
Fair treatment and easier switching for broadband and mobile customers

Implementation of the new European Electronic
Communications Code

[Fair treatment and easier switching for broadband and mobile customers](#) – Welsh overview

Non-confidential version – redacted for publication [✂]

STATEMENT AND CONSULTATION:

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1. Overview

Fairness for customers is a priority for Ofcom. We want people to shop around with confidence, make informed choices, switch easily and get a fair deal.

As part of this work, we are putting in place a package of measures that protect broadband, mobile, pay TV and landline customers, to help make sure they get a fair deal. This implements changes to European rules. The Government set out in July how it will reflect these changes in UK law, and confirmed that Ofcom should implement the customer protections in full.

What we have decided

Banning mobile providers from selling 'locked' devices. Some providers sell locked devices so they cannot be used on another network. If customers want to keep using the same device after they switch, this creates additional hassle and can put people off from switching altogether. So, we're banning the sale of locked mobile devices to remove this hurdle for customers. This will come into force in December 2021.

Making broadband switching easier and more reliable. Customers need to be able to switch providers easily to take advantage of the deals available to them. When customers look to change provider, we are requiring their new broadband provider to lead the switch and offer a seamless switching experience. This is regardless of whether they are moving across different fixed networks (for example, between Virgin Media and a provider using the Openreach network or a full fibre network provider such as CityFibre) or between providers that use the same fixed network, but connect customers using different technologies. Any loss of service that occurs during a switch must not be longer than one working day and providers must compensate customers if things go wrong. We are also banning notice period charges beyond the switch date for residential customers switching their fixed services. These are significant changes to how switching processes work and as such, the new rules will come into force in December 2022.

Better contract information and stronger rights to exit. Customers will be given the information they need in writing, before they sign a contract – including a summary of key contract terms. We are also giving customers the right to exit their contract if providers make changes that they were not previously told about and are not to their benefit during the period they are locked into their contract. This right to exit will also apply to other services or equipment bought as part of a bundle with a communications service. These new rules will come into force in June 2022.

Making sure disabled customers have equivalent access to information about their communications services. Any customer who needs accessible formats to be used because of their disabilities will be able to request communications be sent in a format that meets their needs (such as in braille). This includes any communications about their service (except for marketing materials), such as price changes or payment reminders. This will come into force in December 2021.

Background

- 1.1 In December 2019, we proposed a package of measures to further protect customers and help make sure they get a fair deal. These measures were put forward to implement the new customer protections in the European Electronic Communications Code (EECC). This is an EU directive that updates the regulations for communications services, which needs to be implemented by 21 December 2020.
- 1.2 The UK left the European Union on 31 January 2020, with a transition period until 31 December 2020. During the transition period, under the terms of the Withdrawal Agreement, the UK remains under obligation to implement EU directives into domestic law. In July 2020, the UK Government confirmed the changes it is making to the law to implement the EECC by 21 December 2020. It also stated that Ofcom should proceed to implement the customer protections in the EECC in full, as planned.
- 1.3 We received a range of responses to our December consultation, from communications providers, consumer bodies, advocacy groups, industry bodies, other organisations and individuals. Some respondents were supportive of our proposals, while others raised some concerns, including about implementation timings and the impact of specific proposals. In light of responses, we consulted further on two revised proposals in July 2020.
- 1.4 We have considered all the comments we received on the proposals we set out in both the December 2019 and July 2020 consultations. Many of the new customer protections in the EECC are mandatory requirements that we are required to implement. In some cases, we have decided it is appropriate to make modifications to take account of comments received.
- 1.5 In this document we set out the main changes we have decided to make to our rules to implement the EECC.¹ Alongside this, we are publishing a statement on changes to our accreditation scheme for price comparison websites, including changes to implement EECC rules regarding independent comparison tools.

New rule banning mobile providers from selling ‘locked’ devices

- 1.6 Currently, BT Mobile/EE, Tesco Mobile and Vodafone sell devices that are locked and cannot be used on other networks until they are unlocked. However, other providers – including O2, Sky, Three and Virgin Mobile – choose to sell unlocked devices to their customers.
- 1.7 While many people manage to unlock their device without difficulty, some experience difficulties such as a long delay before getting the code they need to unlock their device; or a loss of service if they didn’t realise their device was locked before they tried to switch.

¹ We have already implemented one aspect of the EECC - the requirements on providers to send end-of-contract notifications and annual best tariff information to residential and business customers (which came into effect from February 2020). As part of this statement we have also decided to revise the scope of the existing annual best tariff information rules, and these changes will come into effect from the date of this statement.

These potential difficulties can deter customers from switching and finding a better deal. Our evidence suggests that just over one third of customers who had considered switching, but decided not to, said device locking was one of the factors that put them off.

- 1.8 Our new rule to ban providers from selling locked devices to residential customers will make sure all providers sell unlocked devices starting in December 2021.

New rules to make broadband switching easier and more reliable

- 1.9 Easy, reliable switching is important for customers and for supporting future investment in - and take-up of - faster, more reliable broadband. As required by the EECC, we are introducing new rules to ensure a customer's new provider leads the switch. Also, our new rules include requirements that a switch is carried out in the shortest possible time and on the date agreed by the customer. The new rules will come into force in December 2022.
- 1.10 While there are already regulated processes for switching within the Openreach and KCOM fixed copper networks and between mobile providers, there are currently no regulated processes in place for residential customers switching between providers on different fixed networks, or providers of full-fibre services. At our request, the Office of the Telecoms Adjudicator (OTA) has been working with industry to seek to develop a new process for residential fixed switches, in line with the new requirements and to ensure they are effective for customers. As industry has to date been unable to agree on a single process, we will shortly consult on proposals to establish the new process.

Better contract information and stronger rights to exit

- 1.11 We are changing the current rules on the information given to customers when they enter into a contract. Under our new rules, which will come into effect in June 2022, customers will be given a short summary of the main contract terms, to help them make an informed decision about the services they are choosing, and a more detailed set of contract information, in writing, before they are tied into that contract.
- 1.12 In addition, we are setting new rules to strengthen customers' right to exit their contract if providers choose to make changes to their contractual terms mid-contract. Currently, customers only have this right if a contractual change particularly disadvantages them. Under the new rules, which also come into effect in June 2022, a broader set of changes to the contract terms would give a customer the right to exit.

New rules for bundles

- 1.13 We are making it clear that where voice and broadband services are sold in bundled contracts with equipment (such as mobile handsets), and certain types of services, the whole bundle is caught by some of our rules. In particular, from December 2021, providers must not offer contracts for bundles with commitment periods of longer than 24 months.
- 1.14 We are also publishing guidance that will help protect customers when they buy a bundle of services and/or equipment that have different minimum commitment periods. We are

concerned that some of these bundles can have the effect of ‘locking-in’ a customer to their provider by making it more difficult for them to switch.

Making sure disabled customers have equivalent access to information about their communications services and emergency communications

- 1.15 We are extending the rules relating to accessible formats. Currently the rules enable blind or vision impaired customers to request certain correspondence² relating to communication services in a format that is accessible (for example braille or large print), free of charge, if they cannot access standard communication formats (such as print or email).³ From December 2021, these rules will cover all communications (except marketing materials) and benefit all customers who need alternative formats because of their disabilities. Not being able to read these communications without assistance can increase reliance on third parties, and lead to loss of independence and privacy. We believe it is important for any customer who needs an accessible format because of their disability to be able to request their communications in a reasonably acceptable format.
- 1.16 Being able to communicate with the emergency services when involved in, or witnessing, an emergency is a crucial communication need for everyone. While there are already some rules that help disabled people contact the emergency services, including the provision of text relay and emergency SMS, we remain concerned that these alternatives might not be enough to ensure equivalent access for British Sign Language (BSL) users. In December, we proposed that BSL users should have access to a free video relay service for contacting the emergency services. We continue to work with industry on how best to deliver this proposal and will publish an update in due course.

Next steps

- 1.17 As part of this document, we are consulting on aligning the definitions and terminology used across our regulatory rules, to make sure they are clear and consistent. We invite responses on the proposed minor changes by **30 November 2020**.
- 1.18 We plan to publish a decision statement and the final set of revised regulatory rules before 21 December 2020. For most of the new rules, providers will then have twelve months from publication of the revised rules to implement the changes included in this statement. In the case of the contract information and right to exit rules, providers will have 18 months. For the new switching rules, providers will have 24 months for implementation.
- 1.19 As noted above, we will also shortly issue a consultation on a process for residential customers switching fixed services.

² Bills, contracts, end-of-contract notifications and annual best tariff notifications.

³ Current GC C5.13.

2. Introduction and background

- 2.1 We want customers of communications services to get a fair deal. Ensuring that providers treat them fairly and put customers' interests at the heart of their businesses is a priority for us.
- 2.2 The European Electronic Communications Code (EECC)⁴ is an EU Directive that includes new protections (the "end-user rights provisions") for customers, which need to be reflected in our regulatory rules. Although the UK left the European Union (EU) on 31 January 2020, under the terms of the Withdrawal Agreement, the UK remains under an obligation to implement EU Directives into domestic law until after the EECC's transposition deadline of 21 December 2020. In addition, in its statement on the EECC, the Government was clear that Ofcom should proceed to implement the end-user rights provisions in full.⁵ Therefore, we need to revise our regulatory rules by 21 December 2020.
- 2.3 In December 2019, we consulted on our proposed approach to implementing the new end-user rights provisions (the December Consultation).⁶ Then in July 2020, we published a further consultation on revised proposals in two areas (the July Consultation).
- 2.4 In this document, we set out our decisions on implementation of these provisions, to give full effect to these customer protections. This follows consideration of the responses to the December 2019 and July 2020 consultations. In addition, we are consulting on some minor, consequential changes to a number of other General Conditions (the GCs) to ensure clarity and consistency in the terminology and definitions used throughout the GCs. We will then publish the final set of revised GCs in December.
- 2.5 This section sets out the background to this document and the legal framework.

Ofcom's Fairness for Customers work plan

- 2.6 Our implementation of the end-user rights provisions of the EECC is part of our ongoing work to ensure fairness for customers, which remains a priority for us, as highlighted in our plan of work.⁷ We have been engaging with communications providers to ensure that they treat their customers fairly, and have introduced other targeted interventions where necessary.⁸

⁴ [Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Recast\)](#)

⁵ DCMS, July 2020. [Government response to the public consultation on implementing the European Electronic Communications Code](#)

⁶ Ofcom, December 2019, [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code](#). This followed on from our statement in May 2019 confirming early implementation of the EECC requirements in relation to end-of-contract notifications and annual best tariff information (the May Statement). Ofcom, May 2019, [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#)

⁷ Ofcom, April 2020. [Ofcom's Plan of Work 2020/21](#)

⁸ See for example the [progress update](#) we published in January 2020.

2.7 The decisions in this document also align with a number of the Government’s strategic priorities for customers of communications services, in particular, that Ofcom should continue to improve industry processes for broadband switching, including across different networks; and take all opportunities to improve the customer experience in the communications sector, particularly for vulnerable customers, including those with disabilities.⁹

The European Electronic Communications Code includes new protections for customers

2.8 The EECC is an EU Directive that consolidates, updates and replaces the four Directives that made up the EU regulatory framework for electronic communications.^{10,11} It entered into force on 20 December 2018 and EU Member States have until 21 December 2020 to transpose it into national law. Under the terms of the Withdrawal Agreement, the UK remains under an obligation to implement EU Directives until the end of the transition and implementation period on 31 December 2020.

2.9 This document is focused on the “End User Rights” chapter of the Directive set out at Title III of Part III of the EECC,¹² which contains a package of measures to protect end-users. These build on the protections currently contained in the Universal Service Directive, and include a range of requirements, in areas such as the following:

- a) provision of information in contracts;
- b) transparency, comparison tools and publication of information;
- c) quality of service;
- d) contract duration and termination;
- e) switching and porting; and
- f) bundled offers.

2.10 The end-user rights provisions apply to different categories of customer: some only apply to residential customers; some also apply to microenterprise, small enterprise and not for profit customers; while others apply to all end-users, including large businesses.

2.11 These provisions are subject to full harmonisation.¹³ This means that, in the areas that they cover, Member States may not maintain or introduce end-user provisions in national law

⁹ As required by section 2B(2) of the Communications Act 2003, we have had regard to the UK Government’s Statement of Strategic Priorities (SSP) for telecoms, management of radio spectrum and postal services. DCMS, [Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services](#), October 2019, section 2: furthering the interests of telecoms consumers.

¹⁰ Framework Directive (2002/21/EC), Authorisation Directive (2002/20/EC), Access Directive (2002/19/EC) and Universal Service Directive (2002/22/EC), all as amended.

¹¹ [Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Recast\)](#)

¹² Articles 98 – 116, EECC.

¹³ Article 101, EECC.

that diverge from those provisions of the EECC, including more or less stringent provisions that would provide a different level of protection for end-users, except for where the provisions allow for such divergence.

- 2.12 We have already implemented the provisions on end-of-contract notifications and annual best tariff information, which came into effect in February 2020.¹⁴

December 2019 consultation

- 2.13 In December 2019, we published a consultation on introducing the new end-user rights provisions in the EECC into the GCs.¹⁵ The document proposed a package of measures to protect broadband, mobile, pay TV and landline phone customers, including:
- new rules to make broadband switching easier and more reliable;
 - a new rule banning mobile providers from selling devices locked to a particular network;
 - better contract information and stronger rights to exit where providers make changes to their contract; and
 - new rules to help ensure that customers with disabilities have equivalent access to communications services.
- 2.14 We proposed to implement these requirements by modifying the GCs and setting new GCs using our existing powers under section 45 of the Communications Act 2003 (the Act). We also proposed to issue guidance on how providers should comply with certain GCs, including in relation to contract information, contract summary, contract termination, and switching and porting.
- 2.15 The consultation closed on 3 March 2020, and we received 58 responses from a wide range of interested parties, including providers, consumer bodies and advocacy groups, industry bodies, other organisations and individual consumers. All non-confidential responses are available on our website.¹⁶ A summary of the responses received and our decision is outlined in the relevant sections of this statement.
- 2.16 Our proposals to implement the end-user rights provisions in relation to independent comparison tools were set out in a separate consultation on [Digital Comparison Tools for telephone, broadband and pay TV: proposed changes to Ofcom's voluntary accreditation scheme](#) which was published at the same time.

¹⁴ Ofcom, May 2019. [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#). In July 2020 we published a consultation on reducing the scope of our annual best tariff requirements: Ofcom, July 2020. [Implementing the new European Electronic Communications Code Revised proposals for annual best tariff information and business customer definitions](#).

¹⁵ Ofcom, December 2019. [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code](#).

¹⁶ Non-confidential responses to our December 2019 consultation are all published [here](#).

Government’s decision on implementing the EECC

- 2.17 In July 2019, the Government published a consultation setting out its approach to implementing the EECC in the UK.¹⁷ This identified a small number of end-user rights provisions that required legislative or other changes, to ensure that they could be implemented in full.
- 2.18 The Government published the response to its consultation on 22 July 2020.¹⁸ It confirmed that it was proceeding to implement the EECC by the deadline of 21 December 2020, and that Ofcom should proceed to implement the end-user rights articles in full, as planned.
- 2.19 Of particular relevance to our implementation of the EECC, the Government stated that it no longer sees the application of customer rights to providers of online “over the top” services, such as messaging services and email (referred to as Number-independent Interpersonal Communications Services (NIICS)) as critical for implementation by 21 December 2020.¹⁹ In light of this, we have excluded NIICS from the scope of our revised GCs.
- 2.20 On 12 October 2020, the Government laid the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 in draft before Parliament.²⁰ These will make amendments to the Act in order to transpose the EECC into UK law, including certain changes to implement the end-user rights provisions, such as introducing a new express power for Ofcom to impose general conditions relating to ‘bundled contracts.’

July 2020 consultation

- 2.21 In July 2020, we published a further consultation on revised proposals in two areas:²¹
- a) revising the scope of our annual best tariff requirements.²² In particular we proposed that annual best tariff information only needs to be sent where the customer was initially tied into a fixed commitment period which has since expired; and
 - b) revising the definitions of microenterprise, small enterprise and not for profit customers.

¹⁷ DCMS, July 2019. [Implementing the European Electronic Communications Code: consultation.](#)

¹⁸ DCMS, July 2020. [Government response to the public consultation on implementing the European Electronic Communications Code.](#)

¹⁹ See page 48 of [Government response to the public consultation on implementing the European Electronic Communications Code.](#)

²⁰ See the [Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020](#)

²¹ Ofcom, July 2020. [Implementing the new European Electronic Communications Code Revised proposals for annual best tariff information and business customer definitions.](#)

²² We published a statement in May 2019 confirming the early implementation of the provisions in Article 105(3) requiring providers to send end-of-contract notifications and annual best tariff information. These rules came into effect from February 2020. Ofcom, May 2019. [Helping consumers get better deals: Statement on end-of-contract notifications and annual best tariff information.](#)

2.22 This consultation closed on 11 September 2020. We received 17 responses, from providers, consumer bodies and an alternative dispute resolution schemes. A summary of the responses received and our decision is outlined in the relevant sections of this statement.

UK Legal Framework

2.23 In this section, we outline our domestic powers and duties that are relevant to the decisions set out in the remainder of this Statement and proposals set out in the accompanying consultation.

Our general duties

2.24 The Act places a number of duties on us that we must fulfil when exercising the regulatory powers and functions we have been given. Section 3(1) of the Act states that it shall be our principal duty, in carrying out our functions:

- a) to further the interests of citizens in relation to communication matters; and
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.²³

2.25 In performing our duties under section 3(1) of the Act, we are required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to us to represent best regulatory practice (section 3(3) of the Act).²⁴

2.26 Section 3(4) provides that we must have regard, in performing our duties, to a number of matters, as they appear to us to be relevant in the circumstances, including the desirability of promoting competition in relevant markets; the desirability of encouraging investment and innovation in relevant markets; the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets and of members of the public generally; and the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in section 3(1) is reasonably practicable.

2.27 In addition, section 3(5) of the Act requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

²³ Consumer is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

²⁴ Our regulatory principles can be found at [What is Ofcom](#).

Duties for the purpose of fulfilling EU obligations

- 2.28 As set out in section 4(2) of the Act, when exercising certain functions,²⁵ we must act in accordance with the six European Community requirements described there which continue to apply during the transition period under the Withdrawal Agreement and domestic EU exit legislation. These include requirements:
- a) to promote competition in the provision of electronic communications services;
 - b) to secure that our activities contribute to the development of the European internal market; and
 - c) to promote the interests of all persons who are citizens of the European Union.²⁶

Powers and duties in relation to general conditions

- 2.29 The Act gives us powers which we can exercise in implementing the requirements in EU legislation.
- 2.30 Section 45 of the Act says that we may set general conditions which contain provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64. Under section 51(1)(a), we may set general conditions making such provisions as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services.
- 2.31 Section 51(2) sets out a non-exhaustive list of the specific types of general conditions that we may set in pursuance of this purpose. This includes:
- a) section 51(2)(a) which gives Ofcom the power to set conditions relating to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services;
 - b) section 51(2)(b), which gives Ofcom the power to set conditions to give effect to EU obligations to provide protection for end-users of electronic communications services; and
 - c) section 51(2)(c), which gives Ofcom the power to impose GCs specifying requirements in relation to the provision of services to disabled people and accordingly, it may set requirements in relation to equivalence.
- 2.32 Section 47(2) governs the circumstances in which we can set or modify a general condition. It states that a condition can be set or modified where it is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates,²⁷ not such as to discriminate unduly against particular persons or against a particular description of

²⁵ Including those we have chosen to exercise in this document.

²⁶ We have also had regard to the objectives in Article 3(2) of the EECC.

²⁷ Section 47(3) states that the setting of a general condition is not subject to the test of being objectively justifiable, although we are likely to consider this in any event when assessing whether the condition is proportionate.

persons, proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve.

Impact assessments

2.33 Where appropriate, in our December Consultation, we included analysis that constituted an impact assessment for the purposes of section 7 of the Act. This states that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses of the general public, or when there is a major change in Ofcom's activities. As a matter of policy, Ofcom is committed to carrying out impact assessments in relation to the great majority of its policy decisions.²⁸ The form of our impact assessments will depend on the nature of the proposals under consideration and the legal framework in which we are operating. In response to the December Consultation, some providers commented on our approach to impact assessments. We address these comments in section 3.

Equality impact assessment

2.34 As set out in the December and July Consultations, we have given careful consideration to whether the decisions contained in this document will have a particular impact on persons sharing protected characteristics (race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.

2.35 We do not envisage that our decisions would have a detrimental impact on any particular group of people. Moreover, we consider that our new measures to ensure equivalent access and choice for disabled customers will provide additional protection and have positive impacts for those customers.

This document

2.36 This document summarises and assesses the responses received to our December and July consultations, and confirms the changes we will make to regulatory rules to give full effect to the end-user provisions of the EECC and to ensure that customers are treated fairly.

2.37 It also includes a further consultation proposing:

- a) further minor changes to align the terminology used throughout our GCs, to make them easier to understand;

²⁸ For further information about Ofcom's approach to impact assessments, see the guidelines [Better policy making: Ofcom's approach to impact assessment](#).

- b) minor consequential changes to the Metering and Billing Direction and National Telephone Numbering Plan for consistency with the definitions used in the GCs; and
- c) a small number of further amendments to the GCs and the Numbering Plan which are intended to ensure that when the transition period under the EU Withdrawal Agreement ends at 11.00 pm on 31 December 2020, in so far as possible, they continue to have the same scope and effect immediately after this date as they did before.

2.38 We intend to publish our final notification making the changes to the GCs to implement the EECC, as set out in this document, as well as any changes we are now consulting on, in December 2020. The changes to the GCs will come into effect from at least 12 months after this date.²⁹ The implementation period for each requirement is set out in section 3.

2.39 Our decision to implement the EECC provisions in relation to independent comparison tools is set out in a separate document on which is published alongside this document.³⁰

2.40 The rest of this document is set out as follows:

- Section 3 sets out our approach to implementation of the end-user rights provisions of the EECC.
- Section 4 sets out changes to certain definitions in the GCs necessary to implement the EECC.
- Section 5 sets out changes to the GCs to implement the requirements for the provision of contract information and a contract summary to customers.
- Section 6 sets out changes to the GCs to implement the requirements for helping customers to manage their usage, publication of information, and provision of data to third parties.
- Section 7 sets out changes to the GCs to implement the requirements on contract duration and termination.
- Section 8 sets out changes to the GCs to implement the requirements on customers' right to exit.
- Section 9 sets out changes to the GCs to implement the requirements on switching and porting.
- Section 10 sets out our decision to introduce a new GC to ban mobile providers from selling locked mobile devices.
- Section 11 sets out our decision to introduce guidance on non-coterminous linked contracts.
- Section 12 sets out our changes to the GCs to require correspondence relating to communications services to be provided in accessible formats for disabled customers and an update on our proposals for video-relay services for 999.
- Section 13 sets out our decision to modify the existing rules on availability of networks and services and access to emergency services.

²⁹ With the exception of the revised scope of our annual best tariff information rules in GC C1.16, and the associated amendment to our Guidance under GC C1, which will come into effect immediately from the date of this statement. See section 7 for further details.

³⁰ Ofcom, October 2020. [Digital comparison tools for telephone, broadband and pay TV: Changes to Ofcom's voluntary accreditation scheme](#)

- Section 14 sets out our assessment of how the new requirements and amendments we are making to the GCs meet the necessary legal tests and Ofcom's duties.
- Section 15 sets out our proposed further modifications to the General Conditions, Metering and Billing Direction and the National Telephone Numbering Plan.

2.41 The Annexes are set out as follows:

- Annex 1: Responding to this consultation
- Annex 2: Ofcom's consultation principles
- Annex 3: Consultation coversheet
- Annex 4: Consultation questions
- Annex 5: Tables of GC changes
- Annex 6: Revised guidance on GC C1 contract requirements
- Annex 7: Guidance on contract information and summary
- Annex 8: New guidance on compensation related to switching and porting
- Annex 9: December Consultation switching information proposals for residential customers
- Annex 10: Revised guidance on contractual modifications
- Annex 11: Notification of proposals to modify existing General Conditions
- Annex 12: Notification of modifications to the General Conditions in relation to the annual best tariff information requirements
- Annex 13: Notification of proposed changes to the Metering and Billing Direction
- Annex 14: Notification of proposed changes to the Numbering Plan
- Annex 15: Glossary and abbreviations

3. Approach to implementation of the end-user rights provisions of the EECC

- 3.1 Our December Consultation set out our approach to implementing the end-user rights provisions of the EECC in full, by 21 December 2020. A number of respondents made representations about our overall approach. In this section we summarise those representations and set out our response. We do so in relation to the following areas:
- a) the implications of the UK's departure from the EU. We set out why we still need to implement the end-user rights provisions in full;
 - b) our approach to impact assessments. We explain the approach we have taken in the legal context of implementing the end-user rights provisions, which are subject to full harmonisation; and
 - c) implementation deadlines. We explain that, in light of stakeholder comments, and the impact of the Covid-19 pandemic, we have decided to give providers at least 12 months from publication of the final notification containing the revised GCs in December 2020 to implement the relevant changes.³¹

Implications of the UK's departure from the EU

- 3.2 As set out in section 2, the UK left the EU on 31 January 2020, with a transition period until 31 December 2020. During the transition period, under the terms of the Withdrawal Agreement, the UK remains under an obligation to implement EU Directives into domestic law.
- 3.3 In light of this, a number of respondents urged us to exercise discretion when deciding on our approach to implementing the EECC.
- 3.4 Verastar argued that, as the Brexit transition period is due shortly after the EECC implementation deadline of 21 December 2020, Ofcom should not proceed with its proposals to align the GCs with the EECC. Similarly, Tesco Mobile said it did not understand why Ofcom was implementing the EECC when the transition period finished at the end of 2020, after which there would be no legal requirement to implement it.
- 3.5 Other providers argued that we should take a more selective approach to implementation, rather than implement in full. In particular:
- a) BT said that the UK's departure from the EU presented Ofcom with an opportunity to take a more proportionate approach to implementation, and suggested that Ofcom should only impose interventions where there is demonstrable harm and, where there was no harm, it should state that current protections met the aims of the EECC. Similarly, Three urged Ofcom to take a "proportionate and flexible approach where

³¹ The revised scope of our annual best tariff information rules in GC C1.16, and the associated amendment to our Guidance under GC C1, will come into effect immediately from the date of this statement. See section 7 for further details.

appropriate to both implementation and enforcement,” and to “de-prioritise those parts of the EECC that are either not relevant to the UK or will not deliver benefit to UK consumers.” Virgin Media also argued that many of the requirements of the EECC were impractical, disproportionate, or would result in unintended consequences, and therefore Ofcom should re-evaluate the need to implement the EECC in its entirety.³²

- b) Gamma said that while Ofcom had the power to transpose the EECC into national law, it was not obliged to do so automatically. It also said that the Government’s position with regard to regulatory divergence after Brexit should be taken into account by Ofcom when exercising any discretion on implementation.
- c) O2, Virgin Media and Vodafone argued that Ofcom should re-evaluate each of the EECC requirements at the end of the transition period to assess which ones the UK should retain. Vodafone suggested that Ofcom conduct a new consultation following the end of the transition period to assess which EECC requirements the UK should retain. Similarly, O2 argued that upon conclusion of the Brexit transition period the UK will no longer be bound by EU law and Ofcom will have a duty to review the effectiveness and proportionality of the requirements transposed from the EECC.

