migration is a matter for Openreach and telecoms providers. However, given the wide-ranging impact of copper retirement in general for consumers and businesses, we believe migration should be tested so that lessons can be applied to nationwide roll out. Openreach's phased approach to migration, exchange by exchange, should also help improve processes as fibre deployment and customer migrations gradually progress.
- 4.32 The trials do not set a precedent for our nationwide policy in relation to geographic pricing. A key aspect of our proposals in the WFTMR published in January is to restrict Openreach's ability to geographically target price reductions. We propose to prohibit geographic discounts on rental charges in the WLA market for FTTC and G.fast in Areas 2 and 3¹²⁰ and for FTTP in Area 2. This is to prevent Openreach targeting specific discounts in order to deter rollout in areas where others are starting/planning to roll out new fibre network.¹²¹ If we were to grant exceptions to this under the consent mechanism, we would need to be convinced that they were consistent with the policy objective underlying these restrictions.

Importance of switchover processes

- 4.33 We recognise that the ability for network competitors to Openreach to switch end-users from Openreach's copper platform to their own alternative network is likely to be a factor in competitors' business cases. We also recognise that cross-platform switching is a complex issue.
- 4.34 The European Electronic Communications Code (EECC) specifies new requirements for all types of switches including where customers switch fibre services and between different physical networks. We are currently consulting on changes to the General Conditions to implement these EECC requirements, and there is already a programme of work led by the Office of the Telecoms Adjudicator considering cross-platform switching.¹²² We also note that one network competitor is currently also consulting on the role of alternative fibre infrastructure builders in helping to switch customers from legacy copper networks.¹²³

Consideration of other points made by respondents

- 4.35 In relation to Vodafone and the FCS's opposition to the imposition of connection charges to move customers from a legacy product to a fibre or single order product we note that:
- In the January WFTMR consultation, we propose to set the FTTP 40/10 connection charge to zero in both Areas 2 and 3 (potential rival network build and no expected rival network build areas respectively) when the stop sell applies in the exchange.

¹²⁰ As part of our proposals for copper retirement, we propose to remove the prohibition of geographic discounts to the extent that they apply to copper services, in premises where fibre is available, in ultrafast completed exchanges. See WFTMR, Volume 3, Section 2.

¹²¹ See Annex 15 of the WFTMR. This is for all bandwidths.

¹²² Ofcom, December 2019. *Fair treatment and easier switching for mobile and broadband customers: Proposals to implement the new European Electronic Communications Code*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/proposals-to-implement-new-eecc>.

¹²³ <https://www.cityfibre.com/news/cityfibre-consult-industry-copper-fibre-switch-opportunity/>

- In relation to migration to single order products, while we have proposed to deregulate WLR (and ISDN), Openreach has committed to continue to provide new WLR (and ISDN) services until December 2023, and existing WLR (and ISDN) services until December 2025. In the meantime, single order products terms and conditions, including charges, will continue to be subject to the requirement to be fair and reasonable, including associated charges such as connection charges.
- 4.36 In response to Vodafone's suggestion that Ofcom should consider in advance how the proposed consents and direction could be extended should the trials be extended, we agree this is a relevant consideration in case of delays to the trials. We are, however, wary of extending the current consents and direction longer than is currently necessary, to limit the disapplication of current regulation and the impact of our proposals. In addition, after the Trials Offer expires, the new regulatory requirements (including national wholesale prices) set by the WFTMR will be in place. We are not currently aware that there would be a need to make changes to those new requirements.
- 4.37 We consider that [X]'s comments are primarily relevant to the stop-sell proposals, our approach to consumer protection and monitoring of the trials. We have therefore considered his comments in section 3.

Amendments to the legal instruments

- 4.38 We agree that it would be appropriate to amend the legal instruments as suggested by Openreach. We also agree with TalkTalk that the legal instruments should align with the dates of the finalised Trials Offer from Openreach. Given that Openreach notified its customers that the Trials Offer would run from 3 February 2020 to 4 May 2021, subject to the appropriate regulatory waivers being in place, we propose to reflect those dates in the legal instruments.
- 4.39 We explain below that we have made 4 changes to clarify the scope of the consent and direction as follows:
- An amendment to paragraph 8 to correct a reference to the closing date of the Trials Offer to 4 May 2021.
 - To replace references to SOGEA Voice Access in the list of Target Services for the Mildenhall area (in paragraph 15) with the current product name SOGEA Low Bandwidth product.
 - To replace references to Generic Ethernet Access (FTTP) Voice Access in the list of Target Services for the Salisbury area with the current product name Generic Ethernet Access (FTTP) Low Bandwidth product.
 - An amendment to the consent relating to Condition 4 (obligation not to discriminate unduly) and Condition 5 (obligation to provide network access on an equivalence of inputs basis) to clarify that the consent applies to connection charges.