Our response

- 3.6 We note providers’ arguments that, following the UK’s departure from the EU and in light of the end of the transition period at 11pm on 31 December 2020, Ofcom should not implement the end-user rights provisions in full. However, under the terms of the Withdrawal Agreement between the UK and the EU and the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) (the “Withdrawal Act”), the UK is under a legal obligation to implement the EECC Directive by the transposition deadline of 21 December 2020.
- 3.7 In this regard, as set out in section 2, the Government has confirmed that it is proceeding to implement the EECC by the deadline of 21 December 2020, and that Ofcom should proceed to implement the end-user rights provisions in full, as planned. Therefore, Ofcom will implement the provisions in full, rather than doing so selectively (or not implementing at all), neither of which would be consistent with Ofcom’s legal obligations as a UK public authority.
- 3.8 We note the suggestion by some providers that Ofcom will need to review the GCs again immediately after the end of the transition period and remove regulatory burdens that cannot be shown to be beneficial. However, we do not agree that when the transition period ends, we would have a duty to review the new rules straight away. The changes we are making to the GCs to implement the EECC do not become obsolete at the end of the transition period as a matter of law.³³

³² These comments were included in an additional submission from Virgin Media dated 12 August 2020.

³³ The Withdrawal Act, which makes provision about the extent to which EU law continues to apply in UK law at the end of the transition period, does not require any such review of EU-derived regulation to be carried out: in most part that Act is

- 3.9 In addition, we consider that committing to a review of the regulations after the end of the transition period, but before the deadline for providers to make changes to reflect these regulations, and without having seen the impacts of the changes in practice, would create significant regulatory and legal uncertainty for both customers and providers, which would be undesirable. We therefore do not anticipate carrying out such a review before the changes to the GCs have come into effect.
- 3.10 However, in accordance with our duties, including our duties under section 6 of the Act, if in future, in light of any market developments or fresh evidence, we have reason to believe that a particular requirement is imposing an unnecessary burden, we would have the ability to carry out a review and potentially consider revising or removing it, taking into account the benefits of retaining it for end-users, in line with our usual practice.³⁴

Our approach to impact assessments

- 3.11 Where appropriate, our December Consultation included analysis which constituted an impact assessment for the purposes of section 7 of the Act.³⁵ We recognised that many of the end-user rights provisions of the EECC left no discretion to Member States as to their implementation. Where this was the case, we briefly described what we considered to be the most likely impacts of the amendments we proposed to make.³⁶
- 3.12 A number of respondents to the December Consultation argued that our impact assessments were too limited and did not set out the full impacts of our proposals.³⁷ In particular:
- a) BT said that we did not present evidence of harm to support any of the proposals and recommended that we carry out research, trials and a full impact assessment before considering implementing requirements such as the pre-contract information and extended right to exit for contractual modifications, which, in their view, could drive a worse outcome for customers.³⁸ Similarly, Virgin Media said that we had failed to undertake an adequate impact assessment and this meant that certain proposals would be disproportionate and/or would result in unintended consequences. It said that we should revisit a number of proposals to properly investigate the impact and consequences of them.

intended to preserve UK law as it stands prior to the end of the transition period and enable any deficiencies arising out of the UK's exit from the EU and the end of the transition period to be corrected.

³⁴ Section 6 of the Act requires Ofcom to keep under review the carrying out of our functions with a view to securing that our regulation does not involve the imposition of unnecessary burdens or the maintenance of unnecessary burdens.

³⁵ Section 7(5) of the Act states that an assessment carried out under this section may take such form and must relate to such matters as Ofcom consider appropriate.

³⁶ See paragraph 2.19, Ofcom, December 2019. [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code. Where relevant, we described these impacts in relation to each proposed requirement.](#)

³⁷ BT, Gamma, ITSPA, Sky, Virgin Media, and Vodafone.

³⁸ We address points about these two specific requirements in the relevant sections of this statement (see section 5 and section 8).

- b) Sky, Virgin Media and Vodafone argued that we were not complying with our duties under section 7 of the Act to carry out impact assessments when making important proposals. In particular, Vodafone said we had failed to quantify the costs of each proposal, and instead relied on assumptions that glossed over and/or downplayed the costs that operators were likely to face.³⁹ In addition, UKCTA argued that we had not quantified costs of each proposal and said that we should be mindful of our duties under section 7 of the Act.
- c) Gamma and ITSPA said that we had only referred to section 51(1)(a) of the Act in our December Consultation, and had not specifically referred to section 51(2)(b), which specifically relates to setting conditions in order to implement EU obligations. In their view, this meant that there was no difference in the approach we should take to carrying out an impact assessment than if Ofcom were imposing GCs of its own motion, rather than transposing EU law, and therefore a full impact assessment and cost benefit analysis was required. Gamma also said we had failed to carry out the analysis necessary to satisfy the legal tests in section 47(2) CA2003 of the Act for setting or modifying the GCs in respect of those EECC obligations which do leave Ofcom with discretion as to how they should be implemented.

Our response

- 3.13 In response to comments made by Gamma and ITSPA, as set out in section 2, Ofcom has power under section 51(1)(a) of the Act to impose GCs making such provision as we consider appropriate for the purpose of protecting the interests of end-users of public electronic communications services. Of particular relevance to the changes we proposed in the December Consultation, and which we have decided to adopt in this statement, is the non-exhaustive list of the types of conditions we may impose set out in section 51(2) of the Act, which includes conditions to give effect to EU obligations to provide protection for end-users of electronic communications services (section 51(2)(b)). We do not agree with Gamma and ITSPA that these provisions determine the nature of the impact assessment to be undertaken in this case.
- 3.14 We note providers' comments about our duties under section 7 of the Act and whether we are required to conduct a fuller analysis of the costs and benefits of the changes we proposed in our December Consultation. While in some cases it will be appropriate in accordance with our duties under section 7 of the Act to seek to quantify the impact of our proposals where possible, there is no legal obligation to do so in every case. The form of our impact assessments depends on what is appropriate in any given case, in light of the nature of the proposals under consideration and the legal framework in which we are operating.
- 3.15 In this case, it is important to take account of the legal context in which we put forward changes to the GCs, which are intended in most cases to go no further than necessary to

³⁹ Vodafone was also concerned that, in places, Ofcom's proposed new guidance extended and/or built on the requirements in the proposed GCs. We address this where we discuss those proposals later in the statement.

transpose the end-user rights provisions of the EECC. The end-user rights provisions of the EECC are subject to full harmonisation (unless specified otherwise), and many of these provisions leave no, or minimal, discretion as to how they should be implemented. For most of the proposed changes – including the changes to the pre-contractual information requirements or right to exit discussed in sections 5 and 8 – it is not therefore the case that we must justify why the changes should be made as a matter of domestic regulatory policy. The EECC itself has also been subject to an impact assessment and an assessment of proportionality in the context of the EU legislative process.⁴⁰

- 3.16 As set out in subsequent sections of this statement, we consider that we have fulfilled our duties by giving appropriate consideration to the impact of our proposals, in the context where the EECC sets out mandatory requirements that we must implement. We do not consider any further evidence or analysis of the likely benefits or costs of the changes is required in order to ensure we have fulfilled our duties. We have taken account of consultation responses regarding the anticipated costs of our proposals, and where relevant and appropriate have made a number of changes to the proposed conditions in light of these responses.
- 3.17 Where we proposed changes which we consider appropriate in order to further the interests of consumers, but which are not required in order to implement the EECC, such as in relation to mobile device locking (see section 10),⁴¹ and accessible formats for end users with disabilities (see section 12),⁴² we have undertaken an impact assessment and discussed the anticipated benefits and impacts, and we have taken stakeholders' comments on this analysis into account in reaching our final decision.
- 3.18 We have set out in section 14 why we consider the legal tests in section 47(2) of the Act are met in relation to changes to the GCs that we have decided to adopt.

Implementation deadlines

- 3.19 In our December Consultation, we proposed that the changes to the GCs to implement the EECC should apply from 21 December 2020, in line with the EECC transposition deadline of 21 December.⁴³
- 3.20 Most providers and trade associations raised concerns with this deadline, arguing that it was going to be very challenging to meet. [O2] said it was nonetheless committed to working with Ofcom to implement the necessary changes as soon as practically possible. Other providers argued strongly that the deadline was unachievable and significantly longer than would be required to implement the obligations.⁴⁴ In particular, providers raised concerns about:

⁴⁰ EU, September 2016. [Proposed Directive establishing the European Electronic Communications Code](#).

⁴¹ See section 8 of our December Consultation.

⁴² See section 12 of our December Consultation.

⁴³ Our December Consultation also include proposed changes to the GCs not required to implement the EECC for which we proposed longer implementation deadlines.

⁴⁴ For example, BT, FCS, Post Office, Sky, Tesco Mobile, UKCTA and Virgin Media made this point.

- a) *The short time period between Ofcom’s statement and the implementation date.* Several providers argued that the proposed implementation time period was very short and would not be sufficient to implement the changes. For example, Sky argued that, in practice, providers would have in the order of 7 – 9 months to implement the changes should Ofcom publish its statement in the summer of 2020, and several providers noted that they had typically been given longer to implement other individual regulatory changes.⁴⁵ Sky and Virgin Media argued that were Ofcom to stipulate a time period significantly shorter than 12 months, it would be contrary to its duties under section 3 of the Act, to carry out its functions in a manner that is transparent, accountable, proportionate and consistent.
- b) *The significant scale and complexity of the changes required.* Several providers argued that we were proposing a large number of changes, several of which are complex and require significant systems and process changes to implement, which would take a significant amount of time.⁴⁶ For example, BT highlighted that some of the changes would require changes to commercial strategy, system builds and changes to third party contracts. Similarly, Vodafone and UKCTA argued that changes would require significant resources and planning. Post Office highlighted the additional complexities that providers who source telecoms services from third party suppliers face.
- c) *The impact of UK’s departure from the EU, and Covid-19.* BT argued that implementing a large number of new requirements so close to the likely end of the Brexit transition period made implementation more challenging. BT explained that providers are committing significant resources to preparing for the UK’s departure from the EU, and that having to implement the EECC at the same time could create significant problems for providers. Sky noted in its consultation response that Covid-19 was placing a strain on its resources which was likely to continue for the foreseeable future and would impact Sky’s estimated timeline for practical implementation. Other providers also subsequently told us that Covid-19 presented significant challenges that impacted their ability to implement new systems and process changes at this time.
- d) *The risk of harm from rushed implementation and impact on other initiatives.* Some providers argued that a short implementation period would make it difficult for them to implement the best overall solutions for customers, and they would need to implement temporary solutions or choose options based on what was possible within the deadline.⁴⁷ Virgin Media suggested that this would lead to higher implementation costs and limited quality assurance. In addition, [redacted] and Virgin Media noted that providers have taken, and continue to take, significant other steps to improve consumer protection, which may be affected by EECC implementation. Specifically, [redacted] said that having to prioritise implementation of the EECC would impact the introduction of other consumer protections such as [redacted].

⁴⁵ E.g. ISPA noted that when the GCs were last reviewed providers were given 12 months to implement. BT also noted the 12 month implementation period for the review of GCs and for end of contract notifications.

⁴⁶ For example BT, UKCTA, Mobile UK, Virgin Media, and Vodafone.

⁴⁷ Points made by Sky, UKCTA, and Virgin Media.

3.21 As a result, many providers argued that Ofcom should extend the implementation period. Suggested implementation deadlines ranged from 12 months from publication of Ofcom’s final statement to 24 months from our statement.⁴⁸

Our response

3.22 We recognise that providers will need to undertake systems and process changes as a result of the changes we are making to the GCs, and that these will take time to implement properly. In addition, since publishing our December Consultation, the Covid-19 pandemic has had a significant impact on providers, particularly given the key role they have played and their continued need to prioritise support for people and businesses.

3.23 In light of this, we published an update on implementation deadlines on 7 May 2020.⁴⁹ We stated that Government and Ofcom continued to work towards transposition of the EECC by 21 December 2020. However, given the very challenging circumstances presented by the Covid-19 pandemic, we recognised that providers were likely to need additional time to make the necessary changes to their systems and processes to bring themselves into compliance with the new rules. As a result, we set out our intention to allow providers at least 12 months from the date of the publication of our statement to implement the new rules, and said that we might allow longer where providers needed to make very significant changes.

3.24 Taking account of stakeholder comments, we have decided to give providers a period of time of at least 12 months from the final notification containing the revised GCs, which we will publish in December, to implement the relevant changes.⁵⁰ In practice, this will give providers 14 months to implement the necessary changes.

3.25 We have also decided to extend this time period for certain provisions, where the implementation of changes is more significant and complicated. We have decided to give providers:

- a) 18 months from publication of the final notification containing the revised GCs to implement new requirements on pre-contract information and the contract summary (discussed in section 5) and requirements on customers’ right to exit following contractual changes (discussed in section 8). Therefore, providers will have until June 2022 to implement these requirements.

⁴⁸ BT suggested that Ofcom should allow providers at least 24 months from publication of our final statement to implement the proposed requirements; UKTCA suggested that Ofcom should allow at least 18 months from our statement before commencing enforcement action; [] and Tesco Mobile proposed that Ofcom should give providers 12 to 18 months from our statement depending on the requirement; O2 commented that Ofcom should give providers [] from our statement depending on the requirement; and Sky said that implementation would require at least 12 months from publication of Ofcom’s final statement and that, at the very least, Ofcom should not take enforcement action until after 12 months from our statement.

⁴⁹ Ofcom, May 2020. [Implementing the new European Electronic Communications Code](#).

⁵⁰ The revised scope of our annual best tariff information rules in the existing GC C1.16, and the associated amendment to our Guidance under GC C1, will come into effect immediately from the date of this statement. See section 7 for further details.

b) 24 months from the final notification to implement the new requirements on switching, discussed in section 9. Therefore, providers will have until December 2022 to implement these requirements.

3.26 We have set out the reasoning for our revised implementation deadlines for each new requirement in the relevant sections of this document.

4. Changes to the defined terms used in the General Conditions

- 4.1 This section sets out the definitions we have decided to include in the revised GCs to reflect the defined terms in the EECC and the Communications Act 2003 (the Act).⁵¹
- 4.2 As set out in our December Consultation, most of the definitions in our GCs will remain broadly the same, or will only be subject to minor changes to reflect the wording of the EECC. However, there are three areas where there are more substantive changes:
- The definition of an electronic communications service (ECS). Although the Government decided not to prioritise extending the scope of this definition to include number-independent interpersonal communications services (NIICS) at this point, it has updated the ECS definition in the Act. We have decided to revise the definition of an ECS in the GCs to reflect this. In addition, we have also decided to include the definitions of internet access service (IAS), number-based interpersonal communications services (NBICS) and machine to machine transmission services, as proposed in the December Consultation, and have made minor revisions to the definition of interpersonal communications service (ICS), to align with the definition in the Act.
 - The definition of a bundle. We have revised the definition of a “bundle” in the GCs to reflect responses to our December Consultation and the Government’s decision to modify its approach to bundles, and in order to be consistent with the definition in the Act.
 - The definitions of microenterprise, small enterprise and not for profit customers. We have generally decided to proceed with the definitions as proposed in the July Consultation, though we are excluding volunteers from the headcount threshold in the definition of a not for profit customer.
- 4.3 In addition, as set out in section 15, we are proposing to make further minor changes to a number of GCs to update terminology/definitions so as to align more closely with definitions used in the EECC and ensure greater consistency and clarity throughout the GCs. We have also proposed a small number of consequential changes to definitions in the Metering and Billing Direction and the National Telephone Number Plan.

New definition of “electronic communications service” in the EECC

- 4.4 The definition of an ECS currently used in our GCs is derived from the definition in section 32(2) of the Act and is as follows:

⁵¹ On 12 October 2020, the [Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020](#) (the “EECC Regulations”) were laid in draft before Parliament. These will make a number of changes to the Act to transpose relevant provisions of the EECC.

“a service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a content service.”

4.5 The EECC introduces a new, broader definition of an ECS to reflect changes in the services that people and businesses use for communications purposes.⁵² In particular, it brings certain over-the-top (“OTT”) services such as WhatsApp, Snapchat and Facebook Messenger into scope of the regulatory framework. It also establishes three sub-categories of ECS:

- internet access services;
- interpersonal communications services (which in turn includes a distinction between number-based and number-independent interpersonal communications services); and
- conveyance services.

Our December proposals

Definition of ECS

4.6 In December, we proposed to amend the definition of an ECS in the GCs to align with that set out in the EECC:⁵³

‘Electronic Communications Service’ means a service normally provided for remuneration via Electronic Communications Networks which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using Electronic Communications Networks and Electronic Communications Services, the following types of services:

(a) Internet Access Services;

(b) Interpersonal Communications Services; and

(c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for broadcasting and Machine to Machine Transmission Services.

4.7 We also noted that the Government might amend the definition of an electronic communications service in the Act to reflect the revised definition in the EECC, and said that we would take account of any amendments to the legal definitions of these services in the Act when finalising our GCs.

Definitions for the different categories of ECS

4.8 In addition, we proposed to add the following definitions for the different categories of ECS, in line with the definitions for these types of services included in the EECC:

⁵² Article 2(4), EECC.

⁵³ Definition taken from Article 2(4) of the EECC.

- *“‘Internet Access Service’ means a service made available to the public which provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.”⁵⁴*
- *“‘Interpersonal Communications Service’ means a service made available to the public which is normally provided for remuneration and enables direct interpersonal and interactive exchange of information via Electronic Communications Networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s). It does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service.”*
- *“‘Number-based Interpersonal Communications Service’ means an Interpersonal Communications Service which connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan or which enables communication with a number or numbers in a national or international numbering plan.”*
- *“‘Number-independent Interpersonal Communications Service’ means an Interpersonal Communications Service which does not connect with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan, or which does not enable communication with a number or numbers in a national or international numbering plan.”*
- *“‘Machine-to-Machine Transmission Service’ means a service made available to the public which allows for the automated transfer of data and information between devices or software-based applications with limited or no human interaction.”⁵⁵*

Consultation responses

4.9 Few respondents commented on these proposed definitions. Some individuals made a general statement that they supported our proposed definitions, and no respondents raised any objections with them.^{56, 57}

⁵⁴ This is consistent with the EEC’s reference to the definition in Article 2 of Regulation (EU) 2015/2120 which lays down measures concerning open internet access (and amends Directive 2002/22/EC on universal and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union).

⁵⁵ This is a type of conveyance service and we noted that these services are out of scope of many of the consumer protection conditions proposed in the consultation.

⁵⁶ Openreach commented that the definition for NBICS could add some complexity to the switching requirements. We discuss the switching requirements in section 9.

⁵⁷ Sky noted its view that its pay TV service is not an ECS and therefore is not within scope of the proposed GCs (except insofar as such a service is bundled with an ECS). As explained in previous Statements, we consider that we have the power to regulate a pay TV service as an ECS insofar as it includes the conveyance of signals on an electronic communications network (see Ofcom, May 2019, [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#), paragraphs 3.4 – 3.8; Ofcom, September 2017, [Review of the General Conditions of Entitlement: statement and consultation](#), paragraphs 3.24 – 3.28).

Our decision

4.10 Since we published the December Consultation, the Government has set out its decision not to prioritise extending the regulatory framework, including the application of the EECC end-user rights protections, to NIICS at this time. Specifically, the Government stated that it no longer sees the application of customer rights to providers of NIICS as critical for implementation by 21 December 2020.⁵⁸

4.11 In addition, the Government has now laid the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (the “EECC Regulations”) in draft before Parliament.⁵⁹ This confirms the amendments it is making to the legal definition of an ECS, and the sub-categories of ECS referred to in the EECC, in the Act.⁶⁰ We have reflected the Government’s approach to defining an ECS in the Act in the definitions in the revised GCs.

4.12 Specifically, we are defining an ECS as:

‘Electronic Communications Service’ means any of the following types of service provided by means of an Electronic Communications Network, except so far as it is a Content Service⁶¹:

a) an Internet Access Service;

b) Number-based Interpersonal Communications Service; and

c) any other service consisting in, or having as its principal feature, the conveyance of Signals⁶², such as a Machine-to-Machine Transmission Service or a transmission service used for broadcasting.

4.13 In relation to the categories of ECS:

a) We have removed the definition of NIICS as it is no longer required. We have also made consequential changes throughout the GCs to remove references to NIICS.

b) We have adopted the definitions for Internet Access Service, Number-based Interpersonal Communications Service (subject to a minor change) and Machine-to-Machine Transmission Service that we consulted on in December 2019. The definitions of ‘Internet Access Service’ and ‘Number-based Interpersonal Communications Service’

⁵⁸ DCMS, July 2020, [Government response to the public consultation on implementing the European Electronic Communications Code](#), page 48.

⁵⁹ See the [Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020](#)

⁶⁰ The EECC Regulations will insert a new statutory definition into the Act (s.32(2) and (2A)) as follows:

“(2) In this Act “electronic communications service” means a service of any of the types specified in subsection (2A) provided by means of an electronic communications network, except so far as it is a content service.

(2A) Those types of service are— (a) an internet access service; (b) a number-based interpersonal communications service; and (c) any other service consisting in, or having as its principal feature, the conveyance of signals, such as a transmission service used for machine-to-machine services or for broadcasting”.

⁶¹ We are inserting a new definition of “Content Service” based on that set out in s.32(7) of the Act – see paragraph 4.28 below.

⁶² For consistency, we have decided to refer to the definition of ‘Signal’ already included in the GCs, which is itself based on the definition set out in s.32(10) of the Act.

are aligned with those that will be included in the Act.⁶³ However, for the purposes of the GCs, we are defining these services by reference to those that are ‘made available to the public’, as it is publicly available services which are intended to be subject to the relevant obligations under the GCs, and so using this language more appropriately reflects their scope for the purposes of the GCs.⁶⁴ Although the Act will not include a separate definition of “Machine-to-Machine Transmission Service” we have decided to adopt our proposed definition for consistency and clarity throughout the GCs.

- c) We have also decided to retain the definition of ‘Interpersonal Communications Services’ (since it is used in the definition of ‘Number-based Interpersonal Communications Service’), subject to minor changes to the proposed wording to align with the definition that the Government is including in the Act.⁶⁵

4.14 As a result, we are defining the following terms:

- a) *“‘Internet Access Service’ means a service made available to the public which provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used”;*
- b) *“‘Interpersonal Communications Service’ means a service which enables direct interpersonal and interactive exchange of information by means of Electronic Communications Networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient”;*
- c) *“‘Number-based Interpersonal Communications Service’ means an Interpersonal Communications Service made available to the public which:*
 - (a) connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan; or*
 - (b) enables communication with a number or numbers in a national or international numbering plan”;*
- d) *“‘Machine-to-Machine Transmission Service’ means a service made available to the public which allows for the automated transfer of data and information between devices or software-based applications with limited or no human interaction”.*

⁶³ As inserted by the EECC Regulations, Section 32(2B) will state that an *“‘internet access service’ means a service that provides access to the internet and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.”* Section 32A(1) will state that a *“‘number-based interpersonal communications service’ means an interpersonal communications service which (a) connects with publicly assigned numbering resources, namely a number or numbers in a national or international numbering plan, or (b) enables communication with a number or numbers in a national or international numbering plan.”*

⁶⁴ This means we have made a minor change to the definition of “Number-based Interpersonal Communications Services” that we proposed as we are now inserting reference to the fact that only those “made available to the public” will be in scope of this definition for the purposes of the GCs.

⁶⁵ Section 32A(2) as inserted by the EECC Regulations will state: *“‘interpersonal communications service’ means a service which enables direct interpersonal and interactive exchange of information by means of electronic communications networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient.”*

Definition of a bundle

- 4.15 The EECC recognises that bundles⁶⁶ have become increasingly widespread and are an important element of competition. While bundles often bring about benefits for customers, the EECC is concerned that they can make switching more difficult and costly and raise risks of contractual ‘lock in’.⁶⁷
- 4.16 To ensure that customers are not hampered in their rights to switch their entire bundle or parts of it, the EECC requires that certain provisions⁶⁸ should apply to all elements of a bundle, including terminal equipment and other services which are not directly covered by the scope of the provisions.⁶⁹

Our December proposals

- 4.17 In our December Consultation, we noted that Recital 283 of the EECC sets out that a bundle exists in situations where the elements of the bundle are provided or sold by the same provider under the same or a closely related or linked contract. In light of this, we proposed to add the following definition of a bundle to our GCs:
- ‘Bundle’ means where Public Electronic Communications Services and other service(s) and/or Terminal Equipment⁷⁰ are provided or sold by the same Communications Provider under the same or closely related or linked contracts.*
- 4.18 We also made it clear, where relevant, that the revised GCs referred to bundles that include IAS and/or NBICS.
- 4.19 We proposed that when assessing whether a combination of contracts falls within the definition of a bundle, we would look at how the different contracts were sold or provided and whether they could be said to be closely related or linked in the circumstances.
- 4.20 We considered the following types of dependencies to be the most common types of links between services and/or terminal equipment:
- Technical dependency – where a customer would lose, or be impaired in using, one element of a bundle when terminating another.
 - Contractual dependency – where there are links between the rights or obligations for the provision of different elements of the bundle.
 - Financial dependency – where any prices, tariffs or charges for the provision of one element of the bundle are contingent on taking another element.

⁶⁶ Comprising at least either an IAS or NBICS, as well as other services or terminal equipment

⁶⁷ Recital 283, EECC.

⁶⁸ These are the provisions regarding contract summary information, publication of information, contract duration and termination and switching, which are set out in sections 5, 6, 7, and 9 of this statement.

⁶⁹ Article 107(1), EECC.

⁷⁰ We proposed to define ‘Terminal Equipment’ as “(a) equipment directly or indirectly connected to the interface of a Public Electronic Communications Network to send, process or receive information; in either case (direct or indirect), the connection may be made by wire, optical fibre or electromagnetically; a connection is indirect if equipment is placed between the terminal and the interface of the network; and (b) satellite earth station equipment”

4.21 We also noted that the Government’s consultation on implementing the EECC proposed to give Ofcom express powers to set rules that apply to all elements of a bundle including at least an IAS or an NBICS, potentially including services subject to different regulatory regimes. We considered that our proposed definition of a bundle was broad enough to capture these types of bundles.

Consultation responses

4.22 Two respondents supported our proposed definition of a ‘bundle’.⁷¹ Post Office and a number of individual respondents supported our proposed approach to definitions overall, without specific comment on our proposal for defining a bundle.

4.23 However, a number of respondents raised concerns about the implications of the Government’s proposal to give Ofcom powers to regulate non-ECS elements of bundles, potentially including services subject to different regulatory regimes. Some considered this went beyond the purpose and/or jurisdiction of the EECC⁷² and a number disagreed with the Government’s view that the possibility of regulatory clashes was minimal.⁷³ Concerns were also raised about how clashes would be managed and the risk of regulatory uncertainty, increased costs for businesses and a reduction in choice and convenience for customers as a result.⁷⁴

4.24 In addition, two providers commented specifically on our proposed definition of a bundle:⁷⁵

- Three asked Ofcom to confirm that the definition does not extend to bundled mobile contracts (where customers pay for their mobile service and handset in a combined price under one contract).
- Sky raised concerns that the definition could capture services that are only linked in a very minor/inconsequential way and argued that Ofcom should produce clearer guidance on what constitutes a bundle and introduce a materiality threshold to make clearer the linkages the definition applies to.

Our assessment of responses and decision

4.25 We note that a number of respondents to our December Consultation raised concerns about the implications of the Government’s proposal to give Ofcom express powers to regulate all elements of a bundle, including, potentially, services subject to different regulatory regimes.

⁷¹ CityFibre and OS who also supported our criterion for assessing links between services.

⁷² UKCTA and [redacted].

⁷³ Hyperoptic, ISPA, [redacted], Virgin Media, and [redacted].

⁷⁴ Hyperoptic, ISPA, [redacted], Virgin Media and UKCTA.

⁷⁵ In addition, BT said more clarity was needed on how the definition applies to monthly third-party content add-ons, particularly in the context of rights to exit contracts. BT’s point is considered in section 8.

- 4.26 However, since our December Consultation, the Government has decided to modify its approach.⁷⁶ In light of stakeholders concerns’ about the risk of regulatory clash,⁷⁷ it has decided that Ofcom’s express power should only extend to those services that are “most relevant, and closely related to, telecoms.”
- 4.27 In addition, the EECC Regulations introduced a number of legislative amendments to the Act to implement the EECC. These include inserting a definition of a bundle in the Act, which makes it clear that in addition to voice and broadband services, a bundle includes digital services such as email and cloud storage; content services, such as TV or video on demand content or music streaming services; and terminal equipment.⁷⁸
- 4.28 We have decided to revise the definition of a bundle in the revised GCs so that it reflects the definition that the Government has included in the Act. Our definition is as follows:
- “‘Bundle’ means a contract, or two or more closely related or linked contracts, between the provider of a Public Electronic Communications Service and an End-User, which:*
- (a) relates, or together relate, to the provision of at least one of the following:*
- (i) an Internet Access Service; or*
- (ii) a Number-based Interpersonal Communications Service; and*
- (b) also relates, or together also relate, to the provision of at least one of the following:*
- (i) another service falling within paragraph (a)(i) or (ii);*
- (ii) any other Public Electronic Communications Service;*
- (iii) an Information Society Service;⁷⁹*
- (iv) a Content Service;⁸⁰ and/or*
- (v) Terminal Equipment.”⁸¹*

⁷⁶ DCMS, July 2020. [Government response to the public consultation on implementing the European Electronic Communications Code](#)

⁷⁷ Similar to those expressed by respondents to our December Consultation as summarised at paragraph 4.23 above; see section 5.3 of DCMS’ July 2020 response statement.

⁷⁸ This will be set out in new section 51(8) of the Act, as inserted by the EECC Regulations.

⁷⁹ We have inserted a new definition of ‘Information Society Service’, namely “‘Information Society Service’ is to be read in accordance with Article 1(1)(b) of [Directive \(EU\) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services \(codification\)](#)”. This is consistent with the definition of ‘information society service’ included at section 51(9) of the Act.

⁸⁰ We have inserted a new definition of ‘Content Service’, namely “so much of any service as consists in one or both of the following: (a) the provision of material with a view to its being comprised in Signals conveyed by means of an Electronic Communications Network; (b) the exercise of editorial control over the content of Signals conveyed by means of such a network”. This is taken from the definition of content service in section 32(7) of the Act.

⁸¹ We have decided to adopt our proposed definition of ‘Terminal Equipment’, subject to a few minor drafting amendments to ensure consistency with the definition of terminal equipment inserted at s.151 of the Act by the EECC Regulations. The new definition will read: “‘Terminal Equipment’ means: (a) equipment directly or indirectly connected to the interface of a Public Electronic Communications Network to send, process or receive information, with the direct or indirect connection being made by a wire or optical fibre or electromagnetically; or (b) equipment which is capable of being used for the transmission or reception, or both, of radio communication signals by means of satellites or other space-based systems”.

- 4.29 Therefore, in response to the specific comments we received on the definition we proposed in our December Consultation and to a comment O2 made about this when responding to our July Consultation:
- In relation to Three’s point about whether the definition extends to bundled mobile contracts, the definition of a Bundle applies when a combination of services and/or terminal equipment are included in a single contract between a provider and an end-user, as well as in two or more closely related or linked contracts sold or provided by the same provider to an end-user. Mobile handsets (including those provided under credit agreements) are within scope as they fall within the definition of ‘terminal equipment’.
 - In relation to Sky’s concern about the definition capturing services with only minor and inconsequential links, the wording in the definition refers to ‘closely related or linked’ contracts, which reflects the wording of Recital 283 of the EECC as well as the definition of ‘bundled contract’ in the Act. As noted at paragraph 4.20, when assessing whether a contract or combination of contracts falls within the definition of a Bundle, we would consider the nature of any links between the services and/or terminal equipment. We consider technical, contractual and financial dependencies to be examples of the most common types of links between services and/or terminal equipment currently in existence.
 - When responding to our July Consultation, O2 argued that we should revise our definition to reflect the Government’s change in approach. As explained above, we have done this.
- 4.30 As the definition we have decided to adopt makes clear that a Bundle must comprise at least an IAS or NBICS, we have made some consequential amendments where relevant to the scope provisions of the relevant requirements applying to bundles.
- 4.31 We have also taken into account that the definition of ‘bundled contract’ being inserted into the Act also includes a definition of ‘qualifying end-user’ for these purposes.⁸² Rather than adding this into the definition of ‘Bundle’ set out above, we have decided to make clear when setting the scope of each of the requirements in the GCs that apply to Bundles that these apply only to Bundles entered into with such end-users (i.e. residential customers and microenterprise or small enterprise customers and not for profit customers). We think this will ensure the scope of each relevant requirement is clearly and consistently set out in the GCs.

Definitions for different categories of customers

- 4.32 The end-user rights provisions of the EECC apply to different groups of customers. Some apply not only to residential customers, but also to **microenterprise customers, small**

⁸² As inserted by the EECC Regulations, section 51(9) of the Act will provide that: “*qualifying end-user*” means an end-user who is (a) an individual acting for purposes other than those of a business; (b) acting in the course of a business which is carried on by the end-user, and for which no more than 10 individuals work, whether as employees or volunteers or otherwise; (c) a not-for-profit body for which no more than 10 individuals work, whether as employees or otherwise but excluding volunteers.”

enterprise customers and not for profit organisations (unless they waive their right to these additional protections). In addition, there are also some rights that extend to all customers, including businesses of all sizes.

- 4.33 The EECC explains that the rationale for extending certain rights to microenterprise, small enterprise and not for profit organisations is because: *"the bargaining position of those categories of enterprises and organisations is comparable to that of consumers and they should therefore benefit from the same level of protection unless they explicitly waive those rights."* By contrast: *"larger enterprises usually have stronger bargaining power and do, therefore, not depend on the same contractual information requirements as consumers."*⁸³
- 4.34 The same customer protections are extended to microenterprises, small enterprises and to not for profit organisations:
- a) Protections that only extend to these three groups of customers including, but not limited to, ensuring that customers are provided with certain information before contracts are finalised, ensuring customers receive contract summaries, and a maximum contract duration of 24 months.
 - b) Protections that apply to all end-users (including large business customers), but which are also extended to any aspects of the bundle taken by residential, microenterprise, small enterprise and not for profit customers. These include, but are not limited to, publication of certain information on providers' websites; strengthened rights to exit and protections during the switching process.

Our December proposals

- 4.35 We noted that our GCs already included a definition of a residential customer, namely the definition of "Consumer;"⁸⁴ as well as a definition of "End-User" (i.e. covering both residential and business customers).⁸⁵ We proposed to revise these definitions to ensure that they cover customers who take bundles that are within scope of the GCs (see above for our definition of a bundle).
- 4.36 We also proposed to add new definitions for microenterprise, small enterprise and not for profit customers. The EECC does not set out definitions for these three categories of customer. Instead, it refers to an EU Recommendation⁸⁶ that provides guidance on how to define microenterprises and small enterprises, and this guidance formed the basis of our proposed approach in our December Consultation.
- 4.37 Our proposed definitions were as follows:

⁸³ Recital 259, EECC.

⁸⁴ The definition of 'consumer' used in this context is derived from the EU directives and is different to the definition of 'consumer' set out in the Act.

⁸⁵ This term is already used in the Universal Service Directive 2009/136/EC which is replaced by the EECC. It is also defined in section 151 of the Act.

⁸⁶ [Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises.](#)

- *“‘Microenterprise’ means a Small Enterprise Customer who carries on an undertaking for which fewer than 10 individuals work (whether as employees or volunteers or otherwise) and whose annual turnover and/or annual balance sheet total does not exceed [£1.7m⁸⁷].”*
- *“‘Small Enterprise Customer’, in relation to a Communications Provider which provides services to the public, means a Customer of that provider who carries on an undertaking for which fewer than 50 individuals work (whether as employees or volunteers or otherwise) and whose annual turnover and/or annual balance sheet total does not exceed [£8.8m⁸⁸], but who is not himself a Communications Provider.”*
- *“‘Not-For-Profit Customer’, in relation to a Communications Provider which provides services to the public, means a Customer which, otherwise than as a Communications Provider, is a Customer of that provider and which by virtue of its constitution or any enactment:*
 - (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and*
 - (b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes).”*

Responses to our December proposals

- 4.38 We received no responses to our consultation regarding our proposed changes to the ‘Consumer’ or ‘End-User’ definitions in the GCs.⁸⁹
- 4.39 However, a number of providers and trade associations expressed concerns about the three business customer definitions proposed in December. When doing so, some made overarching arguments that Ofcom had discretion when setting these definitions, as the EECC does not specify what they should be, and argued that the EU Recommendation is not binding.⁹⁰ These respondents considered that Ofcom should use this discretion to adopt definitions with more appropriate thresholds.
- 4.40 In addition, they set out a number of specific concerns with the proposed business customer definitions:
- businesses with up to 50 employees have more sophisticated needs than residential customers, and do not require the same protections as residential customers;
 - practical difficulties providers face in seeking to find out financial turnover and headcount information; and

⁸⁷ In the proposed definition we used a calculation based on the prevailing exchange rate for the last 12 months, which we proposed to update for the statement.

⁸⁸ See approach noted in footnote 87 above.

⁸⁹ However, ISPA, UKCTA and Virgin Media argued that none of the customer protections should be applied to end-users, because this category of customer encompassed large business customers. We have considered the scope of each of the conditions we are setting, which we have aligned with the requirements of the EECC, as set out in subsequent sections.

⁹⁰ [3<], the Business Carrier Coalition (representing Verizon, AT&T, Orange business services, CenturyLink and Colt), FCS, ISPA, and UKCTA.

- confusion from adding new business customer definitions to the existing small business customers definition in the GCs.

4.41 There were also a number of concerns raised about our proposed definition of not for profit organisations:

- organisations including central and local government as well as large, well-resourced charities would be captured, as there was no restriction on the size of such organisations;
- communications providers may no longer wish to offer services to not for profit organisations given the complexity of the additional GC requirements for a subset of customers; and
- the ability of customers to waive some of these rights would not reduce the harm.

Our July proposals

4.42 In light of these responses, we revisited these definitions and consulted on four revised proposals in our July Consultation, which were to:⁹¹

- remove the financial threshold from the definition of microenterprise and small enterprise customers;
- use a single definition of ‘microenterprise or small enterprise customer’ with a headcount threshold set at 10 staff members;
- set a headcount threshold of 10 staff members for not for profit organisations; and
- extend the guidance for providers on identifying employee headcount to not for profit organisations.

Proposal to remove the financial threshold from microenterprise and small enterprise customer definitions

4.43 In the July Consultation, we set out the concerns providers had raised about the practical challenges presented by the proposal to use a financial threshold and the additional burden this would entail. We also had regard to the EU Recommendation which makes clear that the main criterion for setting the microenterprise and small enterprise customer definitions is staff headcount, rather than any financial criteria.

4.44 Therefore, in light of these two points, we considered that setting a staff headcount threshold alone would be an appropriate approach and proposed to remove the financial thresholds from the proposed microenterprise and small enterprise definitions.

Proposal for the staff headcount threshold used to define small enterprise customers

4.45 In our July Consultation, we acknowledged that the EU Recommendation sets ceilings for staff headcount, rather than absolute thresholds that must be applied in all cases. Therefore, we considered that there was scope to lower the threshold below the ceiling, if

⁹¹ Ofcom, July 2020. [Implementing the new European Electronic Communications Code: Revised proposals for annual best tariff information and business customer definitions.](#)

that would still meet the objective of the EECC, which is to extend certain residential customer protections to business customers with a similar bargaining position to residential customers.

- 4.46 In light of respondents' concerns about the proposed staff headcount threshold, we considered the available evidence on how similar the position of small businesses of different size categories is to that of residential customers. We identified some survey evidence that suggested that businesses with under 10 employees are more likely to be in a similar position to individual residential customers.⁹² This is for two main reasons.
- 4.47 First, those with under 10 employees are more likely to rely on the same "standard" communications services as residential customers, such as PSTN phone lines and standard and superfast broadband.⁹³ Conversely, those with 10 or more employees are more likely than those with less than 10 employees to use specialised, higher capacity services such as dedicated internet access and ISDN30 lines.⁹⁴
- 4.48 We said that we would expect customers with more complex communications needs and uses to negotiate more tailor-made contracts and be more engaged in the purchasing process. It follows that some of the end user rights protections – which are intended to protect those customers who are not in a position to engage in sophisticated negotiations and who use standard communications services - may be of less relevance to these customers.
- 4.49 Secondly, activities related to purchasing communications services are far more likely to be undertaken by owners/proprietors/MDs/partners in businesses with fewer than 10 employees (79%) compared to businesses with 10-49 employees (31%), who have specialist staff to make these purchasing decisions.⁹⁵ As a result, businesses with fewer than 10 employees may not have the time to gather information, review contracts and negotiate. They may also have limited expertise in communications services. For all the above reasons, they may be in a weaker bargaining position than larger businesses.⁹⁶
- 4.50 We also noted that there is already a definition of small businesses in the existing GCs (primarily embedded in the 'Domestic and Small Business Customers' definition) - those with no more than 10 staff members. This definition is based on section 52(6) of the

⁹² This is based on Ofcom's research on [SME experience of communications services](#), which was last carried out in 2016 and published in 2017.

⁹³ PSTN: Public Switched Telephony Network. The telephony network used to provide telephone calls using (or emulating) circuit-switching and using telephone numbers to identify subscribers or called locations, allowing all customers connected to the network to call all other customers.

⁹⁴ Only 2% of businesses employing less than 10 employees took leased line circuits and this rose to 9% for those employing between 10 and 49 employees. There was a similar difference for those taking ISDN30 lines – 1-9 employees (1%) and 10-49 employees (24%). Based on Ofcom's research on SME experience of communications services, carried out in 2016 and published in 2017.

⁹⁵ The SME experience of communications services: research report January 2017 ([data tables](#))

⁹⁶ Indeed, smaller businesses (0-9) are more likely than larger ones (10-49) to disagree that they can negotiate effectively with their suppliers and therefore arguably more likely to need additional customer protections.

Communications Act 2003,⁹⁷ and is used to provide small businesses with some of the same regulatory protections as residential customers. Using a threshold of 10 employees or less within the small enterprise definition would enable providers to benefit from a more consistent approach when complying with a broad set of consumer protection measures and help reduce the risk of confusion noted by some respondents.

- 4.51 However, we recognised that if we were to lower the small enterprise threshold down to 10, we would not be extending residential customer protections to businesses that are materially larger than microenterprises (microenterprises being those businesses with up to 9 staff members) and there would be little practical distinction between the microenterprise and small enterprise categories of customer.
- 4.52 We also recognised that there may be some slightly larger small businesses that, in practice, are in a similar bargaining position to those with 10 or fewer employees and who might therefore benefit from additional protections. We considered whether there is any evidence to indicate that a threshold of somewhere between 10 and 49 staff members may be appropriate. However, we did not identify any evidence to suggest that a headcount threshold at any particular level between 10 and 49 staff members would appropriately draw the line between those businesses which are in a similar bargaining position to residential customers and those which are not.
- 4.53 We proposed to reduce the headcount threshold for small enterprises down to 10 staff members, and consolidate the small enterprise and microenterprise definitions into a single customer definition. This was based on the best available evidence that businesses with less than 10 employees are most likely to be in a similar position to residential customers. It therefore sought to align the definition more closely with the purpose of the EECC, to help ensure that customers receive protections that are relevant to them. We noted that, by setting the threshold at 10 or fewer employees, this would align with the existing small business customer definition in the GCs, and reduce the number of definitions and therefore complexity for providers. As the same protections apply to both microenterprises and small enterprises, we proposed to merge the small enterprise and microenterprise business definitions into a single consolidated definition, for simplicity.
- 4.54 We noted that in the existing GCs there is already a definition of small business customer (primarily embedded in the ‘Domestic and Small Business Customers’ definition) - those with no more than 10 staff members.⁹⁸ We explained that if we were to proceed with our proposal, we would consider whether it might be better to replace this existing definition, with the consolidated microenterprise and small enterprise definition to ensure consistency and clarity throughout the GCs and to reduce complexity in terms of the

⁹⁷ This section states *“domestic and small business customer”, in relation to a public communications provider, means a customer of that provider who is neither—*

(a) himself a communications provider; nor

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

⁹⁸ This definition is based on section 52(6) of the Communications Act 2003, and is used to provide small businesses with some of the same regulatory protections as residential customers.

number of different customer definitions which providers would have to take account of. We set out proposals in relation to this in section 15.

Proposal to add a headcount threshold to the definition for not for profit customers

- 4.55 In our July Consultation, we noted that the EECC makes clear that the rationale for extending certain customer protections to not for profit organisations applies where they are in a “comparable situation” to residential customers in terms of their bargaining position. The EECC does not set the definition of not for profit organisations but instead makes reference to definitions in national law, so Ofcom has some discretion over the precise definition used.
- 4.56 We also noted stakeholders’ arguments that larger not for profit organisations are likely to have different communications needs to residential customers and may be in a stronger bargaining position than residential customers or smaller not for profit organisations.
- 4.57 We therefore proposed to include a staff headcount threshold in the definition of not for profit organisations. We proposed to align this with the headcount threshold that we considered would be appropriate for small enterprises. In our view this would be appropriate for consistency reasons and because similar considerations are likely to apply as to the relevant bargaining power of not for profit customers as for small enterprise customers.⁹⁹
- 4.58 We explained that the precise staff headcount level would depend on the outcome of our consultation on setting the threshold for a small enterprise customer. However, given our proposal for revising the small enterprise definition, we proposed to set a threshold of 10 staff members.

Proposal to extend guidance on identifying headcount to not for profit customers

- 4.59 In the July Consultation, we recognised the practical challenges that providers can face in finding out staff headcount information, and noted that we had already consulted on proposed new guidance on identifying headcount as part of the proposed revised guidance on GC C1 in our December Consultation.¹⁰⁰
- 4.60 We anticipated that similar challenges may arise if the headcount threshold was also applied to not for profit organisations. In light of this, we proposed to amend the guidance set out in our December Consultation so it would also apply to not for profit organisations.

Consultation responses and Ofcom’s decision

- 4.61 We set out below a summary of the comments we received on our four proposals, as well as our assessment of responses and decision.

⁹⁹ While the Jigsaw Research 2017 cited in paragraphs 4.47- 4.49 above also included certain not for profit organisations, the sample sizes for not for profit organisations are too small to enable us to make comparisons by organisation size.

¹⁰⁰ [Annex 7 of December 2019 Consultation: Proposed amendments to guidance on contract requirements](#) (A.7-A.9).

Proposal to remove the financial threshold from microenterprise and small enterprise customer definitions

- 4.62 Many respondents agreed with this proposal.¹⁰¹ In particular:
- a) BT considered that requiring the collection of an imperfect financial dataset would create a set of complex IT system dependencies for providers and substantially increase the costs of implementing the EECC. It agreed that the use of business headcount alone would be a more practical and proportionate approach.
 - b) [redacted] said that the imposition of both a headcount and financial threshold would be both burdensome and unnecessary.
 - c) O2 argued that financial data [redacted] is likely to change year on year. It considered that removing the financial threshold in favour of organisation size and/or a connection-based proxy is a pragmatic solution.
 - d) [redacted] stated that the lack of a public source of small business turnover information in the UK would have made compliance with this requirement “impossible to manage.”
- 4.63 We did not receive any consultation responses that supported the retention of the financial thresholds.

Our assessment of responses

- 4.64 We note the strong level of support from respondents for removing the financial threshold.
- 4.65 We also note that the Government has inserted a new definition of “qualifying end-user” into section 51(9) of the Act.¹⁰² This definition sets out the scope of the new power for Ofcom to impose general conditions in relation to ‘bundled contracts’ (i.e. bundles) and is intended to reflect the scope of Article 107 of the EECC. It is therefore also intended to transpose the EECC concepts of “microenterprise” and “small enterprise” customer. We have taken into account that, consistent with our proposed approach, this definition also omits a financial threshold in respect of microenterprise and small enterprise customers, and only includes a staff headcount threshold.

¹⁰¹ BT, Magrathea, TalkTalk, Telefonica, Virgin Media, Vodafone, [redacted], and [redacted], all supported this proposal.

¹⁰² The new definition of ‘qualifying end-user’ in section 51(9) of the Act states that a “qualifying end-user” means “an end-user who is: (a) an individual acting for purposes other than those of a business; (b) acting in the course of a business which is carried on by the end-user, and for which no more than 10 individuals work, whether as employees or volunteers or otherwise; (c) a not-for-profit body for which no more than 10 individuals work, whether as employees or otherwise but excluding volunteers.”

Our decision

4.66 For the reasons set out above, we have decided not to include a financial threshold in our definition of microenterprise and small enterprise customers.

Proposal to reduce the headcount threshold for small enterprises down to 10 staff members

4.67 Many respondents supported our proposal to consolidate the small enterprise and microenterprise definitions into a single definition.¹⁰³ For example:

- a) BT suggested that the use of a single definition to encompass microenterprise and small business customers was a practical and proportionate way of implementing the requirements of the EECC. It agreed with our analysis of the research evidence on the types of individuals involved in purchasing communications services at different sized businesses and that this accorded with its own insights into the use of complex communications services by business users.
- b) The Business Carrier Coalition considered our proposal would better align the level of bargaining power of such customers with the need for consumer protection provisions, as envisaged by the EECC. It added that companies with 10-49 staff are likely to require different services and contracts, have specialist staff or expertise to manage their communications needs and greater bargaining power, and were therefore not in the same position as residential customers.
- c) [redacted] said that while it had reservations about how headcount thresholds operate, it agreed with our proposal, which it considered to be the most pragmatic approach for Ofcom to take.
- d) ITSPA maintained that the previous proposals were too broad and would have resulted in many businesses and organisations receiving residential-style protections that would not have been appropriate for them. It noted that there are a range of practical issues with setting a headcount threshold, but argued that the only available, credible upper benchmark was a threshold of 10 employees.
- e) Virgin Media agreed that our proposed approach was appropriate given the intention of the EECC is to protect businesses who may not have significantly more bargaining power than residential customers. It considered that Ofcom's assessment of the business sector provided useful evidence, with businesses larger than 10 employees taking more sophisticated communications solutions. It also argued that greater engagement by such businesses with providers about their required solutions suggests they are more informed customers with bargaining power. It did not consider that there was any material evidence to support extending the relevant protections to businesses with up to 50 employees.

¹⁰³ BT, the Business Carrier Coalition, FCS, ITSPA, Magrathea, TalkTalk, Telefonica, Three UK, Virgin Media, Vodafone and [redacted].

- 4.68 We received one response which did not agree with changing the definitions from our December 2019 consultation proposal. This was from Ombudsman Services, which explained that it receives complaints from small businesses with more than 10 employees that have experienced many of the same issues as residential and microbusiness consumers. It cited recent research that it had carried out, which suggests that the propensity to make a complaint does not decrease with company size.
- 4.69 While Ombudsman Services understood that larger businesses are more likely to be engaged in the purchasing process, and may use higher capacity or specialised services, it nonetheless has seen that they also have issues about mis-selling, misunderstandings at point of sale, contract terms and cancellations. It also argued that small and medium sized enterprises, with fewer than 250 employees share many similarities with domestic and microbusinesses, but are not afforded the same protections.

Our assessment of responses

- 4.70 We note that many respondents supported this proposal.
- 4.71 We have considered the evidence and arguments presented by Ombudsman Services. It is important to consider that there are new protections that all business customers (large and small) will receive under the end-user rights provisions of the EECC. For example, all business customers will have a right to exit their contract following mid-contract modifications; will have the right to exit on one month's notice after their contract has been automatically prolonged; and receive end of contract notifications and annual best tariff notifications.¹⁰⁴
- 4.72 We consider that the additional protections that apply only to microenterprise and small enterprise customers are those most suited to businesses with needs similar to individual residential customers, (for example one page contract summaries, and a maximum 24 month commitment period). We consider that these are less relevant to larger businesses that are more likely to, for example, take contracts for specialist leased line services and to do so for more than 24 months.¹⁰⁵
- 4.73 We understand that there may be occasions when larger businesses experience difficulties with the services they buy, however, we have not seen clear evidence that this is a widespread issue that gives rise to significant harm, or that the specific protections extended to microenterprises and small enterprises would provide appropriate protection for larger businesses with different needs to residential customers. We would also have to consider whether increased protection for these businesses could also lead to less flexibility and innovation, weaker competition and higher costs for providers, which could mean higher prices and less choice for business customers. This could ultimately mean that

¹⁰⁴ The GCs and associated guidance relevant to End of Contract Notifications and Annual Best Tariff Notifications (C1 and C5) came into effect on 15 February 2020. [Statement on end-of-contract notifications and annual best tariff information](#).

¹⁰⁵ As part of the 2019 Business Connectivity Market Review (BCMR), Ofcom prepared an analysis on the typical lengths of contracts based on circuit data we received from providers. The analysis found that for CI Access services (leased lines connections), contract durations tended to range from 1 year to 5 years, with the median duration being 3 years for retail contracts (and 1 year for wholesale contracts) – [BCMR annex](#), paragraph A8.37.

such protection is against the interests of such businesses in general, despite there being evidence of occasions where some of them might benefit.