Impact of our decisions

Our proposals

Impact on consumers and businesses

- 4.40 The Salisbury and Mildenhall trials will affect only a small proportion of customers whose telephone and broadband services rely on wholesale services provided by Openreach. At most, this concerns approximately 30,000 premises altogether. Moreover, we expect that most migrations will be voluntary with customers actively electing to adopt the new services.
- 4.41 As part of our consultation on the Salisbury trial, we had already considered the consumer protection issues that might arise in connection with the stop sell in Salisbury and how they should be mitigated. Among other things, we proposed that our consumer protection measures proposed in February¹²⁴ would be suitable for the Salisbury trial since the risks we identified related to the migration of traditional analogue telephone services to IP based replacements (section 3). As the Mildenhall trial also involves this migration to IP-based voice services, we similarly considered that the measures we outlined in February to protect consumers during the PSTN switch-off would apply.
- 4.42 In relation to the Trials Offer specifically, we considered that the Trials Offer would be likely to be beneficial for consumers and businesses in most respects. Openreach is proposing to waive wholesale migration charges and to maintain wholesale rental charges at legacy service rates for one year after migration. If telecoms providers are able to align their retail service offerings for the trial with Openreach's, end consumers could migrate to replacement services without additional charge and continue to pay their legacy service rates for one year after migration. In some cases, the replacement services will be better than the legacy service.
- 4.43 One year after migration, Openreach's wholesale rental charges would move to the prevailing rate for the wholesale service that the customer has migrated to. In cases where customers have migrated to a better service (e.g. from standard broadband to FTTC, G.fast or FTTP broadband) the wholesale charges and the corresponding retail charges may be higher. We therefore considered that it would be important for retail telecoms providers to make this clear to consumers and businesses.

Impact on telecoms providers participating in the trials

- 4.44 We considered that the proposed consents and the direction are likely to be beneficial to telecoms providers who will participate in the Salisbury and Mildenhall trials. The Trials Offer would significantly reduce telecoms providers costs, enabling them to set retail charges to encourage participation in the trials.

¹²⁴ Ofcom, 2019. *The future of fixed telephone services*.

Responses to the consultation

- 4.45 [3<] considered that the proposals have the potential to have a material detrimental impact on infrastructure competition in the trials areas because, absent the SMP conditions, Openreach would be able to use geographically targeted discounts to foreclose competition from rival infrastructure providers. [3<] also considered that the proposals would have a negative impact on competition in the UK as a whole, because the trials would serve as a precedent for migration elsewhere in the UK, and would give negative signals to investors in rival infrastructure providers and retail telecoms providers who may consider purchasing wholesale services from such providers.¹²⁵
- 4.46 BT Group believed there should be additional protection for consumers. BT Group was of a view that telecoms providers should abide by a customer charter to protect users of low bandwidth services (including vulnerable consumers) who will have to transition to more expensive FTTP products. BT Group noted that in order to replicate WLR it would need to provide an IP voice product in conjunction with the low bandwidth fibre product proposed by Openreach for voice-only applications. It suggested that the pricing of the voice-only product would need to be assessed in light of the cost of providing the IP voice product, to ensure that BT can continue to provide services to voice-only customers at a fair price.¹²⁶
- 4.47 Vodafone reiterated its view (set out in response to the July 2019 Consultation) that a set of pre-conditions should be met to ensure the success of the trials.¹²⁷
- 4.48 The FCS was concerned that the national migration programmes could have an adverse effect on resellers if vertically integrated providers are not obliged to pass on future trials offers to resellers on equivalent terms to their downstream divisions. It asked Ofcom and Openreach to consider measures to ensure that equivalence is maintained.¹²⁸

Our reasoning

Impact on infrastructure competition in the trial areas

- 4.49 We consider that there is a low risk that the regulatory waivers might result in a material detrimental impact on infrastructure competition in the trials areas given the context of Openreach's request and the locations selected for the trials.
- 4.50 Openreach has requested the waivers specifically to facilitate the Trials Offer, the terms of which were communicated to us with the request. Given the Trials Offer is in response to feedback from Openreach's customers and the narrow disapplication proposed, we consider that the risk of Openreach departing from the Trials Offer to engage in discriminatory conduct to harm infrastructure competition or excessive pricing is low.

¹²⁵ [3<] response to the November 2019 consultation, paragraphs 4.22 to 4.26.

¹²⁶ BT Group response to the November 2019 consultation, page 2.

¹²⁷ Vodafone response to the November 2019 consultation, pages 5-6.

¹²⁸ FCS response to the November 2019 consultation, page 2.

- 4.51 While we did not specifically detail the risk to infrastructure competition in Salisbury and Mildenhall in the November 2019 consultation, we considered the impact of our proposals on network competitors in these areas. There are two other network providers present in Salisbury, Virgin Media whose network covers much of the Salisbury exchange area and Open Fibre Networks Limited which has a very small and targeted footprint.¹²⁹ We considered that our proposals were likely to support increased network competition for existing providers and that those providers were likely to be able to respond to increasing demand for higher bandwidth services. In Mildenhall, given the trial relates to Openreach wholesale services migration to single order services, we do not believe that our proposals would significantly impact any existing network competitors.
- 4.52 In relation to new entrants, in Salisbury, we consider that it is more likely that potential entry would be deterred by Openreach's pre-existing fibre deployment than our proposals, which come after Openreach's fibre network is available in the majority of the Salisbury exchange. In Mildenhall, Openreach is not currently proposing to deploy fibre.¹³⁰

Impact of the measures in the UK as a whole

- 4.53 We consider that there is a minimal risk that the regulatory measures to enable the Trials Offer would have any impact on infrastructure competition in the UK as a whole. We explained in the November 2019 consultation that our proposals were focused on enabling the Salisbury and Mildenhall trials rather than setting principles for withdrawal of copper-based services more broadly across the country. We also explained that we planned to set out proposals that will apply more broadly as part of the WFTMR. We have since published our consultation setting out those proposals.¹³¹ We expect any final decisions to take effect on 1 April 2021.
- 4.54 Our nationwide approach to copper retirement has some differences from our approach to the trials and seeks to protect network competition in number of ways. Firstly, by proposing a threshold of 75% Ultrafast coverage before allowing copper stop sell, we limit the risk that Openreach will only focus on parts of the exchange before moving on to another exchange, and thereby deterring network competition in more areas.¹³² Secondly, our proposals to require Openreach to provide transparency of when it expects to reach the coverage thresholds that trigger changes in regulation should allow competing networks to also plan their commercial activities to attract retail or wholesale customers onto their network during the migration to fibre.
- 4.55 In addition, as mentioned above, a key aspect of our proposals is to impose geographic pricing restrictions on fibre services (and, until regulation is lifted, to retain geographic pricing restrictions on copper services).

¹²⁹ <https://labs.thinkbroadband.com/local/broadband-map#6/51.414/-0.641/>

¹³⁰ <https://www.openreach.com/content/dam/openreach/openreach-dam-files/images/fibre-broadband/fibre-first/DCMS%20Transparency%20Data%20Capture%20Jan%202020-%20v3.pdf>

¹³¹ Ofcom, January 2020. *Wholesale Fixed Telecoms Market Review consultation*.

¹³² Ofcom, January 2020. *Wholesale Fixed Telecoms Market Review consultation – Volume 3: Non-pricing remedies*, Section 2.

Consideration of other points raised by respondents

- 4.56 We recognise BT Group's concerns about the prices of voice-only and broadband services for vulnerable consumers. We have set out our views in this topic in section 3 in response to similar points made by respondents to the July 2019 consultation.
- 4.57 We have considered the pre-conditions suggested by Vodafone in section 3.
- 4.58 In relation to the FCS's comments, our decision relates to certain regulated wholesale services provided by Openreach rather than downstream services provided to resellers on a commercial basis. However, given the Trials Offer's objective, we would expect Openreach to work with telecoms providers to maximise participation in the trials. We plan on asking Openreach for updates on the take up amongst CPs of the Trials Offer.