- 4.74 We also note that a headcount threshold of 10 staff members is aligned with the new definition of ‘qualifying end-user’ which is inserted into section 51(9) of the Act by the EECC Regulations, and is also intended to reflect the concept of microenterprise and small enterprise customers as set out in the EECC for these purposes.¹⁰⁶

Our decision

- 4.75 We have decided to reduce the threshold for small enterprises down to 10 staff members, and consolidate the small enterprise and microenterprise definitions into a single definition. We have also taken into account the new definition of ‘qualifying end-user’ being included in section 51(9) of the Act through the EECC Regulations and have decided to make some minor drafting amendments to align with that definition.

- 4.76 The revised definition is the following:

“Microenterprise or Small Enterprise Customer’, in relation to a Communications Provider which provides services to the public, means a Customer of that provider acting in the course of a business which is carried on by the Customer, and for which no more than 10 individuals work (whether as employees or volunteers or otherwise), but who is not himself a Communications Provider.”

Proposal to add a headcount threshold to the definition of not for profit customers

- 4.77 Most respondents supported our proposal to include a staff headcount threshold in the definition of not for profit organisations:¹⁰⁷
- a) BT and the Business Carrier Coalition said they agreed with our proposal to align the staff headcount threshold with that for small enterprises, for the reasons set out in our consultation.¹⁰⁸
 - b) O2 stated that it welcomed this proposal because larger not for profit organisations are able to negotiate contracts suitable for their needs. At the same time, the proposed headcount threshold will afford protections to those customers who do not have the market power or relevant staff to undertake such negotiations.
 - c) TalkTalk said it agreed with the underlying rationale for the proposed definition, though it added that it was unclear why there needed to be a different definition for not for profit customers when it would be substantially the same as that for small business customers.

¹⁰⁶ See footnote 102 above

¹⁰⁷ BT, the Business Carrier Coalition, FCS, ITSPA, Magrathea, TalkTalk, Telefonica, Three UK, Virgin Media, Vodafone and [redacted].

¹⁰⁸ For consistency reasons, and because similar considerations are likely to apply as to the relevant bargaining power of small not for profit customers as well as for small enterprise customers

d) Virgin Media noted that it was not the intention of the EECC to capture “large well-resourced and commercially astute organisations (not for profit or otherwise).”

4.78 However, one respondent disagreed with the proposed definition of a not for profit customer. Citizens Advice Scotland expressed concern that introducing an employee headcount threshold that included volunteers for not for profit organisations would harm charities that rely on volunteers to fulfil their charitable purposes, and did not reflect how the third sector operates. It recognised that larger not for profit organisations, which may be well-resourced in terms of paid staff members, may have bargaining power with providers. However, it considered that there are significant differences between local and central government agencies and small charitable organisations that have few paid staff but more than 10 volunteers. It considered the proposed definition could result in small charities losing protection simply due to their reliance on volunteers.

4.79 It also noted that many volunteers may be transient, only available at certain periods or recruited for short term projects, meaning that headcount may fluctuate substantially over time. Given this fluctuation, it considered the proposed definition risks being administratively unworkable for both providers and customers.

Our assessment of responses

4.80 In response to TalkTalk’s point about whether there needs to be a separate definition for not for profit organisations, we consider that having this category of customer provides greater clarity about what is envisaged in the EECC and, as we discuss below, enables us to make a useful distinction in relation to the status of volunteers when setting headcount thresholds.

4.81 We have carefully considered Citizens Advice Scotland’s argument that volunteers should not be included within the headcount of our proposed definition. The inclusion of volunteers within the not for profit definition mirrored the definition used for small enterprise customers discussed above, which was in turn taken from the ‘domestic and small business customers’ definition set out in the Act.¹⁰⁹

4.82 However, we recognise that not for profit organisations may operate differently to commercial organisations in terms of their use of, and reliance on, unpaid volunteers. Not for profit organisations may rely heavily on volunteers to deliver their charitable purposes; and those unpaid volunteers may include people who contribute for a limited number of hours a week, or for a time-limited project. If, in addition, such not for profit organisations only have small numbers of paid staff, there is a risk that including volunteers within the headcount threshold may overstate their scale or size.

4.83 This issue may be less likely to arise for commercial businesses who are potentially much less likely to rely on material numbers of unpaid volunteers for their commercial purposes. We also note that respondents did not question the inclusion of volunteers in the microenterprise or small enterprise definitions. Furthermore, we are not aware of any

¹⁰⁹ The statutory definition has long been reflected in the GCs in the ‘Domestic and Small Business Customer’ definition.

evidence to suggest that the inclusion of volunteers in the existing 'domestic and small business customers' definition has caused practical problems for commercial businesses to date.

- 4.84 Therefore, to avoid potentially inadvertently excluding small not for profit organisations that rely on unpaid volunteers, even though they may still have comparable bargaining power to residential customers, we consider it appropriate to exclude unpaid volunteers from the threshold.

Our decision

- 4.85 We have decided to include a staff headcount threshold in the definition of not for profit organisations which will be 10 staff members, as with the headcount threshold for "Microenterprise or Small Enterprise Customer."
- 4.86 However, given the response provided by Citizens Advice Scotland, and our subsequent reasoning set out above, we have decided not to include volunteers within this headcount threshold.
- 4.87 We also note that the EECC Regulations insert a new definition of "not-for-profit body" into section 151 of the Act,¹¹⁰ which is intended to transpose the 'not for profit organisation' concept in the EECC into domestic law. For the purposes of the new definition of 'qualifying end-user' which is inserted into section 51(9) of the Act by the EECC Regulations, a "not-for-profit body" is subject to a 10 person headcount threshold, excluding volunteers.¹¹¹ We therefore consider it appropriate to align our proposed definition with the new definition being included in the Act.
- 4.88 The revised definition of not for profit customer is as follows:

"'Not-For-Profit Customer', in relation to a Communications Provider which provides services to the public, means a Customer of that provider, which is a body for which no more than 10 individuals work (whether as employees or otherwise but excluding volunteers) and which, by virtue of its constitution or any enactment:

(a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes;

(b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes)."

¹¹⁰ The definition of "not-for-profit body" inserted at section 151 of the Act is: *"'not-for-profit body' means a body which, by virtue of its constitution or any enactment: (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes)"*.

¹¹¹ See footnote 102 above.

Proposal to extend guidance on identifying headcount to not for profit customers

- 4.89 Several respondents agreed that Ofcom should extend the guidance it had proposed to help providers identify headcount to not for profit organisations:¹¹²
- a) BT said that they were supportive of the pragmatic and flexible approach proposed for compliance monitoring.
 - b) Three said that the guidance would help with any practical difficulties that arise and reduce the cost and burden of implementing the EECC.
- 4.90 Both Three and [X] noted the variability in headcount and asked how often this information should be collected. [X] was concerned about this issue because of the lack of credible external sources for employee numbers (or volunteers) and because it did not consider that the proxies for headcount put forward in the guidance were reasonable alternatives. Overall, [X] argued that Ofcom should state that it would be acceptable for a provider to ask the customer to state the number of employees at point of sale and use that as the basis on which it manages the relationship from a compliance perspective. [X] also suggested that the guidance needed to be clearer on the status of volunteers within the headcount threshold used in the definitions.

Our assessment of responses

- 4.91 In light of Three's and [X]'s requests for greater clarity about how often providers should ask customers for headcount information, we consider that it would be acceptable for a provider to seek to obtain headcount information (either from a customer or from other available sources) at the point of sale, and to then rely on that information until the contract has ended, or until it is renegotiated, whichever comes first. We have revised the guidance to make this clear. This information gathering would then be included within the set of other administrative tasks that would naturally be required at this time (i.e. preparation of contractual information, confirming the customer's address, contact names etc).
- 4.92 In relation to [X]'s suggestion that the guidance needs to be clearer about the status of volunteers, as discussed above, we have decided to amend the definition of not for profit customer so that volunteers will be excluded from the staff headcount threshold.

Our decision

- 4.93 We have decided to put in place the guidance as proposed in the December Consultation, with an amendment so that it can be used by providers to identify headcount thresholds for not for profit customers.
- 4.94 In addition, in light of comments received, we have revised the guidance to make it clearer when the provider should take reasonable steps to identify the different categories of customers to which the requirements apply. For the avoidance of doubt, this would be at

¹¹² BT, Magrathea, TalkTalk, Telefonica, Three, Vodafone and [X].

the point at which the initial contract is agreed, or when an existing contract is renewed or renegotiated.

4.95 The guidance states that:

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

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

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

Residential customer and end-user definitions

4.96 As we received no responses to our consultation regarding our proposed changes to the definitions of 'Consumers' or 'End-User' in the GCs, we have decided to adopt the definitions as proposed in our December Consultation. As revised, these definitions will read:

“‘Consumer’ means any natural person who uses or requests a Public Electronic Communications Service or Bundle for purposes which are outside his or her trade, business, craft or profession”.

“‘End-User’ in relation to a Public Electronic Communications Service or Bundle, means:

(a) a person who, otherwise than as a Communications Provider, is a Customer of the provider of that service or Bundle;

(b) a person who makes use of the service or Bundle otherwise than as a Communications Provider; or

(c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service or Bundle”.

5. Providing contract information and a contract summary

- 5.1 Article 102 of the EECC includes a number of measures to ensure customers are given clear information about their communications services before they enter into a contract to help them make informed choices.¹¹³ In particular, the new provisions make clear that certain contract information must be provided to a customer on a durable medium, as well as providing a contract summary document, before the customer is bound by that contract. The contract information and summary then become an integral part of the contract.¹¹⁴
- 5.2 This section sets out more detail on the EECC requirements, the separate EU contract summary regulation, our December proposals for implementation, the responses we received from stakeholders, our decision on how to include these provisions in the GCs and our associated guidance.
- 5.3 In summary, we have decided to proceed with requiring the customer to be given contract information and a contract summary before they are bound by the contract. We have decided to make some changes to the wording of GCs C1.4 to C1.6, and Annex 1 to GC C1, since our proposals in our December Consultation, to ensure the GCs are more closely aligned with the EECC requirements and to take account of stakeholder responses on possible impacts on the customer journey. Further detail about these changes is set out in this section.
- 5.4 We have also decided to issue guidance on certain aspects of these requirements, in particular, on the provision of contract information and the contract summary. This guidance is set out in Annex 7 and, following stakeholder comments, we have made amendments to our draft guidance in order to provide additional details of the requirements of the contract summary template as well as clarification of our expectations on how the contract information and summary can be provided.

EECC requirements

- 5.5 Article 102(1) of the EECC requires that, before a residential customer is bound by a contract, all providers of electronic communications services¹¹⁵ must provide specified information about the service the customer is signing up to (the ‘contract information’).¹¹⁶

¹¹³ Recital 261, EECC. As indicated in Recital 258, this also reflects that contracts are an important tool for customers to ensure transparency of information and legal certainty.

¹¹⁴ Article 102(1)-(4), EECC.

¹¹⁵ With the exception of transmission services used for the provision of machine-to-machine services.

¹¹⁶ This aligns with equivalent wording used in the Consumer Rights Directive (Directive 2011/83/EU) and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs), which also requires consumers to be provided with certain information before they are bound by a contract, and which Article 102(1) also makes clear should be provided by providers as part of the contract information required under Article 102(1). See also recital 258 which explains that the inclusion of information requirements in Article 102, which might also be required pursuant to Directive

- 5.6 Article 102(1) says that this contract information must be provided in a clear and comprehensible manner, on a durable medium and in an accessible format for disabled customers. Where it is not feasible to provide the information on a durable medium, an easily downloadable document should be made available and drawn to the customer's attention, including the importance of downloading it for future reference.
- 5.7 Annex VIII of the EECC lists the different sets of information that different types of providers are required to include in their contract information. Specifically, providers of all public electronic communications services, other than machine to machine transmission services, are required to provide the following information:
- a) the main characteristics of the service: including the minimum level of quality of service the customer can expect;
 - b) information on pricing: such as any charges for activating the service, including any recurring and consumption-related fees;
 - c) information on the duration of the contract, and conditions for renewal and termination: this includes, amongst other information, any fees due on early termination of contract; and information on terminal equipment unlocking, and cost recovery;
 - d) compensation and refund arrangements, including if quality of service is not met, or if the provider responds inadequately to a security incident, threat or vulnerability; and
 - e) the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.¹¹⁷
- 5.8 There are additional requirements for interpersonal communications service and internet access services ('IAS') under Annex VIII (B)(I) and mobile and landline providers (as providers of number-based interpersonal communications services: 'NBICS') under Annex VIII (B)(II). IAS providers are also required to include the information required in Article 4(1) of Regulation 2015/2120 (the Open Internet Regulation).
- 5.9 In addition, Article 102(1) requires all providers to give the information referred to in Articles 5 and 6 of the Consumer Rights Directive (which has been implemented in Part 2 of the Consumer Contract (information, Cancellation and Additional Charges) Regulations 2013 (the 'CCRs')).¹¹⁸
- 5.10 Article 102(3) of the EECC requires providers of electronic communications services to also provide customers with a concise and easily readable contract summary. The contract

2011/83/EU, should not lead to duplication of the information within pre-contractual and contractual documents, and that relevant information provided in accordance with the EECC, including any more prescriptive and more detailed informational requirements, should be considered to fulfil the corresponding requirements pursuant to Directive 2011/83/EU.

¹¹⁷ Annex VIII (A), EECC.

¹¹⁸ Recital 258, EECC, makes clear that the inclusion of information requirements in this Directive, which might also be required pursuant to the CCRs (which implement Directive 2011/83/EU), should not lead to duplication of the information within pre-contractual and contractual documents. Relevant information provided in accordance with Article 102 and Annex VIII are considered to fulfil the corresponding requirements pursuant to Directive 2011/83/EU and the CCRs.

summary sets out the main elements of the information requirements and is to be given free of charge. Article 102(3) specifies that the contract only becomes effective when the customer has confirmed his or her agreement after reception of the contract summary. Article 107(1) extends these contract summary requirements to all elements of a bundle of services or services and terminal equipment that include at least one IAS or a publicly available NBICS.

- 5.11 Article 102(2) extends the contract information and contract summary provisions to end-users that are microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive their rights.
- 5.12 Article 102(4) establishes that the contract information and contract summary become an integral part of the contract, and shall not be changed unless the parties to the contract expressly agree otherwise.

Contract Summary Implementing Regulation

- 5.13 Article 102(3) sets out that the Commission will adopt implementing acts to specify the contract summary template to be used by providers. The Commission published its Implementing Regulation on the contract summary of 17 December 2019, including the accompanying template, in the Official Journal of the European Union on 30 December 2019.¹¹⁹
- 5.14 The Contract Summary Implementing Regulation specifies that providers are required to use the template it sets out in the Annex and includes instructions for how that template is to be completed.¹²⁰ In particular, it requires that the template should be:
- a single-sided A4 page when printed¹²¹ (unless there is due justification for it being longer).¹²² This can be extended to three single-sided A4 pages for bundled services;¹²³
 - provided in portrait format, with easily readable text, and a font size of at least 10 points. This font size may be reduced, if there is justification (an example given is pre-pay services where smaller font may be needed to fit on packaging)¹²⁴, but it also specifies that, in these circumstances, customers must have a way of enlarging the text (e.g. electronically), or receiving the contract summary with a font size of at least 10 points on request;¹²⁵
 - set out in the ordering of information specified in the Annex (see paragraph 5.15 below), and with the headings of each section of information clearly distinguishable

¹¹⁹ [Commission Implementing Regulation \(EU\) 2019/2243 of 17 December 2019](#) establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972 of the European Parliament and of the Council (the ‘Contract Summary Implementing Regulation’).

¹²⁰ See Annex, [Commission Implementing Regulation \(EU\) 2019/2243 of 17 December 2019](#).

¹²¹ Article 2(1) of the Implementing Regulation.

¹²² For example, Recital 4 to the Implementing Regulation suggests reasons of accessibility for customers with disabilities as a possible justification.

¹²³ Article 2(1) of the Implementing Regulation. See section 4 for the definition of “bundle”.

¹²⁴ Recital (6) of the Implementing Regulation.

¹²⁵ Article 2(2) of the Implementing Regulation.

from the main text.¹²⁶ It also specifies that there should be sufficient contrast between the text and the background, and any visuals should not overlay the text;¹²⁷ and

- drafted in a language that is easily readable and understandable for customers.¹²⁸

5.15 In terms of the content of the template, the Annex sets out what headings should be used and provides details on what should be included under each heading, as well as specifying the format of the top of the template (e.g. requiring the provider brand name or logo, plus contact details to appear in the top right-hand corner). The headings, and information required under each, include:

- **Services and equipment:** a description of the main characteristics of the electronic communications service(s). For bundles, this must include the type of terminal equipment (where relevant) and other services being provided, such as TV packages. The description must include, as applicable, the volume or quantity for calls, messages and data and the roaming fair use policy applied by the provider;
- **Speeds of the internet service and remedies (where relevant):** for fixed internet access, this must include the minimum, normally available and maximum download and upload speed.¹²⁹ For mobile internet access, the estimated maximum download and upload speed must be included.¹³⁰ Providers are also required to describe the remedies available to the customer in the event of continuous or regularly recurring discrepancy between the contracted and actual performance regarding speed or other quality of service parameters;¹³¹
- **Price:** the prices for activating the service and any recurring or consumption-related charges. Any additional fixed prices such as for activating the service, and, where applicable, the price of equipment, as well as any time-limited discounts must also be included. Where applicable, consumption-related charges which will apply after the volumes included in the recurring price have been exceeded, must be indicated. Where applicable, any charges for additional services that are not included in the recurring prices can be indicated as being available separately.¹³²
- **Duration, renewal and termination:** information on the duration of the contract and the main conditions for renewal and termination at the end of the contract. The main conditions for early termination must also be included, including any fees due and information on unlocking the terminal equipment;
- **Features for end-users with disabilities:** information on the main products and services for end-users with disabilities, such as real-time text, total conversation, relay services, accessible emergency communications, specialised equipment, special tariffs and accessible information. Details can be indicated to be available separately; and

¹²⁶ Article 2(2) and 2(5) of the Implementing Regulation.

¹²⁷ Article 2(3) of the Implementing Regulation.

¹²⁸ Article 2(4) of the Implementing Regulation.

¹²⁹ As required under Article 4(1)(d) of Regulation (EU) 2015/2120 (the Open Internet Regulation).

¹³⁰ Again, as required under Article 4(1)(d) of Regulation (EU) 2015/2120 (the Open Internet Regulation).

¹³¹ As required under Article 4(1)(e) of Regulation (EU) 2015/2120 (the Open Internet Regulation).

¹³² Where the service is provided without a direct monetary payment but subject to certain obligations on users as a condition of service, that must also be included.

- **Other relevant information:** an optional heading for providers to include any additional information required by Union or national law (this could include, for example, other information which must be provided as part of the pre-contract information under Article 102(1) and Annex VIII).

Our December proposals

Contract information provisions

- 5.16 To implement Article 102(1), we proposed a number of changes to our GCs, including:
- amending and extending the list of information set out in the existing GC C1.2 to include the information required in Annex VIII to the EECC, relevant information listed in the CCRs and the information listed in the Open Internet Regulation;¹³³
 - adding a requirement for the contract information to be provided before the customer is bound by the contract, on a durable medium (or, where not feasible, in an easily downloadable document which is drawn to the customer’s attention) and at a time that reasonably allows the customer to make an informed decision about entering into the contract;
 - adding a requirement for this contract information to become an integral part of the contract that cannot be altered without the consent of the contracting parties;
 - extending the scope of the conditions to micro- and small enterprises and not for profit customers, unless they explicitly agree otherwise; and
 - specifying the types of providers that the different information requirements apply to.
- 5.17 These proposed amendments were set out in revised GCs C1.3, C1.4 and C1.7. The scope of the information requirements was set out in GC C1.1(a), with the list of contract information included in a proposed new Annex to GC C1.
- 5.18 We also noted that the existing switching provisions in our GCs (GC C7) already include a requirement for providers to set out specific information for some customers before they enter into a contract.¹³⁴ As part of our implementation of Article 102 we proposed moving a large part of that information to the Annex to GC C1. We also proposed to add certain additional information to the Annex as part of our implementation of the switching requirements in Article 106. This included information on the arrangements for the provision of an electronic communications service, such as the date it would be provided. We noted that these additional requirements would apply to all public electronic communications services and all types of customers falling within the scope of GC C1.3.

¹³³ The information required under the Open Internet Regulation is included in points (d) and (e) of Article 4(1) of [Regulation \(EU\) 2015/2120](#).

¹³⁴ The current requirements only apply in relation to switches involving certain types of broadband services and fixed-line telecommunications services within Openreach’s or KCOM’s copper networks. Gaining providers are only required to provide the specified information when entering into a contract with residential or small business customers.

Additionally, we also proposed certain specific information requirements for residential customers switching IAS or NBICS.¹³⁵

- 5.19 In addition to these changes to GC C1, we also proposed to insert a new requirement into GC C5.16 in order to implement the requirement in the EECC for the contract information to be provided in an accessible format for disabled customers on request.

Contract summary provisions

- 5.20 We noted there was no existing requirement in our GCs for providers to make available a summary of their contract terms. To implement Article 102(3), we therefore proposed to:

- introduce a new GC requiring providers to provide a contract summary at a point before the customer is bound by the contract and which enables them to make an informed decision about what they buy;
- require providers to comply with the summary template set out in the Commission's Implementing Regulation;¹³⁶
- add a requirement for the contract summary to become an integral part of the contract that cannot be altered without the consent of the contracting parties; and
- make clear that these GCs apply to residential customers, and also, unless they explicitly agree otherwise, to microenterprise, small enterprise, and not for profit customers.

- 5.21 Our proposals to implement these changes were set out in proposed GCs C1.5 to C1.7. The scope of our proposed requirements was set out in GC C1.1(a) and C1.1(f).¹³⁷

- 5.22 We also proposed to extend the requirement for contract information to be provided, on request, in an accessible format for disabled customers to also include the contract summary to ensure equivalence of access for disabled customers. To implement this, we proposed to insert a new requirement in GC C5.16.

Impact of these provisions

- 5.23 We said in the December Consultation that we expected the above proposals to benefit customers by enabling them to make informed choices and take full advantage of the competitive environment, as well as providing transparency and legal certainty. With respect to the implementation of our contract information proposals, we noted that providers are already required to set out a comprehensive list of contract information prior

¹³⁵ In our December Consultation we said that this additional information would have to be provided before a residential customer enters into a contract for the services being switched. See paragraph 7.106 of the December Consultation.

¹³⁶ The Implementing Regulation had not been published at the time of the December Consultation, but we noted that the Commission had consulted on a draft regulation for the contract summary template, and included a reference to this draft regulation in the proposed GC definition of 'Contract Summary'.

¹³⁷ In our December Consultation, our proposed draft GC C1.1(f) had an error in that it did not include an explicit reference GCs C1.5 to C1.7 (the contract summary GCs). As noted above, Article 107(1) extends the contract summary requirements to bundles, and we also referenced this in section 4 of our December Consultation. As discussed in the decision section below (paragraphs 5.151-5.154), we have corrected the relevant references in the updated GC wording to make clear that the contract summary requirements extend to bundles.

to a customer signing a contract under our existing GCs, the CCRs and the Open Internet Regulation and, in most cases, providers are already providing this on a durable medium before or after a customer enters into the contract.

- 5.24 We recognised, however, that providers would need to make some changes to ensure that they provide all the information that would now be required and to update their contracts accordingly. We were also aware that some providers do not always provide the contract information on a durable medium before the customer is bound by the contract, particularly for phone sales. We also noted that the contract summary proposals would be new requirements. Therefore, we expected that providers would need to make changes to their processes, including customer sales journeys to ensure customers are given the contract information and summary before they are bound by the contract.

Proposed guidance

- 5.25 Alongside GCs C1.3 to C1.7, we proposed to issue guidance on these requirements to give providers further clarity about what steps were needed to ensure compliance, and how they should be implemented in practice. In particular, the proposed guidance covered our expectations on when and how the contract information and contract summary should be provided, as well as specific details of how certain elements of the contract information should be presented, including:

- the core subscription price:¹³⁸ we proposed that where a contract specifies that this price will increase at a certain point with reference to a particular inflation index, providers should set out an example of what the customer's core subscription price would be once that inflation increase has been applied. We also proposed that, customers should be given information on the expected core subscription price at the end of any commitment period (as well as the price during any commitment period);
- the price of individual elements of a bundle: we said providers should set out these prices where they make individual elements of a bundle available for separate, stand-alone purchase and we provided a specific example of how this could be set out for bundled mobile handset contracts;
- information on contract duration and conditions for renewal and termination for non-coterminous linked contracts: we said we would expect providers of non-coterminous linked contracts to make it clear to customers that those linked contracts have commitment periods ending on different dates and the consequences for the different contracts where one contract expires or is cancelled or renewed by the customer; and
- conditions on terminal equipment (locked mobile handsets): as well as being told that their handset is locked before they purchase it, we said providers should clearly set out what this means, when the device can be unlocked and any fees that would need to be paid to unlock it.

¹³⁸ In our GCs, we define the 'Core Subscription Price' as the sum (however expressed in the contract) that the Subscriber is bound to pay to a Communications Provider at regular intervals for services and/or facilities the Communications Provider is bound to provide in return for that sum. It does not include sums payable for additional services or facilities (or the additional use of services or facilities) that the Subscriber is only liable to pay for if the additional service or facility is used.

Consultation responses and our assessment

5.26 We received a wide range of comments from stakeholders on our proposed implementation of the contract information and contract summary provisions. Below we have first set out the comments we received about our overall approach to implementation, and our response, before setting out and responding to specific issues on the detail of our proposals in the following sections.

Overall approach to implementation and impact of the proposals

5.27 The Communications Consumer Panel (CCP), Ombudsman Services, Which?, Uswitch and a number of individuals were supportive of our proposals. The CCP noted that accessible, accurate and understandable information for customers is key and Which? said that the proposals will help customers make informed choices. Ombudsman Services noted that a proportion of the complaints they saw from residential customers were about contract issues and that it was in the interests of customers for contract terms to be made clearer.

5.28 Uswitch suggested that we should go further in our guidance and require core contractual information to be available not just at the start of the contract but throughout its duration via providers' online accounts and linked to bill communications.

5.29 Some providers, on the other hand, raised a number of concerns about our proposals. BT, Sky, UKCTA and Virgin Media said our proposals could overload customers with information which would make it more difficult for them to make an informed decision about what deal was right for their needs, particularly when customers had limited time available to make such decisions. There was also concern that the provisions would have a negative impact on the customer journey if the provider had to pause the sales process to send, and confirm receipt, of the contract summary, all of which they argued could act to disengage customers. A number of providers were also concerned that the provisions could create disincentives to switch.

5.30 Several providers and industry groups said that customers are already well protected by the existing information provisions, such as the CCRs. BT argued that we had not provided any evidence of customer harm from the existing information provision rules that needed to be addressed. Further, BT, Mobile UK, Sky and Verastar considered our proposals were too prescriptive. Verastar said that the revised GCs exceeded the information requirements of the EECC, with stricter requirements for providers operating off-premises and in the business-to-business market. Mobile UK said that the proposals went beyond a proportionate implementation of the EECC.