Our decision

- 4.59 We note that most respondents were supportive of the Trials Offer and of our proposals. For the reasons set out above, we also continue to consider that the commercial incentives from Openreach to its customers would support early participation of telecoms providers in the trials, and that the potential benefits of the trials justify targeted regulatory intervention to facilitate them.
- 4.60 Accordingly, in order to allow Openreach to implement the Trials Offer for the Salisbury and Mildenhall trials, we have decided:
- a) to consent to Conditions 4 and 5 not applying in relation to rental and associated charges for the specified wholesale services provided in the Salisbury and Mildenhall exchange areas for the duration of the Trials Offer (including the small changes suggested by Openreach); and
 - b) to direct that condition 7B.5(a)(i) is disapplied in relation to the relevant wholesale services offered in the Salisbury exchange area for the duration of the Trials Offer.
- 4.61 We have decided to implement our proposals so that the consents and direction should apply for the duration of the Trials Offer (3 February 2020 to 4 May 2021) and thereafter in relation to rental charges for a period not exceeding one year following migration, where such migration was contracted within the trials period.

Legal tests

- 4.62 As explained above, we have decided to consent to certain non-discrimination requirements, including the requirement to provide network access on an Equivalence of Inputs basis not applying in Mildenhall and Salisbury for the duration of the Trials Offer, and to direct that certain aspects of the VULA charge control should be disapplied in Salisbury for the duration of the Trials Offer. For the reasons we set out below, we are satisfied that these consents and the direction meet the various tests set out in the Act.
- 4.63 Section 49 of the Act provides that where an SMP condition has effect by reference to a direction or consent given by Ofcom, and Ofcom proposes to give such a direction or

consent that affects the operation of an SMP condition, Ofcom must not give that direction or consent unless it is satisfied that to do so is: objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; not such as to discriminate unduly against particular persons or against a particular description of persons; proportionate to what it is intended to achieve; and in relation to what it is intended to achieve, transparent.

- 4.64 Taking into account respondents' views and our reasoning set out above, we continue to be of the view that the consents and the direction are:
- a) Objectively justifiable, in that: these measures facilitate the Salisbury and Mildenhall trials which should allow BT and telecoms providers to better understand the challenges in rolling out fibre networks and withdrawing WLR services on a large scale; facilitating Openreach's Trials Offer will incentivise and encourage telecoms providers and customers to engage with the trials, and assist in an efficient fibre rollout, ultimately for the benefit of customers; and as previously discussed absent these measures the trials are unlikely to be completed successfully within the proposed timescales significantly reducing their value.
 - b) Not unduly discriminatory, in that they apply by reference to objective factors; that is, the Trials Offer are limited to two small geographic areas, applicable to limited services and for a time period.
 - c) Proportionate, in that they are targeted and confined to a limited geographic area in the UK, and limited to what is necessary to run the trials.
 - d) Transparent, in that they are clear in their intention to ensure that BT is only given the additional pricing flexibility in the Salisbury and Mildenhall exchange areas where the trials will take place and the consents and direction are published as part of this statement.
- 4.65 We also consider that the consents and the direction meet our duties under section 3 and 4 of the Act. We consider that Trials Offer for the relevant services in the Salisbury and Mildenhall exchange areas will both incentivise and encourage early participation in the trials and in turn assist BT and telecoms providers to better understand the processes involved in successfully and efficiently rolling out fibre and withdrawing the legacy services. For this reason, we consider that the consents and the direction further the interests of citizens in relation to communications matters and of consumers in relevant markets, where appropriate by promoting competition.
- 4.66 With regard to the Community requirements set out in section 4 of the Act, we believe that the consents and the direction are in accordance with these requirements; in particular, by helping to ensure that BT, telecoms providers and stakeholders better understand, and put into place well-identified measures for, the copper retirement process and WLR withdrawal, we believe they are in accordance with the fifth Community requirement. Ultimately these measures aim to facilitate network competition which is in accordance with the first Community requirement.

5. Monitoring the trials

Our proposals

- 5.1 In the July 2019 consultation we explained that we planned to ask Openreach to supply us with information to enable us to monitor the progress of the Salisbury trial and the consumer experience during and after the installation of new services. We proposed to ask Openreach to provide a Salisbury 'view' of the existing quality of service metrics and several additional measures as listed in Annex 1 of the July 2019 consultation.
- 5.2 We also proposed to liaise further with Openreach and telecoms providers to identify any other metrics that would provide further insight into the consumer experience during the Salisbury trial. Additionally, we proposed to engage with local stakeholders, in the run-up to and during the Salisbury trial, to ensure we are aware of any issues or challenges that consumers or stakeholders may be experiencing.
- 5.3 In the November 2019 consultation, we proposed to ask Openreach to supply us with information to enable us to monitor the progress of the Mildenhall trial and the consumer experience during and after the installation of new services. Our initial view was that our requirements for the Mildenhall trial would be very similar to those proposed for the Salisbury trial. We planned to develop detailed proposals before the start of the Mildenhall trial, drawing on responses to our proposals for the Salisbury trial.

Responses to our consultations

- 5.4 Respondents to the July 2019 consultation supported the metrics we proposed to request from Openreach, however, there was a desire for further information both from Openreach and other telecoms providers.¹³³
- 5.5 Openreach supported our proposals and agreed to provide the metrics that we proposed.¹³⁴
- 5.6 TalkTalk suggested that the metrics should be expanded to include measures of other aspects of Openreach's installation performance:
- the average duration of installation appointment;
 - one-stage installations that subsequently became two-stage installations; and
 - customer rejection rates on the day of installation with reasons.¹³⁵
- 5.7 TalkTalk also suggested to collect information about the quality of home visits for vulnerable consumers (e.g. number of cases where Openreach engineers flagged potentially vulnerable consumers to telecoms providers and the number of cases where

¹³³ TalkTalk response to July 2019 consultation, paragraph 4.1-4.2; [X] response to July 2019 consultation, page 2; BT Group response to July 2019 consultation, paragraph 3.1.

¹³⁴ Openreach response to July 2019 consultation, page 5.

¹³⁵ TalkTalk response to July 2019 consultation, paragraph 4.2.

impacts on downstream services were identified during installation). Furthermore, TalkTalk suggested monitoring several aspects of quality of service following installation:

- minimum and average speeds delivered;
- reliability and performance of migrated connections; and
- adherence to SLAs.¹³⁶

- 5.8 BT Group stated that metrics should be collected from other telecoms providers and provided a list of suggested metrics in its confidential response that it would be willing to provide.¹³⁷
- 5.9 A confidential respondent stated that the installation of FTTP in shared ducts might cause disruption to other telecoms providers, and suggested a metric to monitor this.¹³⁸ Another confidential respondent said our metrics did not have sufficient data to ensure that consumers who encounter issues are monitored, nor to ensure that the impact on vulnerable consumers is captured.¹³⁹
- 5.10 TalkTalk suggested that Ofcom's attendance at working groups would be useful before, during and after the trials to avoid duplication and encourage collaboration, and suggested Ofcom should implement a process for collecting views and data from telecoms providers on the success of the trial, suggesting the OTA2 could facilitate this.¹⁴⁰
- 5.11 Several stakeholders stated that feedback from Salisbury consumers was required, with data collected on their experience of the trial.¹⁴¹
- 5.12 One confidential respondent suggested that additional information should be collected on a range of topics including the current infrastructure make-up (i.e. FTTC, FTTP and copper) of each of the main telecoms providers in Salisbury and the proportion of copper lines used for care alarms/equipment for vulnerable consumers.¹⁴²

Our decision

Metrics from Openreach

- 5.13 Having considered respondents' comments, we remain of the view that the quality of service measures we proposed in the July 2019 consultation would be suitable for monitoring both the Salisbury and Mildenhall trials. These measures, which are listed in Table A4.1 in Annex 4, are measures that Openreach already supplies to us on a national or regional basis. For the trials it will provide these measures for the Salisbury and Mildenhall exchanges separately.

¹³⁶ TalkTalk response to July 2019 consultation, paragraphs 4.3-4.4.

¹³⁷ BT response to July 2019 consultation, paragraphs 3.2-3.5 and Annex 1 (confidential).

¹³⁸ [X] response to July 2019 consultation, page 2.

¹³⁹ [X] response to July 2019 consultation, page 3.

¹⁴⁰ TalkTalk response to July 2019 consultation, paragraphs 4.5-4.6.

¹⁴¹ Vodafone response to July 2019 consultation, paragraph 11; TalkTalk response to July 2019 consultation, paragraph 4.6.

¹⁴² [X] response to July 2019 consultation, page 1.