5.31 BT, Sky, UKCTA and Virgin Media were concerned that we had not carried out an impact assessment of our proposals. Some providers said there would be significant cost and resource implications which we had not properly accounted for. They said these costs would come from having to build new systems, retrain staff and update sales scripts, as well as making changes to the sales process. Sky said that providing the detailed level of

personalised information that was required in the proposals, in some cases on a real-time basis, was an immense undertaking for providers.

Our assessment of responses

- 5.32 We note providers' concerns about the implementation of these proposals, and we recognise that there are already existing protections for customers to ensure they are given relevant information about their contract at the point of sale. However, as set out in section 3 we are required to make changes to our GCs to align them with the requirements of Article 102, which are intended to benefit customers by enabling them to make informed choices and take full advantage of the competitive environment, as well as providing transparency and legal certainty. As we do not have discretion to diverge from the requirements of Article 102, either by implementing less stringent requirements or by adding to the requirements (as Uswitch has suggested), we have sought to make changes to the GCs which are no more than necessary to achieve the objectives of Article 102.
- 5.33 As noted in the December Consultation, we expect that implementation of these provisions will have an impact on providers, and we recognise that the changes they will need to make (for example to their systems, sales process and staff training) will involve costs, which in some cases may be significant.¹³⁹
- 5.34 We also consider, however, that there will be benefits to customers from these provisions. As we set out in our December Consultation, they will help to ensure that customers are given the information they need about the communications service being offered to them before they enter into a contract so they can make a well-informed choice. Contracts are an important tool for customers to ensure transparency of information and legal certainty and there is value in customers having that information in a form that enables them to refer to it, and understand and evaluate their position throughout the duration of their contract.¹⁴⁰ Given the importance of this information, it is therefore not clear that this information would overload customers or how it could create a disincentive to switch. We are aware of potential impacts on the customer sales journey and this is discussed further below.
- 5.35 We have considered stakeholder comments carefully and, where appropriate, have made some amendments to our proposals to ensure providers are able to exercise flexibility in how they implement the requirements where applicable, whilst also ensuring that the revised rules in the GCs reflect the objectives and wording of the EECC. Below we set out our response to specific concerns raised by stakeholders, and any changes we have made, in relation to the following areas:
- a) how and when the contract information and summary are provided;
 - b) the scope of the provisions; and
 - c) the information required in the contract information and contract summary.

¹³⁹ More detail on our approach to impact assessments is set out in section 3.

¹⁴⁰ December Consultation, paragraph 4.8.

5.36 We have also decided to give providers more time (18 months) to implement these changes.¹⁴¹ As explained further in paragraph 5.159 below, this is because we recognise that providers will need to make a number of changes to their sales processes and systems, and, given these changes may be significant, it is important that providers have sufficient time to get them right.

How and when the contract information and contract summary is provided

5.37 Stakeholders raised a number of concerns, and practical questions, about how the contract information and summary would be provided to customers. Below we set out the points raised, our assessment of them, and any changes we are making to our December proposals (as well as any changes to our proposed guidance where relevant) in relation to each of the following areas:

- a) process for providing the contract summary and getting customer consent;
- b) timing for providing the contract information and summary;
- c) providing the contract information in a durable medium;
- d) providing the information and summary in an accessible format for disabled customers; and
- e) changes to the contract information and contract summary.

Process for providing the contract summary and getting customer consent

5.38 Several providers were concerned that our proposals required them to get customer agreement to the contract summary document itself before a customer's contract could become effective.

5.39 BT, Sky and Virgin Media noted that the sales journey might become disjointed with new steps needing to be added to provide the contract summary to customers before placing an order. There was particular concern about what this would mean for the phone sales journey, where customers might have to call back or continue the purchasing journey online in order to confirm acceptance if they are unable to receive the summary whilst on the call. Sky suggested customers should be given the opportunity to proceed with the sale without having to re-engage with the provider, particularly as customers were already protected by extensive cooling-off rights for distance sales.

5.40 Virgin Media noted that there were likely to be particular challenges for customers who do not have an email address as they would have to wait for written copies. It was concerned that such delays might particularly impact elderly, disabled and other vulnerable customers. Another provider flagged concerns about digitally disadvantaged customers who may have to wait for documents sent by post.

¹⁴¹ As explained in paragraphs 5.161 and 5.162, where specific information about the switching process is required under the contract information and summary requirements in GC C1, we have specified that the implementation period for these elements will be aligned with the implementation period for the switching provisions in GC C7.

- 5.41 Virgin Media also said that, where the information could be provided, allowing time for the customer to read and understand the contract summary would increase call lengths significantly and would have the knock-on effect of increasing wait times for all customers, not just those signing up to a new contract. Virgin Media suggested that agents should be allowed to give customers the salient points from the contract summary verbally, allowing verbal confirmation from the customer to trigger an order. This would be followed by the documents being sent to the customer on a durable medium. Tesco Mobile was also concerned that providing the contract summary and ensuring the customer had read the summary would interrupt the flow of the customer journey and might be a point of frustration for customers.
- 5.42 Post Office said that for services being sold in-store, it currently provides a one-page leaflet which includes all the relevant information for the customer to understand what they are buying. However, it said with the new process, customers will be given a contract summary and will be required to read, understand and agree to the summary while they are standing at the counter before they can sign up to the contract. Post Office was concerned that, in these circumstances, customers may feel pressured into accepting to avoid having to take further action to confirm acceptance at a later date.
- 5.43 Providers also raised several questions about how they would obtain this agreement from customers in practice. For example, Vodafone asked whether the terms of the contract summary could be accepted verbally and whether proof would be needed to show a contract summary had been sent and received.¹⁴²
- 5.44 Vodafone and Virgin Media also asked whether we would prescribe how long the contract summary should remain valid once it had been issued, e.g. in the case where the customer wants to take it away to review.¹⁴³ They noted it was common for offers to be time limited and Vodafone said that allowing the customer to accept an offer that had since ended could be complex. Virgin Media also noted that devices or equipment may go out of stock while customers pause their sales process to review information. It said that the prospect of 'paused' sales processes should be removed.¹⁴⁴
- 5.45 Three said that requiring the customer's active agreement to the contract summary before entering into a contract would require significant development of their systems and processes. It said its current process for phone sales was to confirm the key points of a customer's contract verbally and then to send the required information in a durable medium following the call. It said that this was a very different process from requiring a customer to actively agree to the contract summary terms, either during or after the call, before being able to enter into the contract.

¹⁴² These comments were included in an additional submission from Vodafone dated 27 March 2020.

¹⁴³ These comments were included in an additional submission from Vodafone dated 27 March 2020.

¹⁴⁴ These comments were included in an additional submission from Virgin Media dated 12 August 2020.

Our assessment of responses

- 5.46 We recognise the concerns raised by providers about possible disruption to the customer journey, particularly in the case of sales made by phone where a customer is unable to receive, and read, the contract summary during that phone call. We are keen to ensure that customers continue to be able to easily sign up to a new contract, particularly via a phone sales journey, as we recognise that this is one of the most common routes used by customers to sign-up to contracts for communications services.
- 5.47 The wording in Article 102(3) specifies that a contract shall become effective after the contract summary has been received by the customer, and the customer has confirmed their agreement to enter into the contract. Having considered stakeholder comments, we note that the wording we proposed for GC C1.6 in our December Consultation suggested that customers had to specifically agree to the contract summary itself before the contract could become effective. The wording in Article 102(3), however, does not specify that the customer has to agree to the customer summary document itself. We have therefore amended GC C1.6 to more closely align with the wording of Article 102(3) in this respect.
- 5.48 We have taken into account the need to ensure consistency across GCs so far as possible, and are aware that in other GCs we use the term “*express consent*” to refer to a customer giving their agreement to enter into a contract; “*express consent*” being defined for these purposes as: “*the express agreement of a Customer to contract with a Communications Provider... where the Communications Provider has obtained such consent in a manner which has enabled the Customer to make an informed choice*”. We will therefore be adopting this wording in GC C1.6. For the purposes of this provision, we would consider that in order for a customer to make an informed choice they would need to have received the contract summary before they gave their “*express consent*” to enter into the contract. We consider that the use of the term “*express consent*” in this context is consistent with the requirements of Article 102(3) and will assist in providing consistency across the GCs.¹⁴⁵
- 5.49 We have also amended the wording of GC C1.5 to clarify that the contract summary needs to be provided “*Before entering into a contract*” as we consider this better reflects, and in clearer language, the requirement in Article 102(3) for the contract summary to be provided as part of the sales process, and before a customer has given their agreement to enter into the contract.
- 5.50 These changes to our proposed GCs mean that providers are not required to obtain separate customer agreement to the contract summary document. Instead, as part of any sales process (whether online, in-store or by phone), providers will need to ensure that they have provided customers with a contract summary, and this has been received, before they can then seek the customer’s agreement to bring the contract into effect.

¹⁴⁵ We continue to use the words ‘agree’ or ‘agreement’ rather than ‘consent’ in the rest of this section given it is clearer, more everyday language.

- 5.51 The Contract Summary Implementing Regulation sets out how the document should be presented.¹⁴⁶ Whilst the summary does not have to be provided in any particular medium, it is clear that the contract summary must be provided in writing and it would not be sufficient to only set out the details of the contract summary verbally to a customer during the sales phone journey. The contract summary would need to be provided to the customer in a format which is consistent with the requirements of the Implementing Regulation (set out above at paragraphs 5.14 and 5.15).
- 5.52 While a provider may set out the key terms of the contract verbally as part of a sales call, before the contract actually comes into effect the customer must have received the contract summary, and then confirmed they wish to enter into the contract. If it is not possible for the contract summary to be provided to the customer in writing during a sales call, it should be provided as soon as possible after the call, and there would then need to be a mechanism for the provider to obtain confirmation of the customer's agreement to proceed once the customer has received the contract summary.¹⁴⁷
- 5.53 We recognise that this requirement will have an impact on providers' sales processes, particularly phone sales, as well as creating a risk of customer frustration if they experience delay in the sales process. There are, however, various options providers could use to send the summary to customers during a phone sale and which the customer could access during that call, for example via email, an online account, or a link sent via an SMS/webchat. We would expect providers to ensure that, as part of the phone sales journey, customers are made aware that the contract summary has been sent to them, and that they can review the summary before they agree to enter into the contract.
- 5.54 We would also expect providers to have a record that the contract summary has been sent to the customer, and that they have processes in place to ensure that the option to review and consider the document is made clear to customers as part of sales calls.
- 5.55 We recognise the concerns raised by providers that not all customers will be able to receive the contract summary during the course of the initial interaction with their provider. This could occur, for example, where the customer requires the document in an accessible format (see paragraphs 5.79 to 5.85 below for discussion of the accessibility requirements), where a customer is unable to access their email or the internet during the phone call, or where the contract summary is sent by post. While this will mean a change to the sales journey for these customers, providers could design simple mechanisms (for example, a text message) for customers to provide their confirmation to proceed after receiving the contract summary, in order to minimise delay and disruption to the sales journey. We also recognise that some of these customers, particularly those that are vulnerable, may welcome the opportunity to have more time to review a summary of their contract terms.

¹⁴⁶ [Commission Implementing Regulation \(EU\) 2019/2243](#)

¹⁴⁷ In addition to the contract summary, the customer must be provided with specified contract information on a durable medium (or in an easily downloadable document) before they are bound by the contract. We discuss the timing for providing the contract information in paragraphs 5.59 to 5.68 below.

- 5.56 There is nothing in the Contract Summary Implementing Regulation or our amended GCs which would require providers to make offers set out in a contract summary valid for a specified period. Where an offer set out in a contract summary is time-limited, we would expect providers to clearly, and prominently, advise customers of this as part of the sales process, in particular being explicit about the deadline by which a customer would need to agree to enter into the contract in order to benefit from that offer. We would expect any such deadline to allow sufficient time for customers to review the contract summary, taking account of the format in which it was sent.
- 5.57 We also note the concern raised by Post Office about customers feeling pressurised, and the extent of the information they would be required to read. We would expect providers to be clear with customers about the options they have for reviewing the contract summary ahead of deciding whether to enter into the contract, and we would expect providers not to place any undue pressure on customers during that process. In considering how providers comply with these requirements, we would be more likely to be concerned if the processes put in place by providers failed to support customers in making informed choices.
- 5.58 We have made amendments to our guidance on the format and process for providing the contract summary to reflect the points discussed above (see paragraphs A7.9 to A7.12 of the final guidance in Annex 7).

Timing for providing the contract summary and information

- 5.59 Vodafone said that our proposal to require the contract information and summary to be provided *“at a time that allows the customer to make an informed decision”* was unclear. It also considered that this provision went beyond the requirements of Article 102 which it said does not prescribe the exact point in time when the information should be given to the customer.
- 5.60 Virgin Media also said that the December Consultation did not make it clear when the contract information and contract summary should be provided. Virgin Media said that the December Consultation indicated that the contract information should be provided initially, followed by the contract summary at the point of sale but that this was contradicted elsewhere in the consultation where it was suggested that the contract summary could be used *“to compare different offers”*.
- 5.61 Vodafone queried our proposed guidance which suggested that the contract summary should be shown to the customer prior to payment details being provided. It was concerned that this would create a poor customer experience because payment details are required for credit checking purposes.¹⁴⁸

¹⁴⁸ These comments were included in an additional submission from Vodafone dated 27 March 2020.

Our assessment of responses

- 5.62 With respect to the timing of providing the contract summary, we explain in paragraphs 5.46 to 5.58 above the different options available to providers for providing this during the sales process. In addition to the changes made to GCs C1.5 to C1.6 explained in those paragraphs, having considered stakeholder comments about the clarity of the wording “*at a time that reasonably allows them to make an informed decision*” we have now removed reference to this wording from GC C1.6. We recognise that this wording was not strictly required by Article 102(3) and was potentially unclear as to what this meant in terms of the timing for the provision of the contract summary. The key point in relation to timing for the contract summary is that the contract can only become effective after the customer has received the contract summary and agreed to enter into the contract.
- 5.63 In relation to the timing of the contract information, we note that the specific requirement in Article 102(1) is that the contract information should be provided “*before a consumer is bound by a contract*”. This aligns with equivalent wording used in the Consumer Rights Directive (Directive 2011/83/EU) and the CCRs, which also requires consumers to be provided with certain information before they are bound by a contract, and which Article 102(1) also makes clear should be provided by providers as part of the contract information required under Article 102(1).¹⁴⁹
- 5.64 The wording we proposed in GC C1.4(b) was intended to reflect the wording in recital 261 of the EECC which says that for end-users to be able to make a well-informed choice, the relevant information needs to be provided prior to the conclusion of the contract. However, having considered stakeholder comments, we recognise that using this wording specifically in reference to timing of the contract information was potentially unclear, and we have therefore amended the wording of GC C1.4 to remove the reference to “*at a time that allows the customer to make an informed decision*” while retaining the requirement in GC C1.3 that makes clear the contract information must be provided before the customer “*is bound by*” the contract. This means that the requirements regarding the timing of the provision of this information will be aligned with the existing requirements under the CCRs.
- 5.65 Providers therefore have flexibility to decide when is the most appropriate point during the sales process for the customer to be provided with their contract information, so long as they meet the requirement for it to be provided before a customer is bound by that contract.
- 5.66 As set out above, we have clarified that the contract summary needs to be provided “*Before entering into a contract*” as we consider this better reflects, and in clearer language, the requirement for the contract summary to be provided as part of the sales process, and before a customer has given their agreement to enter into the contract. While

¹⁴⁹ As noted above, Recital 258 of the EECC makes clear that the inclusion of information requirements in this Directive, which might also be required pursuant to the CCRs (which implement Directive 2011/83/EU), should not lead to duplication of the information within pre-contractual and contractual documents. Relevant information provided in accordance with Article 102 and Annex VIII are considered to fulfil the corresponding requirements pursuant to Directive 2011/83/EU and the CCRs. This means it must be provided during the sales process and before the customer is bound by the contract, consistent with the requirements of the CCRs: see regulations 9, 10 and 13.

we continue to require that contract information is provided before a customer “*is bound by*” the contract in relation to contract information (to ensure consistency with the CCRs), we consider that a customer being bound by a contract reflects the same point in time during a sales process when the customer agrees to enter into a contract.

- 5.67 In practice this means that providers could choose to provide the contract information before, or at the same time as, the contract summary. For example, for phone sales, if a provider sends the contract summary to a customer by email, they might choose to either include a link or attachment to the contract information within that same email or send it as part of a separate email sent to the customer at the same time.¹⁵⁰
- 5.68 We have made changes to our proposed guidance to reflect the above changes to the wording of the GCs and clarified our expectation of the process for supplying the contract information and summary to customers. These changes include removing the previous reference in our proposed guidance to an example of the contract summary being provided to a customer before they reach the stage of entering their payment details. We recognise that providers may need to carry out credit checks as part of the sales process, and that the guidance should allow flexibility for those credit checks to be carried out ahead of the contract summary being sent to customers where necessary.

Provision of contract information in a durable medium

- 5.69 Uswitch agreed that it would be helpful for customers to have contract information in a durable medium so that customers can refer to that information if they encounter any issues during the course of the contract.
- 5.70 BT suggested that GC C1.3 should be updated to replace the word “provide” with “*provide, make available or make accessible in a manner that is technically and practically feasible*”. BT also said that for distance sales, the GC C1.3 requirements should say that digital tools could be used to allow the information to be downloaded to a desktop or device or sent via email.¹⁵¹
- 5.71 Sky and UKCTA asked for further explanation of Ofcom’s proposed guidance at paragraph A6.9 (in the December Consultation) where we suggested that a downloadable non-personalised pdf would be an acceptable way of providing the contract information. TalkTalk set out its understanding that the contract information would contain personalised information while the contract summary would set out the key features of the specific service or package without containing any customer-specific information. Vodafone also asked if the contract summary was intended to be a bespoke summary for each customer or an off the shelf document.¹⁵²

¹⁵⁰ We discuss the format of the contract information in paragraphs 5.72 to 5.78 below.

¹⁵¹ These comments were included in an additional submission from BT dated 6 May 2020.

¹⁵² These comments were included in an additional submission from Vodafone dated 27 March 2020.

Our assessment of responses

- 5.72 Article 102(1) clearly specifies that the contract information has to be provided on a durable medium. If this is not feasible, *'an easily downloadable document'* is permitted, as long as the provider expressly draws the customer's attention to the availability of that document and the importance of downloading it. The wording of our GCs therefore reflects these requirements. As discussed above, these provisions of the EECC are subject to full harmonisation and we do not have discretion to amend this wording in line with the suggestion that the information should be made available in any manner which is technically and practically feasible.
- 5.73 The broad definition of a 'durable medium' in our GCs (which already references email as an option – see paragraph 5.75 below) means that the use of digital tools would be an option available to providers. In addition, the reference to an *"easily downloadable document"* also provides additional options for the format of the information, provided that the need to download this document is clearly drawn to the customer's attention. We have made changes to our guidance to clarify the range of options which are available to providers.
- 5.74 With respect to the queries about the reference to a *"non-personalised pdf"* in our proposed guidance, it was intended to provide an example of an *"easily downloadable document"* that could be provided where provision on a durable medium was not feasible.
- 5.75 A durable medium is defined in our GCs (and consistent with the definition of "durable medium" included in the CCRs which also uses this term) as *"paper or email or any other medium that (a) allows information to be addressed personally to the recipient"* [emphasis added]. A pdf document addressed personally to the recipient (a 'personalised pdf') that a customer can save and retain would therefore meet this definition. Note, however, that the use of the word 'personalised' does not necessarily imply that the document itself needs to be exclusive or tailored to the customer (i.e. it might include standard terms and conditions), as long as it meets the relevant requirements.
- 5.76 If providing the contract information on a durable medium is not feasible and instead a provider chooses to provide a *"downloadable document"* in line with GC C1.4, the only difference would be that this document would not be required to be personally addressed to the customer (e.g. a 'non-personalised pdf').
- 5.77 This sort of 'non-personalised' document could, for example, be an appropriate way to provide the contract information for customers purchasing pre-pay SIMs in-store, as long as providers draw the customer's attention to the information and note the importance of downloading it.
- 5.78 Given that our proposed guidance was not clear, we have amended this point so that our final guidance (see Annex 7) now makes clear the difference between a 'durable medium' and a 'downloadable document', and our expectations on providers with regard to those formats. We consider there are a range of different formats providers can use for sending customers their contract information that would satisfy the requirements of GC C1.4. Providers therefore have flexibility to consider the most appropriate format across their

different sales channels or for different types of customers. We consider this, along with the points made above (paragraphs 5.62 to 5.68) with respect to when the contract information is provided, addresses many of the concerns raised by stakeholders.

Providing the contract information and summary in accessible formats for disabled customers

- 5.79 The CCP noted that customers should be able to receive information they can easily understand and use to their advantage. It urged Ofcom to require information to be provided to customers in an accessible format, noting that accessible, accurate and understandable information for customers is key.
- 5.80 BT and Virgin Media raised concerns about providing contract information in a timely way for disabled customers given the additional time that may be needed to, for example, transcribe communications into accessible formats (a process Virgin Media said can take up to five days).¹⁵³ Virgin Media felt that this would have a disproportionately negative impact on vulnerable customers who may face disruption to their customer journey.
- 5.81 Vodafone sought clarity on what types of formats would be required to meet accessibility requirements.¹⁵⁴

Our assessment of responses

- 5.82 We agree with the CCP that it is important for customers to have the information they need in a format they can use, so that they understand what they are signing up to. Article 102(1) requires the contract information to be provided in an accessible format for disabled customers on request and we have therefore implemented this through our amendments to GC C5. We also consider that it is appropriate to extend this requirement to the contract summary, as this would ensure that any customer who needs an alternative format due to their disability has equivalent access to electronic communication services by having access to the contract summary as well as the more detailed contract information.
- 5.83 This is also consistent with the approach set out in the EECC in relation to equivalence of access for disabled customers (Article 111(1)) and the requirement that the contract summary must include the extent to which any elements of the service are designed especially for disabled customers.
- 5.84 We note the concerns raised by stakeholders about the potential delays to a customer's sales journey if a disabled customer makes a request for their contract information or contract summary to be provided in an accessible format. However, this requirement is only triggered by a customer request. It is therefore likely that, where a customer does make a request, they consider that receiving this information in an accessible format is important to help them make an informed decision and therefore they are prepared to wait to receive that information. We consider that providing this option to customers that

¹⁵³ These comments were included in an additional submission from BT dated 6 May 2020.

¹⁵⁴ These comments were included in an additional submission from Vodafone dated 27 March 2020.

request it is an important part of helping to ensure that disabled customers have equivalent access to electronic communication services.

- 5.85 In relation to Vodafone’s query about how providers should meet the accessibility requirements for contract information and contract summary, we expect the approach providers take to meeting these requirements should be the same as the approach for providing communications in accessible formats as set out in section 12 of this statement.

Changes to the contract information and contract summary

- 5.86 A number of providers raised concerns about the proposal that the contract information and contract summary could not be changed without the customer’s agreement.
- 5.87 BT suggested that the provision was unwieldy because it appeared to mean that customers would need to be issued with new contract information and a new contract summary for any minor change when deciding on a deal. It said this would then create confusion about which documents form part of the customer’s contract if they did decide to purchase a service. Virgin Media also raised similar concerns. BT suggested that a lower impact option might be to consider a ‘save this page’ or ‘get a quote’ button being made available to customers who wanted to compare deals, so that not all customers would have to be impacted by the extra information.
- 5.88 With respect to when a contract is already in place, Vodafone asked whether a customer upgrading their package, making a change to that package mid-contract or a provider making a change to its terms and conditions (such as the fair use policy) would require the provider to get the customer’s explicit agreement to each change and re-issue the contract summary.¹⁵⁵ Virgin Media sought clarity on how these provisions would apply to re-contracting customers. Sky was concerned about the impact on customers if they had to provide consent to each minor change to their contract.

Our assessment of responses

- 5.89 Article 102(4) makes clear that the contract information and summary shall become an integral part of the contract, and that the express agreement of both parties is required to any changes made to them. The requirement in GC C1.7 therefore reflects this.
- 5.90 In terms of whether a new set of contract information and/or new contract summary needs to be provided if the customer decides to opt for a different deal during the sales process when a customer is choosing which package to take, providers will have to decide the appropriate point in time to issue the contract information and contract summary to customers during that process, in accordance with the requirements of GCs C1.3 to C1.6. Our expectations in relation to that process and the timing are discussed in paragraphs 5.62 to 5.68 above and our guidance (in Annex 7). Providers may want to ensure that the customer is clear about the services they want to purchase before sending them this information.

¹⁵⁵ These comments were included in an additional submission from Vodafone dated 27 March 2020.

5.91 For changes that occur after the customer has signed up to a contract, if such changes result in the customer entering into a new contract (e.g. such as where a customer upgrades and takes a new package as part of that upgrade), or where a customer is re-contracting, then the provider would need to provide a contract summary and set of contract information for that new contract at the relevant point in time as discussed above. However, if the provider chooses to modify the terms and conditions of the customer's existing contract (i.e. without the customer entering into a new contract), we would expect providers to seek the customer's agreement to these changes by complying with GC C1.14 and C1.15 (and associated guidance) on notifying customers of mid-contract changes and providing a right to exit where applicable (in accordance with Article 105(4)). Section 8 of this statement sets out our decision on GCs C1.14 and C1.15 and our guidance in Annex 10 provides further information on how we would expect providers to apply these rules in practice.

Scope of the provisions

5.92 Stakeholders raised a number of different points about the scope of the contract information and contract summary provisions, including:

- a) inclusion of pre-pay mobile services;
- b) how they apply to resellers; and
- c) inclusion of business customers.

5.93 We set out, and respond to, these comments below.

Inclusion of pre-pay mobile services

5.94 A number of providers noted that the sales process for pre-pay mobile services is often significantly different to other communications services. In particular, they said customers often purchase these services in-store (often from a third-party retailer) without interacting with a sales agent. O2 said that pre-pay SIMs are "*obtainable from a variety of locations, including supermarkets, local convenience stores and online. Customers are not required to register personal details for a PAYG service and can purchase it without needing to speak to customer service staff prior to purchase*". Providers therefore raised concerns that this lack of interaction with a sales agent would make it very difficult for them to get explicit customer agreement to the terms of the contract summary.

5.95 Three said that the contract summary template was not relevant when purchasing pre-paid services where there is no fixed commitment period or automatic renewal. Three therefore asked for the obligation to provide a contract summary template for such services to be removed. O2 and [redacted] also said pre-pay mobile services should be removed from the scope of the requirements.

5.96 Some providers said that the absence of an agent involved in these sales also created practical difficulties in giving customers the contract information on a durable medium, and the contract summary in the specified format. For example, O2 said it would not be

feasible to provide the required information in the pre-pay SIM packaging because the packaging is limited in space and already contains a large volume of information. O2 therefore envisaged that such sales might have to be limited to their own stores to ensure the requirements are met. Three, however, suggested that digital solutions might be possible e.g. having QR codes or using a link to a welcome website.