- 5.14 We also remain of the view that the additional information proposed in the July 2019 consultation for the Salisbury trial would help us monitor progress of the Salisbury trial. This information, which supplement the quality of service measures listed in Table A4.1, is also listed in Annex 4 (paragraph 4.2). We consider that it may also be useful for Openreach to supply us with additional information (supplementing quality of service measures) to enable us to monitor progress of the Mildenhall trial, in line with the information asked of Openreach for the Salisbury trial. We plan to develop in more detail the additional information required before the start of the Mildenhall trial.
- 5.15 We note Openreach agreed to supply the information listed in Annex 4, and that it has begun to supply the quality of service information (listed in Table A4.1) to us on a monthly basis.
- 5.16 We plan to consider the additional measures that TalkTalk and others suggested Openreach and industry should provide during our forthcoming engagement with telecoms providers and industry working groups about the trials.

Metrics from other telecoms providers

- 5.17 In light of respondents' comments, we have considered whether it would be beneficial to collect information about the trials from other stakeholders. We have concluded that it would be useful to collect additional information from other telecoms providers to help us monitor the progress of the trials and the experience of vulnerable consumers. We therefore plan to engage with the main retail telecoms providers to ask for information on a voluntary basis.
- 5.18 Our main concern about the trials is the protection of vulnerable consumers, and that the migration from copper to fibre services does not result in either loss of service for their telephony or broadband services, or other related services (e.g. telecare alarms). We note that Openreach has stated that the identification of customers as vulnerable will be the responsibility of retail telecoms providers.¹⁴³ We expect telecoms providers to either have, or be working towards, a system of identification for such consumers. As such, we intend to ask the main telecoms providers to provide the following metrics regarding vulnerable consumers:
- a) The number of vulnerable consumers identified by the telecoms provider (and not Openreach) – to monitor whether there is a gap between the two and lessons to be learnt for both retail providers and Openreach in identifying vulnerable consumers
 - b) The proportion of vulnerable consumers on a telecoms provider's network that are migrated successfully from copper to fibre (i.e. with no provisioning faults) – to monitor how successfully vulnerable consumers are being migrated in comparison to consumers more widely.

¹⁴³ Openreach response to Openreach consultation, paragraph 128.

- 5.19 One of the other key elements of the trials will be telecoms providers progress on migration from legacy to replacement Single Order services. We strongly support, and expect, all telecoms providers to engage with the trials. Therefore, we plan to monitor the main telecoms providers' migration status by asking each provider for the number of copper and fibre and/or replacement Single Order services that they have in operation.
- 5.20 As part of the trials, we anticipate that telecoms providers, may decide to contact end consumers (by phone, email, letter, etc) in advance of migration and make them aware of the process and what it will entail. Therefore, we intend to ask other telecoms providers to provide the number of customers they have contacted at least once prior to migration.
- 5.21 We note TalkTalk and BT Group suggested a variety of additional metrics to add to Ofcom's monitoring of the trial. In addition to the metrics we have set out above, when engaging with telecoms providers as part of our monitoring of the trial and to highlight how telecoms providers might consider collecting the aforementioned data, we will further consider what supplementary metrics might be of use in monitoring the trial - of which we will consider BT Group's and TalkTalk's suggestions, alongside further stakeholder contributions.
- 5.22 We plan to request these voluntary metrics from only the main telecoms providers in Salisbury, and will be in touch with these providers shortly after publication of this statement, both to make them aware of these voluntary metrics and to consider how they might collect this data in light of their current internal information gathering. We expect these metrics to be provided at six monthly intervals. Alongside these metrics, we plan to set up a series of meetings with stakeholders in Salisbury and Mildenhall to discuss their perspective and receive feedback and updates on the trial, where we may discover further metrics that would be of use to our internal monitoring programme.
- 5.23 Furthermore, we are considering undertaking consumer research into the experience of consumers in Salisbury and Mildenhall. We also note that Openreach, in its response to the July 2019 consultation, stated it would be looking at developing its quantitative (as well as qualitative) measures for the trial.¹⁴⁴

¹⁴⁴ Openreach response to July 2019 consultation, page 5.