Our assessment of responses

- 5.97 We recognise the concerns providers have raised about the practical difficulties that may be involved in providing the required contract information and contract summary documents for pre-pay mobile customers purchasing services in-store via a third-party retailer. However, Article 102 is clear that the contract information and summary provisions apply to all providers of public electronic communications services (with the exception of machine-to-machine transmission services), including pre-pay mobile services. As set out above, the EECC sets out mandatory requirements that we are required to implement.
- 5.98 However, we consider that the amendments and clarifications to our proposed GCs and guidance, set out above in paragraphs 5.37 to 5.78 in relation to how and when the contract information and summary are provided will help address some of the practical concerns stakeholders have raised about the application to these services.
- 5.99 In particular, we have made clarifications to our guidance on the format in which the contract information can be provided (see paragraphs 5.72 to 5.78 above), and we have amended the contract summary requirements to make clear that the customer does not have to provide explicit agreement to the contract summary document itself (see paragraphs 5.38 to 5.58). These changes mean there are different options available to providers as to how they comply with these requirements for customers purchasing pre-pay mobile services in-store via third party retailer. For example:
- for the contract information they could use the option of providing an “*easily downloadable document*” and provide a link or QR code to that document on or inside the packaging of the pre-pay SIM. Note that in this example, the link to this information would need to be prominently drawn to the customer’s attention with a clear message advising them that they need to download the document for their future records (see paragraphs A7.5 of our guidance); and
 - the contract summary itself could either be set out on the packaging of the pre-pay SIM, noting that Recital (6) of the Contract Summary Implementing Regulation provides for some flexibility to scale down the contract summary document to more easily fit in pre-pay packaging. The summary could also be made available in-store where feasible.

How the provisions apply to resellers

- 5.100 O2 and Vodafone asked who would be responsible for providing the contract information and contract summary where the customer is purchasing their service from a third party or

reseller.¹⁵⁶ In particular, one example was given of a reseller who supplies a handset bundled with airtime from a provider. O2 suggested that if the documents could only be sent by the provider supplying the communications service, rather than the reseller, this could have competition implications because the provider would have to include information about all elements of the bundle which might include sensitive pricing information. It asked Ofcom to clarify whether resellers could deliver the information on a provider's behalf.

Our assessment of responses

- 5.101 The requirement to provide the contract information and contract summary will apply to the provider of the relevant electronic communications service. Where a reseller is involved, the question of who is responsible for providing the contract information and contract summary will depend on the specifics of the contractual arrangements and who is providing the service to the customer. However, whilst the responsibility to comply with these requirements lies with the provider of the communications service, there is nothing in the GCs that prevents a provider from entering into a commercial arrangement with a third party to deliver some or all of the contract information and contract summary on their behalf to the end customer.

Inclusion of business customers

- 5.102 The Federation of Communication Services (FCS) and Focus Group believed the contract information and contract summary provisions would not be appropriate for, or of particular value to, business customers and would be onerous to provide. FCS' view was that these provisions should be restricted to residential customers, or at most microenterprises. Verastar said that the requirements in the GCs exceeded the information requirements of the EECC and imposed stricter requirements on operators in the business to business market. Virgin Media also asked for guidance on how businesses customers could waive their rights to these provisions.

Our assessment of responses

- 5.103 Article 102(2) makes clear that the contract information and summary provisions apply to microenterprises, small enterprises and not for profit organisations unless they waive their right to these protections. We are therefore required to extend it to these groups of customers. However, following our July Consultation, we have revised our definitions of microenterprises, small enterprises and not for profit customers, as set out in section 4 of this statement.
- 5.104 In addition, providers have the option to ask such customers to expressly agree to waive their rights under these provisions. In seeking such a waiver, providers should ensure that the relevant business customers have been made aware of their rights as part of the sales

¹⁵⁶ These comments were included in an additional submission from O2 dated 14 August 2020, and Vodafone's additional submission dated 27 March 2020.

process. We would also expect any waiver of rights to be clearly and prominently referenced in any pre-contractual information that is provided to these customers, such that it is clear that the customer has given their express consent to such a waiver and made an informed decision prior to entering into a contract.

Information required in the Annex to GC C1

5.105 Stakeholders raised concerns about the implications of having to meet particular information requirements set out in the Annex to GC C1. We set out and respond to these concerns below, in particular covering the following areas:

- a) inclusion of VAT in prices;
- b) arrangements for provisioning of a service;
- c) provider contact details; and
- d) complaints handling and dispute resolution information.

Including VAT in prices

5.106 A number of business providers and representatives raised concerns that our proposed wording in the GCs suggested that VAT had to be included in the price set out in the contract information, including for micro- and small enterprise customers. FCS said such an approach would introduce unnecessary complexity and cost and Verastar said it was inconsistent with the way business customers are billed by other utilities, which would create confusion. Gamma raised similar concerns and said the proposal did not appear to reflect the requirements in the EECC. Gamma asked for confirmation that this requirement would only apply to residential customers.

Our assessment of responses

5.107 We agree with stakeholders' comments that it should not be a requirement for prices to be stated inclusive of VAT for business customers. This may not be an expectation for business customers and they may prefer to receive the information about price exclusive of VAT. We have amended the requirement in the Annex to GC C1 to clarify that if the relevant customer is not a residential customer, prices may be stated exclusive of VAT.

5.108 The template set out in the Contract Summary Implementing Regulation also includes a reference specifying that the recurring price should be shown "*inclusive of taxes*". In line with the approach set out above for the contract information, we would not require this price to be shown inclusive of VAT for business customers and therefore we have also added a clarification to our guidance (see Annex 7, paragraph A7.32(c)) to make this clear.

Arrangements for provisioning of the service

5.109 Three providers raised concerns about our proposed requirement for the contract information to include the date for provision of the service. Hyperoptic explained that providers that use Physical Infrastructure Access to deliver services were often unable to

provide a definite provisioning date as they relied on network capacity information from third parties.

- 5.110 Sky noted that the service activation date may not be available at the time when the contractual information needs to be provided to the customer, for example, where confirmation by Openreach is required.
- 5.111 Virgin Media said it was unclear whether an installation appointment should be booked when the contract summary is issued or after the customer expressly agrees to the contract summary, noting that this latter case could be some time after the information is provided, leading to delays in installation.

Our assessment of responses

- 5.112 We consider that the date when the customer can expect their service to start is an important piece of information that a customer needs in order to make an informed decision about taking up (or switching to) a new service. The timing provision included in Table A, point (4)(b) of the Annex to GC C1 in our December Consultation was intended to reflect the requirements of both Article 102(1) relating to the contract information and Articles 106(1) and 106(5) relating to the timing of a switch or number port.
- 5.113 However, we have considered stakeholder comments and reviewed the wording of our proposed requirement against the requirements of the EECC, the provisions in the CCRs and the existing requirements for switching certain services set out in GC C7.4. The CCRs require a customer to be given information on “*the time by which the trader undertakes to deliver the goods or to perform the services*”.¹⁵⁷ The existing wording in GC C7 refers to providing customers with information about the likely date the service will be provided. We have therefore amended the date requirement in the Annex to GC C1 to align with these existing requirements so that it now specifies that providers must give information on the arrangements for the provision of the service, including “*as accurately as possible, the likely date of provision of the service(s)*”.¹⁵⁸
- 5.114 We have also provided additional clarification in our guidance (see Annex 7, paragraphs A7.20 and A7.21) on how we expect providers to set out this information to customers. In particular, the guidance makes clear our expectation that, in most cases, providers should be able to include an exact date for the start of the service (or the migration date for switching customers) in the customer’s contract information.¹⁵⁹ If providers are unable to include an exact date, there should be objective technical or practical reasons for this, and rather than an exact date they should instead set out, as accurately as possible, the latest

¹⁵⁷ The relevant provisions in the CCRs are in Schedule 1(e) and Schedule 2(j).

¹⁵⁸ In relation to Hyperoptic’s particular concern about the ability of users of physical infrastructure access (PIA) to provide a provisioning date, we note that the SMP conditions set out in our [Physical Infrastructure Market Review Statement](#), published on 28 June 2019, should help to address this issue. In addition, there is time available during the implementation period for the provisions set out in this statement for industry to agree PIA information requirements relating to spare capacity and consider a means to assess spare capacity across Openreach’s network.

¹⁵⁹ When providing information about the migration date, providers also need to comply with the requirements of GC C7.3, including ensuring that this date is, where technically possible, one requested by the customer or, where not the date requested by the customer, it is as soon as possible.

date by which they undertake to deliver the customer's service. In these circumstances, we would expect customers to be subsequently informed, prior to the provision of their services, of the exact date or migration date on which their service will be provided.

- 5.115 In relation to Virgin Media's point, as explained in paragraph 5.52 above, where a customer is not able to receive the contract summary as part of their initial interaction with a provider, providers will need a mechanism to obtain confirmation of the customer's consent to proceed after the customer has received the contract summary. It may therefore be appropriate for an installation date to be booked as part of that mechanism, where it is not feasible or practical to include this as part of the contract summary.

Contact information

- 5.116 Microsoft noted that our proposed wording in the Annex to GC C1 suggested that, as part of setting out their contact details, all providers had to include a telephone number, whereas it considered this was not required under the EECC. It said the wording should therefore be updated so that providers only had to include a telephone number "*where available*".

Our assessment of responses

- 5.117 We agree with Microsoft's point and note this is consistent with the wording in Article 102(1), which requires the provision of the information referred to in the Consumer Rights Directive (Directive 2011/83/EU), i.e. the information which must be provided in accordance with the CCRs. The CCRs only require the provision of a telephone number of the provider in relation to on-premises contracts,¹⁶⁰ whereas they make clear that, in relation to off-premises and distance contracts, this information only needs to be provided "*where available*".¹⁶¹ We have therefore amended the wording in the Annex to GC C1 to make clear that providers only need to include a telephone number as part of their contact details "*where available*".
- 5.118 We have also clarified that the requirement to state the geographical address of the place of business and where customers can address complaints in relation to distance and off-premises contracts only applies to the extent this address is different to the registered address of the provider.

Complaints handling and dispute resolution information

- 5.119 Verastar said that the proposed requirement to include information on complaint handling procedures, alternative dispute resolution ('ADR') schemes and the Ofcom Approved Complaints Code exceeded the information requirements of the EECC and imposed stricter requirements on providers who operate off-premises or in the business-to-business market. Sky also suggested that the information about complaints handling and dispute resolution was unlikely to be of interest to customers at the point of purchase.

¹⁶⁰ CCRs, Schedule 1(b).

¹⁶¹ CCRs, Schedule 2(c).

Our assessment of responses

- 5.120 The requirement to provide information about complaints handling and access to ADR derives from the CCRs, which requires that off-premises and distance contracts (where applicable) provide information about *“the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it”*.¹⁶² Including this as part of the contract information is therefore required under Article 102(1).
- 5.121 The requirement to provide the information in the Annex to GC C1 will apply to residential customers, as well as microenterprise or small enterprise and not for profit customers (unless these customers explicitly choose to waive their rights). Following our July Consultation, we have revised our definitions of microenterprise or small enterprise customers and not for profit customers, as set out in section 4 of this statement. These changes mean that the scope of these definitions is aligned with the application of our ADR provisions and Ofcom’s Approved Complaints Code (as set out in GC C4),¹⁶³ and therefore we consider this information will be potentially relevant for microenterprise or small enterprise and not for profit customers.

Guidance on the information required in the Annex to GC C1

- 5.122 Stakeholders also had concerns about some of our proposed guidance on how particular elements of the information requirements in the Annex to GC C1 should be met. We set out and respond to these concerns below, in particular covering the following areas:
- a) core subscription prices (including inflation-based increases and the price after any commitment period);
 - b) price of individual elements of a bundle; and
 - c) information about the effect of non-coterminous linked contracts.

Core subscription prices

- 5.123 Ombudsman Services welcomed our proposed guidance to require providers to include an example of how an inflation-based increase would affect a customer’s core subscription price. It noted that it sometimes received complaints from customers who were not aware that their contract had a built-in price increase. Uswitch also said the way in which some providers currently present core subscription prices can create customer confusion and supported a worked example being provided of the price impact of inflation, albeit it said that it did not expect this to resolve the concern about such price increases. The CCP said that providers should clearly explain any terms and conditions that could be perceived as, but would not result in, a right to exit the contract e.g. increases linked to inflation.

¹⁶² CCRs, Schedule 2(x).

¹⁶³ As explained in section 15, we are also proposing to amend C4 so that it would apply to consumers, microenterprise and small enterprise customers and not for profit customers for clarity and consistency.

- 5.124 Sky felt that Ofcom’s guidance on inflation was an extension to the information required under the GCs and it was concerned that this increased volume of information might result in customers choosing not to engage with it. Vodafone felt that the guidance on inflation extended beyond the proposed GC requirements, as did Verastar who further noted that micro- and small enterprise customers would already be aware of the impact of CPI and RPI.
- 5.125 Three agreed that showing how inflation might impact on the customer’s recurring price would be helpful but asked for clarification that we were simply asking providers to include worked examples of the type of price rise a customer might reasonably expect during the lifetime of their contract.
- 5.126 Sky said that information on the expected price a customer might pay at the end of their commitment period was likely to confuse customers given it was unlikely to be relevant or accurate by the time of the actual expiry of the minimum term. Three also asked for clarification as to how it should provide this information – it understood it should be the provider’s best estimate of the price at the end of the contract, but that providers would not be held to that price.
- 5.127 Virgin Media was supportive of the objective of giving customers clear information on how they might be affected by price changes but noted that it would require time to introduce.

Our assessment of responses

- 5.128 We note that a number of stakeholders agreed with our guidance on giving customers clearer information on the likely impact of inflation-related price increases on the core subscription price over the course of the customer’s contract.
- 5.129 In relation to the issues raised by Sky, Vodafone and Verastar, Annex VIII of the EECC, requires providers, as part of the contract information, to show the recurring charge for the communications service. This requirement has been included in Annex 1 to GC C1 where it is described as the ‘Core Subscription Price’. The core subscription price is one of the most important aspects of the information which is presented to customers before they enter into a contract, because it represents the sum that the customer is required to pay at regular intervals for their service throughout the duration of their contract. For customers to make an informed decision about the service they are buying it is therefore essential that they have a clear understanding of what their core subscription price will be throughout the contract.
- 5.130 As noted in our December Consultation, we have seen evidence that the way in which some providers present their core subscription price(s) can create customer confusion, particularly where there are changes to those prices during the lifetime of the contract. We also noted in that consultation that we regularly receive complaints from customers about providers increasing their subscription prices during the commitment period.¹⁶⁴

¹⁶⁴ See paragraph 4.47 of our December Consultation.

- 5.131 Therefore, we consider that including an example in our guidance of any inflation-based increases to the core subscription price as part of the contract information is important to ensure this price is clear and comprehensible to customers. This would also give customers a durable and transparent record of the prices they are likely to pay which they can refer to throughout the lifetime of the contract with their provider, in accordance with the requirements of Article 102(1).¹⁶⁵ Given our revised definition of micro- and small enterprise customers, we consider that they will also benefit from having clear information about the prices they will pay throughout the duration of their contract.
- 5.132 In response to Three's comment on inflation, we confirm our guidance is asking providers to give a worked example of how inflation-based increases are likely to affect a customer's core subscription price. We have slightly clarified the wording in the guidance to make clear that this is what is intended.
- 5.133 With respect to the comments about the expected price at the end of a commitment period, for the same reasons as set out in paragraph 5.131 above, the core subscription price represents the recurring price the customer is required to pay throughout the duration of the contract. It is therefore important that this includes the price both during, and after any commitment period. On Three's query, our guidance sets out that the price after the commitment period can be the 'expected' price, or, as is the case for many broadband services, the relevant 'list' price included in the customer's offer.¹⁶⁶
- 5.134 We respond to Virgin Media's comment on the time it will take to introduce in the section on implementation below.

Price for individual elements of a bundle

- 5.135 Which? was supportive of our proposals that providers should make clear to customers the price of individual aspects of a bundle. Virgin Media, however, asked for further guidance on whether Ofcom expects providers to set out the 'standalone' prices for the bundle elements or to (attempt to) apportion the costs of each element against the bundle price.

Our assessment of responses

- 5.136 The information requirements set out in Annex to GC C1 (Table B, point (3)(a)) reflect the requirement in Annex VIII of the EECC¹⁶⁷ that the contract information should include, for bundled services: "*the price of the individual elements of the bundle to the extent that they are also marketed separately*".
- 5.137 We provide further explanation in our guidance (see Annex 7, paragraphs A7.22 to A7.25) that a provider should set out these prices where it makes individual elements of a particular bundle available for separate, stand-alone purchase. The guidance says that a provider need only set out these prices for those parts of the bundle it sells separately and that if the provider does not sell individual elements of the bundle on a stand-alone basis,

¹⁶⁵ Note that we only require this to be provided in relation to the expected price at the time they enter into the contract.

¹⁶⁶ See paragraph A7.19 of our guidance.

¹⁶⁷ B.I.(2)(v).

it does not need to set out the price of those particular elements. The guidance also provides an example of how this would apply to bundled mobile contracts, where we note we would expect a provider to set out the total price of the handset if it were to be purchased separately; and the monthly price of the airtime as if it was purchased as a SIM-only deal (using the closest equivalent SIM-only deal).

Information about the effect of non-coterminous linked contracts

- 5.138 Sky raised concerns that our proposed guidance to require providers to explain the effect of non-coterminous linked contracts, including what happens if the customer cancels one contract but not the other, would result in copious information being given to customers to deal with what could be a minor difference in contract end dates.

Our assessment of responses

- 5.139 We explained in the December Consultation that customers on non-coterminous linked contracts may often face unexpected costs when one of their services reaches the end of their commitment period, and that the complexity of these types of contract can make it harder to compare deals. We discuss our concerns, and the guidance we are implementing, in relation to these contracts in section 11. We remain of the view that it is important that customers are given clear information about these types of bundles so that they are better informed when entering into a contract.
- 5.140 In response to Sky's comment, our guidance relates to the details that are included in the customer's contract information only, and we would not expect this level of detail to be included in the contract summary.¹⁶⁸ We also consider that this information is particularly important in circumstances where there is a material difference in the end dates of the commitment periods. We have clarified this in our guidance.¹⁶⁹

Information required in the contract summary

- 5.141 Some providers questioned whether there was any flexibility in the format that could be used for the contract summary. BT said that Ofcom should allow flexibility to ensure that providers can communicate with their customers in the most effective way, using their current systems. BT thought that mandating a standardised approach placed a disproportionate burden on providers. Sky made a similar point and suggested that providers know how best to communicate with their customers to drive engagement and should be given the flexibility to decide how to do this, rather than being required to use a generic template.
- 5.142 Virgin Media noted that the contract summary template was very basic and was accompanied by limited guidance. In its view, this meant Ofcom had a significant amount of discretion to determine what should be included and how it should be presented. Virgin

¹⁶⁸ However, we note that the Contract Summary Implementing Regulation makes clear that information on duration of the contracts and termination, including in relation to bundles, must be included in the contract summary.

¹⁶⁹ See paragraph A7.27 of our guidance

Media noted that providers had been able to use their own method of presentation for end-of-contract notifications.

- 5.143 Vodafone also raised a number of specific questions about the information required in the contract summary (as set out in the Commission’s Contract Summary Implementing Regulation), including:¹⁷⁰
- a) whether add-ons should be included in the contract summary and particularly in the price information section;
 - b) how mobile speed information should be provided; and
 - c) whether we would be requiring anything specific to be included in the ‘Other relevant information’ section of the template.
- 5.144 On mobile internet speed information, BT said that the contract summary may not be appropriate for providing this information.

Our assessment of responses

- 5.145 The Commission’s Contract Summary Implementing Regulation sets out a detailed set of requirements for the presentation of the contract summary, including the ordering and type of information that should be included. In complying with these requirements, we would expect providers to consider in particular:
- a) the extent to which the information required is relevant to their customers;
 - b) what elements of that information are key to a customer’s understanding of the contract and their decision about whether to sign-up to the contract; and
 - c) how they can present those key elements in clear language that is understandable to a UK customer.
- 5.146 In assessing compliance with the Implementing Regulation, and in particular whether to take enforcement action, we will consider the extent to which a provider has taken account of these factors, so as to ensure that the information presented in the contract summary achieves the objective of helping the customer to make an informed decision about the services they are buying. We have updated our guidance to make clear that this is the approach we will take. Where providers diverge from the presentational specifications of the template in the Implementing Regulation, we would expect them to have an objective and reasonable justification for doing so, based on the factors outlined above and in our guidance.
- 5.147 On the question about whether add-ons should be included in the price, this will depend on the specific terms and conditions of the contract the customer is signing up to. We have clarified in our guidance that where the Contract Summary Implementing Regulation refers to a “*recurring price*”, providers should include the customer’s core subscription price (as

¹⁷⁰ These comments were included in an additional submission from Vodafone dated 27 March 2020.

defined in our GCs). In considering whether any optional add-ons should also be shown, we consider that an important factor in this respect will be whether the add-on is paid for with a recurring payment appearing automatically on a customer's bill each month. We would expect such add-ons that the customer has chosen to include in the package they are signing up to, to be included as part of the price information in the contract summary.

- 5.148 However, we might not expect the inclusion of, for example, all consumption-related charges that the customer only pays for when using the optional service covered by the add-on. The Contract Summary Implementing Regulation makes clear that information about tariffs for additional services which are not part of the recurring price can be indicated as being available separately (for example via a link to a webpage with detailed tariff information).¹⁷¹
- 5.149 In relation to the provision of mobile speed information, the Commission Implementing Regulation is clear that the contract summary needs to include information consistent with the requirements of the Open Internet Regulation. We would therefore expect providers to set out information in the contract summary in a way which is consistent with the existing mobile speeds information they provide to customers as part of meeting their obligations under the Open Internet Regulation. In addition, we would also expect providers to take account of the guidance discussed above in paragraphs 5.145 and 5.146, i.e. ensuring that the information in the summary is relevant, understandable and clear. As part of setting out this mobile speeds information, it might be helpful to provide a link, for example, to the provider's coverage checker.
- 5.150 In relation to the 'other relevant information' section of the template, at this stage we are not requiring any specific information to be included here. However, as set out in paragraphs 5.112 to 5.115, we consider that the date (or latest date) by which the customer can expect their service to start is an important piece of information in ensuring the customer can make an informed decision about taking up (or switching to) a new service. We therefore consider it would be good practice for providers to draw this to the customer's attention by including it in the contract summary as part of the 'other relevant information' section. We will consider further whether there is need for a specific requirement for this information to be included in the contract summary and, if so, consult on any changes alongside the forthcoming consultation on a new fixed switching process for residential customers.¹⁷²

Our decision on the contract information and contract summary requirements

- 5.151 We have decided to proceed with implementing the proposals set out in our December Consultation, with the following amendments:

¹⁷¹ See recital 14 of the Implementing Regulation.

¹⁷² See section 9 paragraph 9.5

- we have removed GC C1.4(b) which required the contract information to be provided *“at a time that reasonably allows the Relevant Customer to make an informed decision”*;
- we have amended GC C1.5 to confirm that the contract summary should be provided *“Before entering into a contract...”*;
- we have updated the definition of ‘Contract Summary’ used in GC C1.5 to refer to the finalised Commission Contract Summary Implementing Regulation;
- we have amended the wording in GC C1.6 to remove the requirement that the Contract Summary must be provided at a *“time that reasonably allows them to make an informed decision”*. We have also reworded this condition so that it reads: *“The contract shall only become effective once the **Relevant Customer** has given their **Express Consent** to enter into the contract after receiving the **Contract Summary**”*.

5.152 We have also made some changes to the wording in the Annex to GC C1, specifically amending:

- Table A, point (1)(b) to note that a provider’s telephone number should be provided *“where available”*;
- Table A, point (1)(f) to note that the geographical address should be provided *“if different to the registered address”*
- Table A, point (3)(a) to note that *“If the **Relevant Customer** is not a **Consumer**, prices may be stated exclusive of VAT”*. and
- Table A, point (4)(b) to note that the information must include *“the arrangements for the provision of the **Relevant Electronic Communications Service(s)**, including, as accurately as possible, the likely date of provision of the service(s)”*.
- Table B, point (1)(d) to accurately reflect Article 4(1)(c) of the Open Internet Regulation so that it now states: *“a clear and comprehensible explanation of how any **Specialised Services** to which the **Relevant Customer** subscribes might in practice have an impact on the **Internet Access Services** provided to them”*.¹⁷³

5.153 Our amendments to the GCs are set out in the revised GCs C1.3 to C1.7 and C5.16 in Annex 5. The scope of these requirements is set out in the revised GC C1.1(a) and (f).¹⁷⁴

5.154 We have also made changes to our proposed guidance accompanying these requirements. Our final guidance (in Annex 7):

- provides more information on how providers can comply with the durable medium requirements for the contract information;

¹⁷³ In our December Consultation, this requirement incorrectly referenced ‘Internet Access Services’ where it should have referenced ‘Specialised Services’. ‘Specialised Services’ is defined in the GCs as: *“a service other than an Internet Access Service which is optimised for specific content, applications or service, or a combination thereof”* – this is based on Article 3(5) of the Open Internet Regulation and the [BEREC guidelines](#).

¹⁷⁴ As explained earlier in this section, in our December Consultation, our proposed draft GC C1.1(f) had an error in that it did not include an explicit reference GCs C1.5 to C1.7 (the contract summary GCs). Article 107(1), and section 4 of the December Consultation where we set out those provisions, made clear that the contract summary requirements do extend to bundles and we have therefore corrected this reference in the updated GC wording.

- reflects the changes we have made, and the additional clarifications discussed in this section, with regard to the timing requirements for providing the contract information and contract summary;
- provides further information on how we expect providers to comply with the requirement to provide the likely date of service provision;
- retains the reference to handset locking because the ban coming into effect after December 2021 only applies to residential customers so the guidance is still relevant for business customers; and
- provides additional clarification on the information included in, and format of, the contract summary, and our approach to enforcement of the Contract Summary Implementing Regulation.

Implementation

Our December proposals

- 5.155 We proposed that all requirements, and guidance, in relation to the provision of information at the point of sale and in contracts should apply to any new contracts entered into from 21 December 2020.

Consultation responses

- 5.156 As discussed in section 3, many providers raised concerns with the deadline of 21 December 2020 that we proposed in our December Consultation for implementing all the proposed changes to our regulatory rules.
- 5.157 A number of providers specifically highlighted that the requirements to provide contract information and the contract summary would require considerable systems and process development, including revising sales scripts and retraining staff. Post Office noted that the changes being proposed were not just about providing additional contract information but also required the acceptance of that information and implementation would mean that the sales process had to be changed. Virgin Media noted the burden on providers from the scale and scope of information that providers would be required to provide, and the logistics of coordinating dissemination of that information across numerous sales channels, in numerous formats.
- 5.158 [redacted], BT, O2, Post Office, Tesco Mobile and Virgin Media expressed concern about a 21 December 2020 implementation date and proposed additional time for implementation of the contract information and summary requirements. O2 said it would need between [redacted], Tesco Mobile said it would need 18 months, and BT said it would require 24 months from publication of the final statement.

Our assessment of responses and decision

- 5.159 Having considered stakeholder comments, we have decided to give providers 18 months from the date of our final notification containing the revised GCs to implement the

contract information and contract summary provisions, i.e. until June 2022. As discussed in paragraph 5.36, this is because we recognise that providers will need to make a number of changes to their sales processes and systems to implement these requirements. Given that the changes needed may be significant, it is important that providers have sufficient time to get them right and we consider 12 months is unlikely to be long enough.

- 5.160 We are also mindful of the potential interaction with the switching provisions and changes we are making to implement the requirements in Article 106. This longer implementation period may therefore provide an opportunity for providers to take account of any changes to their sales processes and systems required by the implementation of the contract information and contract summary provisions alongside the broader changes needed to implement the switching provisions.
- 5.161 However, a number of requirements set out in the Annex to GC C1 relate specifically to the new switching rules which are being put in place through the changes being made to GC C7. As discussed further in section 9 of this document, we are giving providers 24 months to implement these changes. We therefore consider it to be appropriate for the requirements to provide the following information about switching in the Annex to GC C1 to come into effect at the same time as the changes to the switching rules set out in GC C7:
- a) Table A, point 4(c): an explanation that the customer may make use of the processes set out in GC C7.4(a) to transfer their existing services or bundle;
 - b) Table A, point 5(e): information on the right to a refund of any remaining credit in relation to prepaid services in the event of switching providers in accordance with GC C7.7;
 - c) Table A, point 7(b): information on the right to compensation for failure to comply with the requirements of GC C7 on switching and number portability, including how such compensation can be accessed and how it will be paid;
 - d) Table D: the additional switching information requirements for gaining providers as set out in GC C7.11.
- 5.162 Providers will have 24 months from the date of our final notification containing the revised GCs to comply with the above requirements, i.e. until December 2022. In the period between June 2022 and December 2022, providers will have to continue to provide switching information as currently required under GC C7.
- 5.163 The existing GC C1.2 in relation to contract requirements (as renumbered) will also stay in force until June 2022 when the new contract information and contract summary provisions come into effect. We explain when modifications to GC C1 will come into effect in the period between December 2021 and December 2022, and how GC C1 will therefore apply at relevant points in time, in Table 2, Part B of Annex 5.

6. Helping customers manage their usage, publication of information and provision of data to third parties

6.1 The EECC includes a number of measures to help ensure customers have access to clear information about communications services. In section 5, we set out how we are implementing the EECC requirements in relation to contract information. In this section we cover the requirements for providers to:

- a) help customers manage their use of communications services (Articles 102(5) and (6)). We have decided to implement the changes largely as proposed in our December Consultation, which was to include a requirement that billing information must be “up-to-date” and to introduce a new requirement that providers notify customers when a service included in their tariff plan has been used up. We have included a minor amendment to the drafting of the new GC C3.14 to clarify that a notification only has to include information about usage charges the customer “will incur” if they continue to use the relevant service.
- b) publish certain information (Article 103(1)). We have decided to amend and extend the current list of information that providers must publish and amend the rules on how they should do so, as proposed in our December Consultation;
- c) publish quality of service information (Article 104). We have decided not to introduce any new requirements at this time, as proposed in our December Consultation; and
- d) provide certain data to third parties for the purpose of making available independent comparison tools (Article 103(2) and 103(3)). We have decided to implement the changes as proposed in our December Consultation.

6.2 Article 103 also contains requirements to ensure that there is at least one independent comparison tool to enable customers to compare communications services. Our decision on implementing these requirements is set out in a separate statement on our voluntary accreditation scheme for digital comparison tools.¹⁷⁵

¹⁷⁵ Ofcom, October 2020. [Digital comparison tools for telephone, broadband and pay TV: Changes to Ofcom’s voluntary accreditation scheme](#)

Helping customers manage their use of communications services

EECC requirement

- 6.3 Article 102(5) and 102(6) are intended to help customers manage their use of, and spend on, communications services that are billed on the basis of time or volume (as opposed to where a customer pays a fixed amount for unlimited use of a service).¹⁷⁶
- 6.4 Specifically, Article 102(5) requires providers to offer residential customers a means of monitoring and controlling their use of such services. As part of this, providers need to give customers timely information on how much of the service(s) in the customer's tariff plan they have used, and to notify these customers when a service allowance included in their tariff plan has been fully used up. Under Article 102(2), these requirements also apply to microenterprise, small enterprise and not-for-profit customers, unless they explicitly agree to waive all or part of the provision.
- 6.5 Article 102(6) enables Ofcom to require providers to give customers additional information on their consumption level, and to set a consumption limit (which could be financial or volume-related) that would prevent further use of services in excess of that limit.¹⁷⁷
- 6.6 These provisions apply to internet access services (IAS) or interpersonal communications services (ICS)¹⁷⁸ that are billed on the basis of time or volume.

Our December proposals

- 6.7 Under current GC C3.7, providers already have to give customers access to adequate billing information so that they can monitor their usage and expenditure. To implement the requirements of the EECC, we proposed the following two changes:
- amending existing GC C3.7 to include a requirement that billing information must be “up-to-date”; and
 - introducing a new requirement to ensure that residential customers, as well as microenterprise, small enterprise and not-for-profit customers are notified when a service included in their tariff plan is fully used up.¹⁷⁹ This would mean that, for example, a mobile customer with an allowance of texts, minutes and data included in their tariff plan would receive a notification when they used up their allowance for any one of these services. We also:
 - proposed that this notification should include information on the charges customers would pay if they went on to use those services outside of their tariff plan, so that customers could understand the implications of continuing to use

¹⁷⁶ Recital 266, EECC.

¹⁷⁷ The requirements under Article 102(6) are discretionary and therefore Ofcom is not required to implement them.

¹⁷⁸ This would include NIICS as well as NBICS. However, as explained in section 4 the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present. We therefore will not be applying the requirements in this section to NIICS providers.

¹⁷⁹ In line with the requirement in Article 102(5).

these services once their allowance was used up. This was to help them avoid unexpected charges. As the purpose of Article 102(5) is to help customers manage their spend on communications services, we considered that giving customers information on the charges they would pay if they went on to use those services outside of their tariff plan was important to give full effect to this provision.

- said that we would expect that, for most customers, the notification would be sent by text for mobile services and by either text or email for broadband services. The information on charges that apply if customers continue to use their services could be included as a link in the text or email.

6.8 We did not propose to introduce any further requirements under Article 102(6) to give customers additional information on their consumption level or to set consumption limits. This was in light of the:

- a) existing requirement on UK mobile providers to let customers set bill limits, if they wish to do so.¹⁸⁰ These are caps on a customer's bill above which the customer cannot be charged for provision of the service. Mobile providers must notify the customer in a reasonable time if a limit is likely to be reached before the end of their billing period, and as soon as practicable if a limit is actually reached; and
- b) small number of broadband customers with limited data allowances in the UK,¹⁸¹ as well as the lack of complaints by broadband customers about being billed for exceeding those allowances.¹⁸² We noted that the relatively small volume of complaints may in part be the case because providers already have processes in place to help protect customers from significant bill shock.¹⁸³

6.9 However, we said we would continue to monitor this issue and may consider taking action in the future if necessary, for example if we saw evidence of broadband customers not being adequately protected from bill shock and excessive data charges.

6.10 We explained that these proposals would help customers manage their consumption and avoid bill shock. We stated that we did not expect the changes to have a significant impact on providers, because the main providers already allow customers to monitor their usage and expenditure online and/or via mobile apps, and notify customers when they use up the services included in their tariff plan.¹⁸⁴ We also said that we did not expect the inclusion of information on charges in the notification to significantly increase costs, noting that while providers that do not already do so will have to make changes to ensure this

¹⁸⁰ Under section 124S of the Act, mobile providers are required to enable residential customers to set a cap on their bill, if they wish to do so.

¹⁸¹ We found that around 3% of residential broadband customers take a service with a limited data allowance. Source: BT, EE, Plusnet, Sky, TalkTalk and Virgin Media response to formal information request dated January 2019. Figures quoted were calculated from data provided as at 30 November 2018. Data cleaning removed approximately 1.6% of all customers see paragraphs A4.5 – A4.10 of [Helping consumers get better deals: Annex 4, Analysis of provider data](#).

¹⁸² Between January 2018 and July 2019 we received only 16 complaints from broadband customers about data charges.

¹⁸³ Protections included notifying customers when they have used up data included in their tariff, and automatically upgrading customers to higher or unlimited data packages when they exceed their data allowance.

¹⁸⁴ For example, for pay-monthly mobile services, [EE](#), [O2](#), [Three](#) and [Vodafone](#) all notify customers when they are close to using up their data allowance, and again when they've reached their limit. Sources accessed 16 September 2020.

information is included in the notification, this would be limited where the information is provided through a link in a text message or email.

Consultation responses and Ofcom's assessment

- 6.11 Few respondents commented on our proposed approach here. Virgin Media made an overarching comment that it supported the principle that customers should be helped to manage their spend on communications services and agreed that what we proposed was not a fundamental change to what providers currently do.
- 6.12 We set out below the more detailed comments we received on our two proposals, and our response. There were no comments on our proposal not to introduce further requirements under Article 102(6).

Proposal to amend GC C3.7 to require billing information to be “up-to-date”

- 6.13 Two providers commented on this proposal:
- a) Virgin Media asked for further clarity about what is meant by “up-to-date” billing information and questioned whether Ofcom proposed to reduce the 90-day period that providers have to apply certain delayed charges (e.g. overseas charges). It also raised concerns about being able to provide “up-to-date” billing information for customers with accessibility needs who cannot use email or text messaging.
 - b) Microsoft suggested that the scope of GC C3.7 should be limited to providers of “Interpersonal Communications Services and/or Publicly Available Internet Access Services **billed on the basis of time or volume consumption**” (text in bold added by Microsoft). It said the requirement to enable customers to monitor and control their usage is not relevant for services without usage charges.

Our assessment of responses

- 6.14 In response to Virgin Media’s query about what is meant by “up-to-date,” we note that Article 102(5) requires providers to give customers *timely* information about their usage.¹⁸⁵ Providers will need to ensure that, so far as is reasonably practicable, the information they make available reflects customers’ current usage and expenditure. We are not, however, proposing to change existing requirements about how long providers have to apply charges to customers’ bills.¹⁸⁶ But when delayed charges are applied, they should be included in customers’ billing information to ensure it is up-to-date.
- 6.15 In relation to providing “up-to-date” billing information to customers who may experience difficulties monitoring their usage via web portals or mobile apps (which are the main ways

¹⁸⁵ Recital 266 further explains that “...it is important to provide end-users with facilities that enable them to track their consumption in a timely manner.”

¹⁸⁶ Existing requirements in relation to delayed charges are set out in section 4.8.4 of the [Metering and Billing Direction, 2014](#).

in which providers currently give customers access to billing information¹⁸⁷), providers still need to ensure that, so far as is reasonably practicable, the information they provide reflects the customer's current usage and expenditure.¹⁸⁸ We recognise that, where a reasonably acceptable format (i.e. an accessible format) takes time to produce, (e.g. braille), this could delay the provision of information to the customer. But we would expect the provider to have already discussed this with the customer when that customer requested a reasonably acceptable format.

- 6.16 We note Microsoft's suggestion that we limit the scope of current GC C3.7 to services billed on the basis of time or volume. However, we do not consider this to be necessary. This GC is an existing requirement that ensures that all relevant customers have access to adequate billing information, to enable them to verify and control the charges they incur and monitor their bills.
- 6.17 Currently, this requirement applies to providers of "Publicly Available Internet Access Services" and "Publicly Available Telephone Services." In our December Consultation, we proposed to amend the scope of GC C3.7 so that it would, in future, apply to providers of ICS rather than of "Publicly Available Telephone Services" in line with the requirements of Article 102(5). The only new category of providers that would have been brought into scope of this condition would have been NIICS providers. However, in light of the Government's decision not to include NIICS within the scope of the regulatory framework at this time, we are amending the scope of this condition so that it will now apply only to providers of NBICS, as well as IAS,¹⁸⁹ which we consider means it will capture providers of the same types of publicly available broadband and fixed and mobile services that it does currently.
- 6.18 Overall, we consider that the inclusion of the wording "up-to-date" is only a minor modification to the existing requirement and is necessary to implement the requirements of Article 102(5). Ensuring that the information customers receive to monitor their usage is up-to-date helps ensure they can make more informed decisions about their usage and expenditure. We do not expect that the changes to the GC will have a substantial impact on providers, and we have not received evidence to the contrary.

Proposed requirement to notify customers when a service included in their tariff plan is used up

- 6.19 Several respondents commented on this proposal. Uswitch agreed that the proposed notification requirement could help mobile customers manage their spend. It also suggested that Ofcom explore issuing guidance on other proactive notifications that providers could send to help customers understand the extent to which they are using the

¹⁸⁷ And which we would expect providers to ensure are designed in an inclusive way. For example, having regard to the [Web Content Accessibility Guidelines 2.0 \(WCAG\)](#) published by the World Wide Web Consortium. We also note that the [UK Association for Accessible](#) Formats and [RNIB](#) provide practical help on accessible technology to customers and businesses.

¹⁸⁸ This is in line with revised GC C5.15, which requires providers to make reasonable adjustments to allow customers to access billing and other information in accessible formats. See section 12 for further details on the requirements of GC C5.15.

¹⁸⁹ As explained in section 15, we are proposing to amend GC C3.7 to replace with reference to 'Publicly Available Internet Access Service' with the new 'Internet Access Service' definition.

services included in their tariff plan,¹⁹⁰ particularly for mobile customers that are out-of-contract or approaching the end of their contract.

- 6.20 However, some providers argued that further consideration was needed before introducing the notification in line with the EECC.¹⁹¹ In particular, Vodafone argued that Ofcom had not considered the complex interactions of the proposed requirement with existing measures for mobile bill caps and roaming, which require providers to notify customers about their usage, and with the ICO's ban on sending marketing messages.
- 6.21 In addition, Three asked for clarity on whether information on further charges should still be provided when a customer has used up a service included in their tariff plan, if a bill limit is in place meaning that they are unable to consume data outside their tariff plan.
- 6.22 BT raised concerns about the complexity of extending the requirements to microenterprise, small enterprise and not-for-profit customers.¹⁹² BT estimated that implementation would be a major project [§]. FCS further argued that all the requirements discussed in this section should be restricted to residential customers only, or possibly also microenterprises, but should not include not-for-profit organisations or small enterprises.
- 6.23 In terms of impact, Three said that it already sends text notifications to customers when they reach 80% and then 100% of their data allowance. However, BT argued that Ofcom had not presented evidence of the customer harm and should undertake research and carry out a full impact assessment before progressing with this requirement. BT and Vodafone both argued that Ofcom's view that these proposals are unlikely to have a "significant" impact on providers underestimated the changes necessary to comply with this requirement.

Our assessment of responses

- 6.24 As stated in the consultation, we expect that this change will provide customers with timely information to help them manage their consumption and avoid bill shock. We have noted Uswitch's view that customers can also suffer harm if they pay for services they do not fully use. However, this issue is separate to the concern that Article 102(5) is seeking to address. Therefore, we are not proposing to make any changes to our approach to implementation. Nonetheless, we consider that the requirements on end-of-contract notifications and annual best tariff advice that recently came into effect will go some way in helping customers ensure they are on the most appropriate tariff for their usage.
- 6.25 We note Vodafone's comment about the interaction between our proposal and existing regulatory requirements. We recognise that the mobile bill limit requirement, the cap on roaming charges in the EU Roaming Regulations,¹⁹³ and our proposals to implement Article

¹⁹⁰ It considered that customers commonly "overbuy" and pay for a greater allowance than they actually need.

¹⁹¹ BT, Vodafone, and Three.

¹⁹² BT stated that there is [§].

¹⁹³ The EU Roaming Regulation requires providers to give customers the option to set a limit on the roaming charges they incur. Article 15, Regulation (EU) No [531/2012](#) of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union Text with EEA relevance.

102(5) all seek to help customers manage their use of communications services and protect them from bill shock, but do so in different ways.

- 6.26 As a result, customers who choose to set a bill limit may receive more than one notification relating to their usage within the same billing period. For some customers, this may be helpful – for example a customer may get a notification to inform them that they have used up the allowance included in their tariff and then, later on, receive a notification that they have reached their bill limit, where the bill limit is set above their monthly tariff. However, where the bill limit is set at zero, (i.e. the same level as the customer’s monthly tariff), we consider that providers could send customers a single notification to inform them that they have fully consumed a service in their tariff plan, as well as providing them with the relevant information about their bill limit.
- 6.27 Separately, we do not consider that the ICO prohibition on sending unsolicited marketing messages would prevent providers from sending customers messages to inform them that they have used up a service in their tariff plan, together with the charges for making further use of the service. Service messages are not advertising or promotional material and are therefore not covered by the ICO rules on direct or electronic marketing.¹⁹⁴
- 6.28 In response to Three’s question about whether providers should still send customers information on the price for continuing to use a service when they have used up their allowance and a bill limit is in place that prevents them from using more of the service, we recognise that, in this specific situation, receiving information on further charges may be confusing for customers. Therefore, where this is the case, we agree that providers do not have to tell the customer about charges for further usage in their notification. We have amended the drafting of the new GC C3.14 to clarify that a notification only has to include information about usage charges the customer “will incur” if they continue to use the relevant service – this should help make clear that where a customer has reached their bill limit, they do not need to be told of any further charges.¹⁹⁵
- 6.29 We note BT’s and FCS’s concern that the proposal applied to microenterprises, small enterprises and not-for-profit customers, in addition to residential customers. This is in line with the requirements of Article 102(2). However, we have amended our definition of microenterprise and small enterprise customers and not for profit customers.¹⁹⁶ This means that providers would only be required to notify businesses and not for profit organisations with 10 employees or less about their usage (unless they waive their right to this protection).
- 6.30 Overall, we consider the requirements to notify customers when they use up a service included in their tariff plan will benefit customers by helping them to avoid bill shock and are necessary to implement Article 102(5). We have noted the different views on the likely impact of these proposals. Comments from Three and Virgin Media suggested that these

¹⁹⁴ Information Commissioner’s Office, May 2018. [Guide to the Privacy and Electronic Communications Regulations](#), page 13.

¹⁹⁵ If in this situation a customer requests for their bill limit to be increased, then they should be informed about any charges for further usage.

¹⁹⁶ See section 4 for further detail.

requirements would not have a significant impact, while BT and Vodafone argued that they would.

- 6.31 We acknowledge that there will be an impact on providers where they do not currently notify customers when they have used up their allowance. We are required to implement these provisions under the EECC. However, as set out in section 3 and discussed below, we are giving providers longer to implement these changes.

Our decision

- 6.32 We have decided to introduce the new requirements largely as proposed in the December Consultation. We have:
- a) amended existing GC C3.7 to include a requirement that the billing information must be “up-to-date” as proposed.
 - b) introduced a new requirement to ensure that customers are notified when a service included in their tariff plan is fully used up, with a small amendment to the drafting of the new GC C3.14 to clarify that a notification only has to include information about the usage charges the customer “will incur” if they continue to use the relevant service (as set out above).
 - c) decided not to introduce any further requirements to give customers additional information on their consumption level or to set consumption limits under Article 102(6). This is for the reasons set out at paragraph 6.8 above. We further note the welcome development that, since we published our December Consultation, a number of large providers removed all remaining data caps on their fixed broadband services in response to the increase in broadband data usage as a result of the Covid-19 pandemic.¹⁹⁷
- 6.33 Our amendments to the GCs are set out in revised GCs C3.7, C3.13 and C3.14 in Annex 5. The scope of these requirements is set out in GC C3.1(c) and (e). As set out in section 15, we are proposing to replace the existing ‘Publicly Available Internet Access Services’ definition with the new definition of ‘Internet Access Services’ used to implement provisions of the EECC for consistency.

Publication of information

EECC requirement

- 6.34 Article 103(1) seeks to promote transparency about providers and their services, to help customers compare different providers and services more easily and make informed

¹⁹⁷ DCMS, March 2020. [Government agrees measures with telecoms companies to support vulnerable consumers through Covid-19.](#)

choices. It requires providers of IAS or ICS¹⁹⁸ to publish a number of pieces of information.¹⁹⁹

- 6.35 The information to be published is set out at Annex IX of the EECC and includes:
- a) contact details of the provider;
 - b) a description of the services offered:
 - i) scope and the main characteristics of each service provided, including any minimum quality of service levels, where offered, and any restrictions imposed by the provider on the use of terminal equipment supplied (e.g. where a mobile device is locked);
 - ii) tariffs, including information on any allowances in a particular tariff plan, such as the number of voice minutes, text messages or gigabytes of data included as part of the tariff;
 - iii) the applicable tariffs for additional communication units (e.g. texts, voice minutes or gigabytes of data), numbers or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, as well as prices of terminal equipment;
 - iv) after-sales, maintenance and customer assistance services and relevant contact details;
 - v) standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers as a whole or for individual elements of the bundle, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant;
 - vi) information on access to emergency service and caller location and any limitations (where the provider offers number-based interpersonal communications services (NBICS)).
 - vii) details of products and services, including any functions, practices, policies and procedures and alternations in the operation of the service, specifically designed for end-users with disabilities.
 - c) dispute resolution mechanisms, including those developed by the provider.
- 6.36 Article 103(1) requires that this information must be published in a “clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities” And updated regularly. It also states that the information published shall, on request, be supplied where relevant to the national regulatory authority (i.e. Ofcom) before its publication.

¹⁹⁸ This would include NIICS as well as NBICS. However, as explained in section 4, the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present. We therefore will not be applying the requirements in this section to NIICS providers.

¹⁹⁹ Recital 266, EECC.

6.37 In addition, Article 107(1) and (4) requires that providers publish this information for all other services and terminal equipment that are sold in bundles with IAS or NBICS.

Our December proposals

6.38 Under current GCs C2.2 and C2.3, providers are required to publish certain information when services are provided under standard contracts, including the name and registered office address, a description of the services offered, standard tariffs and any additional charges, any compensation and refund policies, any types of maintenance service offered, standard contract conditions and available dispute resolution mechanisms.

6.39 The GCs also specify how this information should be published, including that providers should send a copy of it to any customer that reasonably requests it, and that a copy of the information must be included in an easily accessible and reasonably prominent manner on their website (current GC C2.12).

6.40 To implement Article 103(1), we proposed to:

- amend and extend the list of requirements in the existing GC C2.2 to reflect the information required by Article 103(1) and Annex IX of the EECC (summarised in paragraph 6.35 above);
- amend existing GC C2.12 to require that information published on providers' websites must be clear, comprehensive and machine-readable, and be in a format that is accessible to disabled customers, and that this information be updated regularly.²⁰⁰ We also proposed to remove the requirement in existing GC C2.12 that providers send a copy of the information to any customer that reasonably requests it;²⁰¹ and
- add a new requirement for providers to give Ofcom the information they are required to publish ahead of its publication, should Ofcom request it.

6.41 We noted that providers already publish some of the information included in Annex IX of the EECC. For example, as set out in paragraph 6.35 b(i) above, under Article 103(1) and Annex IX, providers are required to publish information on the main characteristics of each service provided, including any minimum quality of service levels, where offered, such as broadband speed information. In this regard, IAS providers are already under an obligation under the Open Internet Regulation (Regulation (EU) 2015/2120) to publish broadband speeds information including the minimum, normally available, maximum and advertised download and upload speeds.²⁰² In the December Consultation, we clarified that where providers offer such information at address level, we would expect them to also publish this information at address level to comply with their obligations to publish information under Article 103(1).

²⁰⁰ The latter change was set out at [Annex 11](#) to our December Consultation. We considered that this was necessary to implement Article 103(1) which states that the information published under Article 103(1) shall be updated regularly.

²⁰¹ This latter change was set out at [Annex 11](#) to our December Consultation. We considered that this additional requirement was not necessary, particularly because providers are required to ensure that the information on their websites is accessible. In addition, there are other requirements that providers give customers certain information in accessible formats, as set out in sections 5 and 12.

²⁰² [Regulation \(EU\) 2015/2120](#), Article 4(1)(d).

6.42 We considered that the information providers are required to publish under Article 103(1) can be important in allowing customers to compare services and help them to make informed decisions. As highlighted above, we noted that providers are already required to publish much of the information required by Article 103(1). Where they do not currently publish this information they would have to make changes to their websites but we did not expect the cost of making these changes to be significant.

Consultation responses and Ofcom's assessment

6.43 We received a number of comments on our proposals for implementing Article 103(1). Four providers said they agreed with our proposed changes.²⁰³ However, others raised queries and concerns in the following areas:

- a) Extending the list of information that providers must publish;
- b) Requiring that the information published must be machine-readable, and in a format that is accessible to disabled customers;
- c) Requiring that providers give Ofcom the information ahead of its publication, should Ofcom request them to do so.

6.44 The sections below summarise the comments we received on our proposals in these areas and our assessment of these responses.

Extending the list of information that providers must publish

6.45 Three providers questioned whether customers would benefit from the publication of the additional information.²⁰⁴ CityFibre argued that the current proposals included publishing a substantial number of data points which the average consumer may not understand. Virgin Media believed the benefit to customers of publishing additional information was unclear and may lead to information overload.

6.46 Sky had concerns about the cost of maintaining this information and making sure it is up-to-date. It suggested Ofcom should allow providers to publish this information on a website for those customers who wish to access it, rather than having to provide it directly to all customers, increasing the likelihood of information overload.

Our assessment of responses

6.47 Regarding the comments made on the benefits of this additional information, we believe it is important that customers have all the relevant information available to them to make informed decisions. The additional information we are requiring providers to publish helps achieve this and is necessary to implement Article 103(1).

6.48 We note Sky's suggestion that providers should not have to provide this information directly to customers. We are removing the relevant requirement under current GC C2.12,

²⁰³ BT, FCS, O2 and Tesco Mobile. However, O2 and Tesco Mobile also requested a longer timeframe to implement them; we discuss this in the implementation section of this chapter.

²⁰⁴ CityFibre, Sky, and Virgin Media.

so that providers no longer have to give the information direct to customers that make a reasonable request (in addition to publishing it on their websites).

Requirement that the information published must be machine-readable, and in a format that is accessible to disabled customers

- 6.49 Post Office queried what was meant by a machine-readable format and noted that excel spreadsheets, word documents, xml files and CSV files were all examples of machine-readable formats.
- 6.50 In terms of the accessibility requirement, Three asked that Ofcom work with industry to develop guidelines on what was required. Virgin Media stated that implementation costs here would largely depend on how the requirement to provide information in an accessible format for end-users with disabilities is interpreted; the more extensive and bespoke the requirements for end-users, the greater the cost.