A1. Migration to voice over IP - measures we expect telecoms providers to implement

A1.1 In our February 2018 policy positioning statement on the future of fixed telephone services we set out the following measures that we expect telecoms providers to implement in respect of the migration to voice over IP. The measures state that, at a minimum, telecoms providers, either directly, or, where relevant, via their trade association, should:

Downstream services

- Share knowledge of the key downstream services impacted by the migration and examples of good practice/successful communication strategies, for example, by participating in Ofcom's and industry's All IP Working Groups;
- Develop a strategy to identify and engage with downstream service providers that utilise their landline services, in a timely fashion, to ensure they are aware of the change and the potential implications;
- Where relevant, make downstream service providers aware of any available testing facilities or facilitate access to the facilities offered by access network providers, so they can determine whether their services will work effectively over an IP network;
- Identify customers who use critical downstream services (such as a telecare device), develop appropriate communications plans and put in extra protection measures. For example, this could include delaying a customer's migration until satisfied that their downstream service is compatible with VoIP;
- Develop effective processes to support customers who inform them that their downstream services do not function as planned after migration. This could include returning them to a PSTN service if it remains available where the failure creates a risk of significant harm.

Supporting migrating customers

- Give adequate notice of service changes, noting that both residential and business customers may need time to acquire and configure new equipment;
- Ensure that all communications regarding the migration are clear and timely, in a format that reflects the needs of the customer, and include information about the potential impact on equipment that uses the PSTN;
- Assess customers' needs and offer help with migration (for example, a home visit to install a router) if necessary;
- Offer advice and assistance for all migrating customers, including those who use downstream services, and co-operate with providers of these services, to minimise disruption;
- Put ongoing protections in place to respond appropriately to later changes in end-users' circumstances, for example, customers that migrate to a VoIP service and then purchase a security alarm or telecare device.

A2. Impact assessment and equality impact assessment

Impact assessment

- A2.1 The analysis presented in the July 2019 consultation and the November 2019 consultation each constituted an impact assessment as defined in section 7 of the Communications Act 2003.
- A2.2 Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option was preferred. They form part of best practice policymaking. This is reflected in section 7 of the Act, which means that, generally, we have to carry out impact assessments in cases where our conclusions would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions.

Equality impact assessment

- A2.3 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on equality. We have a general duty under the 2010 Equality Act to advance equality of opportunity in relation to age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. We also have complementary duties under Northern Ireland's equality legislation. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- A2.4 We have therefore considered what (if any) impact the decisions we are making in this statement may have on equality.
- A2.5 We have not considered it necessary to carry out separate EIAs in relation to race or sex equality, or equality schemes under the Northern Ireland Equality Scheme. This is because we anticipate that our regulatory intervention will not have a differential impact on people of different sexes or ethnicities, or consumers with protected characteristics in Northern Ireland¹⁴⁵ compared to consumers in general.

The Salisbury stop-sell measures

- A2.6 We consider that there may be a risk that our changes in regulation to support the Salisbury stop-sell measures may have a particular impact for disabled and elderly consumers compared to consumers in general. As such we have undertaken an initial

¹⁴⁵ In addition to the characteristics outlined in the 2010 Equality Act, in Northern Ireland consumers who have dependants or hold a particular political opinion are also protected.

assessment of this impact below and we are working with industry to implement measures to address this potential impact.

- A2.7 In this document we set out our decision to disapply the requirement on Openreach to provide new copper access broadband services in Salisbury (stop sell), where alternative fibre services are available at those premises, from December 2020.
- A2.8 The proposed stop sell will affect customers in Salisbury who move to a new property, who seek to upgrade their service or who seek to switch providers. Such customers would receive their voice or broadband service over a fibre line and would no longer be able to purchase a service over a copper line, unless it is for a voice-only service. This will only apply if their premises have access to a fibre service.
- A2.9 There is a risk that our decision may have a particular impact on elderly and disabled consumers as opposed to consumers in general. When customers in Salisbury migrate from copper-based services to fibre services, this will also in some cases be a migration away from analogue telephony to digital (IP based) voice services. The shift to IP is likely to involve a change in set-up of equipment for those who already have broadband at home, as well as the provision of new equipment for those who do not have broadband. Those who are elderly or have accessibility or disability requirements may need additional support during the change.
- A2.10 About 4% of consumers (around 2 million adults) live in a landline-only home (i.e. without use of mobile) and therefore need to rely on their landline to make emergency calls in the case of a power cut.¹⁴⁶ Traditional lines are powered from the local exchange, but voice services provided over IP will require alternative solutions (such as battery back-up).
- A2.11 The migration will also impact services such as security alarms and telecare devices (and some business services such as card payment systems). With regard to telecare, we understand that more than a million such devices operate over traditional telephony, and they may not function as effectively over IP.
- A2.12 We have set out measures to mitigate the risk to these consumer groups including setting expectations that telecoms providers must only migrate vulnerable consumers reliant on services such as telecare where sufficient protection is put in place (namely, what we set out above in section 3 and Annex 1), and we will work with them to ensure they have processes in place to quickly restore services to consumers where they are migrated in error or migration causes unforeseen difficulties. In addition, with telecoms providers, we will work with providers of telecare services – such as the local authority and local health services – so that they can consider upgrading equipment as appropriate.
- A2.13 Despite the risks we have identified, we consider our proposals are justified for the following reasons –
- a) The number of potentially affected consumers is small and therefore, measures to offset any risks can be applied relatively easily.

¹⁴⁶ Ofcom Technology Tracker 2019.

- b) As outlined above we will work with Openreach, telecoms providers and local stakeholders to make sure they have appropriate safeguards in place for the protection of vulnerable consumers during the trial, including the ability to pause their migration or to restore their copper services at short notice if necessary. Additionally, at this stage we have not allowed a stop sell to wholesale line rental (WLR) in the narrowband market. The WLR service is used to provide voice-only services and some services reliant on the PSTN.
- c) The trial is a contained and monitored environment which will increase the effectiveness of the mitigating measures.
- d) An objective of the trial is to establish a smooth and safe process for the migration to fibre networks and the eventual retirement of the copper network. If the trial is successful in achieving this objective, it will mean that all consumers, nationally, including elderly and disabled consumers, are more likely to have a better migration experience and will ultimately have access to better communications services.

Pricing measures to support the Salisbury and Mildenhall trials

A2.14 The decisions in this statement will waive certain regulations which would otherwise prevent Openreach offering certain discounts for customers who participate in the Salisbury and Mildenhall trials. We consider that these discounts would be generally beneficial for customers. Therefore, we do not consider the impact of the decision in this statement to be to the detriment of any protected group within society. We have therefore not carried out separate EIAs in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

A3. Legal instrument

See separate Annex.

A4. Monitoring information

A4.1 We have decided to ask Openreach to provide the information listed in Table A4.1 on the trials in Salisbury and Mildenhall monthly.

Table A4.1: Existing Quality of Service (QoS) measures – to collect specifically for Salisbury and Mildenhall separately

		FTTP	G.FAST	FTTC	MPF	WLR (Analogue)
Number of these lines		✓	✓	✓	✓	✓
Average first available appointment date		✓	✓	✓	✓	✓
Average installation time	Appointed orders	✓	✓	✓	✓	✓
	Other Orders	✓	✓	✓	✓	✓
Average time to restore service	SML1				✓	✓
	SML2	✓	✓	✓	✓	✓
Percentage of installed base reported as having a fault		✓	✓	✓	✓	✓
Percentage of Orders reported as having a Fault within 28 calendar days		✓	✓	✓	✓	✓
Percentage of Orders reported as having a Fault within eight calendar days		✓	✓	✓	✓	✓
Percentage Repair completion subject to service level	On time for SML1				✓	✓
	On time for SML2	✓	✓	✓	✓	✓
Number of Missed Installation Appointments		✓	✓	✓	✓	✓

Additional measures for the Salisbury trial

- A4.2 We have decided to ask Openreach to provide the following measures as fibre is rolled out and once the stop sell comes into effect -
- a) Number of premises where FTTP is available, separately where G.Fast is available,¹⁴⁷ and number of premises where G.fast is available but not FTTC (definition of availability to be agreed), and the number of premises where only standard broadband is available.
 - b) The number of connections by service (FTTP, G.Fast, FTTC, MPF, WLR etc) by each Communications Provider customer.
 - c) Average time between availability, first order and complete installation / distribution of fastest and slowest times between availability, first order and complete installation.
 - d) Number of times the stop sell is implemented (i.e. where a request for a new copper connection is made and refused by Openreach).
 - e) Number of times stop sell applied to lines that were previously standard broadband.
 - f) Number of 'reversions' to copper lines – i.e. to protect vulnerable consumers.
 - g) Number of expensive/complex faults replaced with FTTP lines (total and as a % of all copper line faults) (definition of expensive/complex faults to be agreed).
- A4.3 We envisage similar measures to monitor the trial's progress in Mildenhall, and plan to develop these before the start of the trial in discussion with Openreach, telecoms providers and other stakeholders.

¹⁴⁷ For ultrafast services, i.e. those above 300 Mbit/s