Our assessment of responses

- 6.51 Article 103(1) is clear that the required information must be published in a machine-readable manner and in an accessible format for end-users with disabilities. In response to Post Office's query, while machine-readable is not defined in the EECC, there is a definition of this term in the EU Directive on open data and re-use of public sector information.²⁰⁵ This sets out that a machine-readable format is one that can be processed by a computer programme in order to extract the relevant data, and does not limit the format to particular types of files.²⁰⁶
- 6.52 In terms of the comments made on the accessibility requirements, we would expect providers to make their published information as inclusive as possible and recommend that providers follow existing relevant guidelines that outline ways in which they can ensure all customers are able to access relevant information.²⁰⁷

Requirement that providers give Ofcom the information ahead of publication, should Ofcom request them to do so

- 6.53 Two providers had queries about how this requirement would work in practice. Virgin Media asked for guidance on the circumstances under which Ofcom would require providers to provide the information in advance of publication, and how far in advance of publication this information would need to be provided. Virgin Media stated that if disclosure is required for every single update published on a provider's website, it would

²⁰⁵ [Directive \(EU 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information](#), Article 2(13) and Recital 35. This explains that a machine-readable format is a file format that is structured in such a way that software applications can easily identify, recognise and extract specific data from it.

²⁰⁶ We consider this to be separate to the requirement that the information is accessible to disabled people. The latter may for example mean that an alternative format is needed to the machine-readable format, or that a specific format that is accessible to disabled people and machine-readable is required.

²⁰⁷ For example, internationally recognised standards such as the [Web Content Accessibility Guidelines 2.0 \(WCAG\)](#), published by the World Wide Web Consortium. We also note that the [UK Association for Accessible](#) Formats and [RNIB](#) provides practical help on accessible technology to customers and businesses.

likely be onerous for both Ofcom and providers. Therefore, it believed that it would be more practical if information was only provided to Ofcom by exception, upon request, and only after publication.

- 6.54 Sky commented that it was unclear how Ofcom would know that the information listed in the proposed GC C2.3 is about to be published in order to request it ahead of publication. Sky also suggested that the pre-emptive aspects of this requirement could be perceived as being against the permissive nature of the GCs. It asked that Ofcom confirm that this is not the intention.

Our assessment of responses

- 6.55 Our approach to implement the relevant part of Article 103(1) here is to include a provision that *enables* Ofcom to request that it is provided with information ahead of publication.
- 6.56 We do not currently have plans to request advance provision of any information under this requirement, and we agree that such requests would be made by exception and on request, rather than a general request for every update of providers' websites. In the event that we decide to make use of this provision, we would confirm the deadline for providing the relevant information with the providers affected.

Our decision

- 6.57 Having considered the consultation responses, we have decided to:
- a) amend the list of requirements in the existing GC C2.2 (new GC C2.3) to reflect the information required by Article 103(1) and Annex IX of the EEC (as summarised at paragraph 6.35), in line with our proposals in the December Consultation. We have made minor changes to the wording of the new GC C2.3 compared to that proposed in our December Consultation to align with terms already defined in the GCs;
 - b) amend the existing GC C2.12 (new GC C2.16) to require that information published on providers' websites must be clear, comprehensive and machine-readable, and in a format that is accessible to disabled customers, and that this information is updated regularly. We are removing the requirement under existing GC C2.12, so that providers no longer have to give the information direct to customers that make a reasonable request; and
 - c) add a new requirement (new GC C2.4) for providers to give us the information they are required to publish ahead of its publication, should we request it.
- 6.58 Our amendments are set out in revised GCs C2.3, C2.4 and C2.16 in Annex 5. The scope of the requirement is set out in revised GC C2.1.

Publication of quality of service information

EECC requirement

- 6.59 Article 104(1) of the EECC is intended to improve the availability of information on quality of service for customers.²⁰⁸ It is a discretionary provision that permits the national regulatory authority to require providers of IAS or ICS to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for all customers, on the quality of:
- a) their service, to the extent that the provider controls at least some elements of the network either directly or through a service level agreement; and
 - b) the provision of services offered to ensure equivalent access for disabled customers.
- 6.60 Ofcom may require providers to inform customers if the quality of the services they provide depends on any external factors, such as “control of signal transmission or network connectivity.”
- 6.61 To implement this provision, Ofcom would need to specify the quality of service measures, the applicable measurement methods, as well as the content, form and manner in which the information should be published. In doing so, we would need to take into account BEREC guidelines, which were published on 6 March 2020.²⁰⁹ Furthermore, Article 104(2) sets out that, where appropriate, the parameters, definitions, and measurement methods set out in Annex X of the EECC should be used.

Our December proposals

- 6.62 In the December Consultation, we noted that providers already have existing requirements to publish certain information on quality of service:
- Landline and fixed broadband providers are required to publish information on any service level agreements or service level guarantees that apply when small and medium sized business (SME) customers suffer loss of service, delayed provision, or a missed appointment. Providers are also required to give this information to SME customers when they enter into a contract.²¹⁰
 - The EU Open Internet Regulation requires broadband providers to publish information on the service they provide, including information on the speed of IASs.²¹¹ We report on providers’ compliance with these regulations annually.²¹²
 - There are also existing requirements for providers to publish quality of service information on relevant services for disabled end-users. Under the existing criteria that Ofcom uses to approve text relay providers, providers

²⁰⁸ Recital 271, EECC.

²⁰⁹ BEREC, 3 March 2020. [BEREC Guidelines detailing Quality of Service Parameters](#).

²¹⁰ Current GC C2.13 and C2.14.

²¹¹ [Regulation \(EU\) 2015/2120](#), Article 4(1)

²¹² Ofcom, [Monitoring compliance with the net neutrality rules](#)

that offer facilities for the receipt and translation of voice communications into text must publish how they have performed against a number of key performance indicators.²¹³

6.63 In addition, we outlined the further measures that Ofcom has already taken to improve customers' ability to compare the quality of service offered by providers, including through:

- the **Broadband Speeds Code of Practice**.²¹⁴ Signatories to this Code of Practice need to ensure that customers are given clear speed information to help them compare offers from different providers. For example, providers have to publish a facility such as a line checker to help customers find out what broadband speed they would get from a provider at a particular address; and
- our annual **Comparing Service Quality report**. We collect and publish service quality information on the UK's main broadband, mobile and landline providers on an annual basis. In August 2020, Ofcom published its fourth annual service quality report which compared the quality of service experienced by customers of the UK's largest landline, broadband and mobile providers.²¹⁵ This report included a number of new metrics including on faults and the time taken to provide a new service.

6.64 In light of the existing requirements in this area and Ofcom's programme of work on improving service quality, we proposed not to introduce new regulatory rules to implement Article 104 at this time. Nonetheless, we stated our intention to consider our position further in due course, particularly after BEREC had finalised its guidelines on quality of service measures and we had published our 2020 Comparing Service Quality report.

Consultation responses

6.65 Few respondents commented on our proposed approach to implementing Article 104. Of those that did, all agreed with our proposed approach not to introduce new requirements to publish quality of service information at this stage.²¹⁶ One of these respondents, Virgin Media, added that new requirements would not be necessary or proportionate because quality of service information is already made available, and said that consumers could be overloaded with further information. They stated that if Ofcom were minded to change its position, it should first consult on any such requirements.

Our decision

6.66 We have decided not to introduce new requirements to implement Article 104 at this time, in line with our proposed approach in the December Consultation. This decision does not preclude the possibility that we may find the publication of further quality of service

²¹³ Ofcom, November 2013. [Next Generation Text Relay](#).

²¹⁴ Ofcom, [2015 Voluntary Code of Practice: Broadband Speeds](#).

²¹⁵ Ofcom, 2020. [Comparing Customer Service: mobile, home broadband and landline](#)

²¹⁶ BT, FCS, O2, Tesco Mobile, and Virgin Media.

metrics to be necessary at a later date. As part of this we will consider further whether it would be appropriate to require providers to publish quality of service information on their websites (based on metrics they prepare for our annual Comparing Service Quality Report) in due course. Should our position change we would consult on any new requirements.

Provision of data to third parties

EECC requirement

- 6.67 Article 103(2) requires that end-users should have access, free of charge, to at least one independent comparison tool that enables comparison and evaluation of different IAS and ICS, with regard to:
- a) prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and
 - b) minimum quality of service where offered, or providers are required to publish such information pursuant to Article 104.
- 6.68 Article 103(3) of the EECC sets out the requirements of the comparison tool referred to in Article 103(2) and states that a comparison tool fulfilling these requirements shall, upon request by the provider of the tool, be certified by national regulatory authorities.
- 6.69 Article 103(3) states that third parties shall have a right to use, free of charge and in open data formats, the information published by providers of IAS and ICS, so as to provide such comparison tools.

Our December proposals

- 6.70 In our December Consultation we proposed to introduce new GCs to implement Articles 103(2) and 103(3), as there are no rules in the current GCs to require providers to give independent comparison tools access to data. We proposed that, subject to agreeing reasonable terms on data security (if relevant), providers would be required to make available to qualifying third parties,²¹⁷ free of charge and in open data formats, information related to prices and tariffs of services and the minimum quality of service of such services, for the purposes of providing a comparison tool.
- 6.71 We proposed to introduce the following GCs:
- a new requirement (GC C2.19) that regulated providers shall make available, free of charge and in open data formats, the information listed in GC C2.21, for the purposes of providing a comparison tool meeting the standards set out in condition C2.20;
 - a new requirement (GC C2.20) setting out the conditions that a qualifying comparison tool would need to meet, namely that it must:

²¹⁷ Third parties that meet the conditions set out in proposed GC C2.20.

- be operationally independent from regulated providers, thereby ensuring that regulated providers are given equal treatment in search results;
 - clearly disclose its owners and operators;
 - set out clear and objective criteria on which the comparison is to be based;
 - use plain and unambiguous language;
 - provide accurate and up-to-date information and state the time of the last update;
 - be open to any regulated provider making available the relevant information in accordance with GC C2.19;
 - include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results; and
 - include the possibility to compare prices, tariffs and minimum quality of service between offers available to consumers.
- a new requirement (GC C2.21) detailing the information referred to in GC C2.19 that a regulated provider would be expected to make available:
 - the prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and
 - the minimum quality of service where offered, or the regulated provider is required to publish such information.

6.72 We also proposed that, in order to comply with our proposed GCs, we would expect providers to make available information relating to the minimum and normally available download and upload speeds of their fixed broadband services (under the requirement to share information on minimum quality of service), including at the address level where providers publish this.

6.73 We stated that the new GCs would make it easier for qualifying comparison tools to access the information they need to offer an accurate, reliable service, which would benefit customers by helping them to compare providers by price, product and service quality.

6.74 We stated that the provision of data to third parties could impose an additional cost burden on providers. We considered that the impact may vary between providers and could depend on factors such as the open data format used to provide data to relevant third parties, the data points being made available and the current data-sharing arrangements between providers and relevant third parties.

6.75 In parallel to the December Consultation we also published a consultation on revising Ofcom’s accreditation scheme to bring it into line with the requirements of the EECC.²¹⁸ The proposals would require accredited comparison tools to:

- meet the conditions that a qualifying comparison tool would need to meet under the EECC;
- ensure that they compare providers’ offers by reference to price and minimum quality of service; and

²¹⁸ Ofcom, December 2019. [Proposed changes to Ofcom’s voluntary accreditation scheme](#).

- enable comparison of fixed broadband services by reference to the minimum and normally available download and upload speeds offered by providers.

6.76 We also stated that we would expect accredited comparison tools to enable comparison by reference to address-level metrics, where providers publish this information.

Consultation responses and Ofcom's assessment

6.77 We received a number of comments on our proposals for implementing these elements of Article 103(2) and Article 103(3), in relation to:

- how providers should make their data available and the costs; and
- what data providers should make available and its format.

How providers should make their data available and the costs

6.78 Virgin Media considered that Ofcom's proposals would require providers to share information in response to individual requests from third parties. It argued that such a requirement would exceed the right that the EECC extends to third parties to use information that providers publish, for the purpose of offering comparison tools.

6.79 Virgin Media asked Ofcom to clarify whether signing up to a voluntary agreement to share data with third parties would demonstrate compliance with the new GCs. It considered that, while providers should be free to enter commercial arrangements to provide data to non-accredited comparison tools, they should not be required to do so. Three noted that it provides data to third parties in various formats under commercial arrangements and asked whether Ofcom would wish to change such an approach. Three considered that Ofcom should leave it to providers to determine commercial arrangements that fulfil the requirements of the EECC.

6.80 Virgin Media was concerned that it would be difficult for it to judge whether it should provide data to a third party that is not a member of Ofcom's accreditation scheme.

6.81 Uswitch was concerned that the wording of draft GC C2.20 may enable providers to refuse third-parties access to data on the basis of a subjective assessment of whether the third party would qualify for access. In addition, Uswitch did not consider that membership of Ofcom's accreditation scheme should be treated as a shortcut means for third parties to evidence that they qualify for access to providers' data.

6.82 Three and Virgin Media asked how providers can be satisfied that their data will be kept secure and confidential by third parties. Virgin Media stated that the new GCs should only require providers to make data available subject to agreement with third parties that, for example, third parties have general obligations to keep the data confidential and secure, that providers may implement technical security controls, that providers have a right of audit and that damages may not be a sufficient remedy for a breach.

6.83 [§] suggested that there should be a limit to the number of comparison tools to which a provider is obliged to provide data, or else the requirement could become unduly burdensome.

- 6.84 Virgin Media was concerned that qualifying comparison tools would not be obliged to use the data that providers make available to them.
- 6.85 CityFibre and Virgin Media were concerned by the potential cost burden of sharing information with third parties in open data formats and through application programming interfaces (APIs). UKCTA and Virgin Media stated that Ofcom had not estimated the cost impact of its proposals, with Virgin Media adding that the costs could be significant.

Our assessment of responses

- 6.86 In order to implement Article 103, providers should be required to make available to qualifying third parties the relevant information that they publish about their products, for example on their public websites, in an open data format (we explain what we mean by this in paragraph 6.108, below). Providers should make this information available for use by qualifying comparison tools, free of charge, so these tools can compare products available across different providers and present this to customers looking for a new deal. Article 103 is clear that the information that providers should make available includes minimum quality of service data, which should include the data providers publish about address-level quality of service, for example via broadband speed checkers on their websites.
- 6.87 We do not agree with Virgin Media's view that the new GCs would require providers to respond to individual requests for information from third parties, so long as providers are otherwise making the relevant information available to them. For example, some providers may choose to make the relevant data available via open data format files on their websites, which third parties could access without making a specific request.
- 6.88 With respect to Virgin Media and Three's comments about voluntary contractual agreements, we welcome such agreements between providers and third parties that would meet the requirements of the new GCs. However, Article 103(3) is clear that the relevant information should be available to all qualifying comparison tools, and providers cannot make a qualifying third party's access to its data conditional on agreement to the provider's commercial terms.
- 6.89 With respect to Virgin Media's concern about ascertaining whether a third party qualifies and Uswitch's concern about this involving a subjective assessment, we consider that providers could adopt a relatively straightforward approach. For example, providers could rely on third parties confirming that they qualify to access the data and will use the provider's data for the purposes of offering a qualifying comparison tool only. Providers could also undertake further due diligence for assurance that the third party qualifies if they wish. However, we would expect this to be carried out on an objective basis.
- 6.90 With respect to Uswitch's comments on Ofcom-accredited third parties' access to data, we consider that members of the Ofcom accreditation scheme should be deemed to fulfil the criteria in GC C2.20, as our parallel statement regarding Ofcom's voluntary accreditation

scheme for digital comparison tools sets out the changes we are making to ensure that the Scheme is aligned with the requirements of Article 103(2) and 103(3)a.²¹⁹

- 6.91 We are mindful of some providers' concerns about the security of information that they would make available about the location of their fixed broadband networks and broadband speeds. In the December Consultation we stated that the requirements to share data would be subject, if relevant, to agreeing reasonable terms on data security. To clarify, we consider that providers may expect third parties to agree terms to help ensure that the data is only used for the purposes of providing a qualifying comparison tool. For example, these terms could include requiring any commercially sensitive data to be kept confidential and secure and limiting how long the third party may hold any information about address-level broadband speeds.
- 6.92 With respect to [redacted]'s comments, we do not consider that the requirement to make data available to an uncapped number of qualifying third parties will impose an undue burden on providers, given the choices they have about how to make their information available. Nor do we consider it appropriate to impose an upper limit on the number of qualifying comparison tools to which providers should make their data available, as we consider this would be inconsistent with Article 103(3).
- 6.93 With respect to Virgin Media's concern that qualifying comparison tools are not obliged to use the data that providers make available, we consider that a third party's right to access a provider's data is premised on its use of the data to provide a qualifying comparison tool. However, in practice there may be legitimate reasons for a third party not to seek data from certain providers or not to make use of all the data made available by a given provider, for example if certain data may not be relevant to its comparison tool.
- 6.94 We recognise that making data available to third parties in open data formats could generate some additional costs for providers. In the December Consultation, we considered that the impact may vary between providers and could depend on factors such as the open data format used to provide data to relevant third parties, the data points being made available and the current data-sharing arrangements between providers and relevant third parties. However, as set out in paragraph 3.16, in the context where the EECC sets out mandatory requirements that we must implement, we consider that we have fulfilled our duties by giving appropriate consideration to the impact of our proposals and that further evidence or analysis of the likely costs or benefits is not required.

Data providers should make available and its format

- 6.95 Hyperoptic, Post Office and [redacted] asked for more detail on what data points relating to prices and tariffs providers will need to make available. Virgin Media proposed that the requirements to make data available should relate to products available to new residential customers.

²¹⁹ Ofcom, October 2020. [Digital comparison tools for telephone, broadband and pay TV: Changes to Ofcom's voluntary accreditation scheme.](#)

- 6.96 Virgin Media asked whether providers would be required to share data about services for business customers or about value-added services, such as Netflix or antivirus software. Microsoft also suggested that Ofcom should amend the wording of the scope of GC C2.1(d) to make clear that it only applied to services provided to customers “for recurring or consumption-based direct monetary payment” and that non-subscription-based services (such as NIICS) are out of scope.
- 6.97 Virgin Media stated that providers should not be required to share personalised price offers and / or retention offers. One provider, [redacted], also stated that the requirement would place an unreasonable burden on providers that do not own or have ready access to data about individual end-user customers’ services.
- 6.98 Post Office noted that there could be inconsistency between providers with respect to the data they share with third parties. CityFibre highlighted that third parties may present data about different providers’ services in “such wide-ranging formats” that it may be difficult for customers to interpret.
- 6.99 Uswitch suggested that providers could potentially share (for example under voluntary commercial agreements) more information on what their customers are already paying, as well as any retention offers available.
- 6.100 Virgin Media, Post Office and Three requested that Ofcom define the “open data formats” in which providers could share their data. Virgin Media and [redacted] asked whether providers could choose the open data format that they use.
- 6.101 Virgin Media and Post Office asked for more clarity about how often providers would need to update the data shared with comparison tools. Virgin Media added that where the relevant information is broadly static, providers may wish to simply publish this in an open data format.

Our assessment of responses

- 6.102 With respect to comments from different providers asking for more detail on what data they should share, we expect providers to make available to qualifying comparison tools the information that they publish via their sales channels about the prices, tariffs and minimum quality of services that they offer to new customers and that are marketed to residential customers. The requirement extends to all information that providers publish that could be used by a qualifying comparison tool for the purposes of evaluating different IAS and NBICS with regard to prices and tariffs,²²⁰ and minimum quality of service. This information should allow third parties to recreate the information that providers include about their products on their own websites.
- 6.103 The information that providers make available should include the minimum, normally available, maximum and advertised download and upload speeds of fixed broadband services, and of the estimated maximum and advertised download and upload speeds of

²²⁰ These can be recurring or consumption-based direct monetary payments.

mobile broadband services. The Open Internet Regulation (Regulation (EU) 2015/2120)²²¹ requires IAS providers to publish and provide their customers with this information and we therefore expect providers to make it available to qualifying third parties. Where this information is published by providers at an address level (for example via an API offering address-level broadband speed estimates), providers should also make this information available.

- 6.104 With respect to Virgin Media’s comments about the scope of relevant services, the new requirements ensure that qualifying comparison tools enable residential customers to compare services²²² and do not require providers to make information available about services marketed to business customers. Providers are also not required to share information about additional value-added services which might be included in a bundle with an IAS or NBICS, but which are not themselves an IAS or NBICS (although providers might choose to provide information about all the services within bundles that they offer).²²³
- 6.105 With respect to Uswitch’s comments, providers are not required to share information about retention offer prices available only to existing customers, nor about personalised prices that may be available to individual new customers or information about individual customers’ existing services.²²⁴
- 6.106 The new requirements will not apply to information about prices or tariffs of services provided, other than against recurring or consumption-based direct monetary payments. The wording of the new conditions is in line with the requirements of Article 103(2), which specifies that the data-sharing obligations apply to the prices and tariffs of services provided against recurring or consumption-based direct monetary payments only. We believe the drafting of GC C2.21 is clear as to the scope of these requirements and we do not think it is necessary to add the wording Microsoft has suggested.
- 6.107 With respect to CityFibre’s view that customers may struggle to interpret data made available by providers in different formats, we anticipate that third party comparison tools will present information about different providers’ products in a comparable way, for their users’ ease of understanding. We also note the requirements for a qualifying comparison

²²¹ [Regulation \(EU\) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation \(EU\) No 531/2012 on roaming on public mobile communications networks within the Union](#), Article 4(1)(d).

²²² This is clear in the definition of “Comparison Tool” that we are inserting in the GCs: “‘Comparison Tool’ in Condition C2.19 means a tool that enables Consumers to compare and evaluate different Internet Access Services and Number-based Interpersonal Communications Services with regard to: (a) prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and (b) minimum quality of service where offered, or the Regulated Provider is required to publish such information.” See also GC C2.20(i). Further, we have made clear that GCs C2.19 to C2.21 apply to providers of IAS and / or NBICS when they provide such services to Consumers, rather than End-Users: see GC C2.1(d). (While this was already accurately stated in the consolidated revised set of GCs published in Annex 16 to our December Consultation, in Annex 11 to the December Consultation GC C2.1(d) erroneously referred to ‘End-Users’.)

²²³ Article 107 does not extend these obligations under Articles 103(2) and (3) to bundled offers.

²²⁴ Open Communications, an initiative for the retail telecoms and pay TV markets, would enable people and small businesses to share information about their existing services, held by their communications provider, with third parties such as comparison tools. Ofcom, 2019. [Open Communications - Enabling people to share data with innovative services](#).

tool include that it must set out clear and objective criteria on which the comparison is to be based and must use plain and unambiguous language.

- 6.108 With respect to providers' comments regarding the definition of open data formats (as referred to in Article 103(3)), we note that this term is not defined in the EECC. The EU Directive on open data and re-use of public sector information defines an 'open format' as "a file format which is platform-independent and made available to the public without any restriction that impedes the re-use of documents".²²⁵ We consider that if the information were made available in a manner which meets that definition, it would also satisfy the requirements of GC 2.19. We also encourage providers to make the information available in a machine-readable format, such that software applications can identify and extract specific data from it easily.²²⁶
- 6.109 We consider that providers should change and update the information available to third parties at the same time and with the same frequency that they amend the equivalent information that they publish on their sales channels. We anticipate that, while this will require providers to update some of the information that they make available to third parties frequently (such as the data underpinning address-level broadband speeds estimates), much will remain static for extended periods of time.

Our decision

- 6.110 Having considered the consultation responses, we have decided to maintain the approach we proposed in our December Consultation. Therefore, we have introduced:
- a new requirement (GC C2.19) that regulated providers shall make available, free of charge and in open data formats, the information listed in GC C2.21, for the purposes of providing a comparison tool meeting the standards set out in condition C2.20;
 - a new requirement (GC C2.20) setting out the conditions that a qualifying comparison tool would need to meet; and
 - a new requirement (GC C2.21) detailing the information referred to in GC C2.19 that a regulated provider would be expected to make available.
- 6.111 These requirements are set out in Annex 5. The scope of these conditions is detailed in GC C2.1(d). We have made clear that GCs C2.19 to C2.21 apply to providers of IAS and / or NBICS when they provide such services to Consumers, rather than End-Users.²²⁷
- 6.112 In order to comply with our proposed GCs, we would expect providers to make available information relating to the minimum and normally available download and upload speeds

²²⁵ [Directive \(EU\) 2019/1024 of the European Parliament and of the Council on open data and the re-use of public sector information](#), Article 2(14). See also recital 16, which explains that open data as a concept is generally understood to denote data in an open format that can be freely used, re-used and shared by anyone for any purpose.

²²⁶ We note that it is a requirement under Article 103(1) (which we are implementing through the changes we are making to GC C2.3 and GC C2.16, as discussed above) for information to be published in a clear, comprehensive and machine-readable manner, and therefore providers will already be required to publish information in a machine-readable format.

²²⁷ This amendment corrects an error in Annex 11 of the December Consultation, the Tables of proposed GC changes for sections 3, 4 and 5. The correct text for GC C2.1(d) was included in the amended consolidated set of GCs published at Annex 16 to the December Consultation.

of their fixed broadband services, including at the address level where providers publish this.

Implementation

Our December proposals

- 6.113 We proposed that the requirements to help customers manage their usage of communications services would apply from 21 December 2020 in relation to all relevant services, whether they are provided under an existing contract or under a contract entered into after that date.
- 6.114 We also proposed that the requirements in relation to publication of information and provision of data to third parties would apply from 21 December 2020.

Consultation responses

- 6.115 As discussed in section 3, many providers raised concerns with the implementation deadline of 21 December 2020 that we proposed in our December Consultation. Below we set out the specific comments we received in relation to the proposals discussed in this section.

Helping customers manage their use of communications services

- 6.116 O2 said it would need between [X], and Tesco Mobile said it would need 18 months, from publication of our statement to implement both the contract information requirements set out in section 5 and the requirements to help customers manage their use of communications services.
- 6.117 BT stated that it would need [X] months to implement a solution to notify business customers when a service included in their tariff plan is fully used up (proposed GCs C3.13 and C3.14). It also stated that it would need [X] months to develop a solution for consumers still on legacy mobile and broadband services or voice only services.

Publication of information and provision of data to third parties

- 6.118 O2 stated that that it would need [X] to make the necessary changes to implement the requirements relating to the publication of information and provision of data to third parties. Tesco Mobile considered that 18 months from Ofcom's final statement would be a more appropriate deadline (noting that it would require more than 6 months to implement Article 103).
- 6.119 Virgin Media stated that it was likely to need 12 months to develop the necessary systems to share information with comparison tools, but as currently proposed, Ofcom did not provide enough detail to enable Virgin Media to commence development work.

Our assessment of responses and decision

- 6.120 In light of the comments we received and the Covid-19 pandemic, we are giving providers 12 months from publication of the final notification containing the revised GCs in December 2020 to implement the requirements discussed in this section, i.e. until December 2021. Therefore, in practice, this gives providers 14 months to implement the necessary changes. We consider this to be sufficient for providers to make the necessary changes, including for providers to make information that they publish available to qualifying third parties in open data formats.
- 6.121 The requirements in relation to helping customers manage their use of communications services (revised GC C3.7, C3.13 and C3.14), will apply in relation to all services whether they are provided under an existing contract or new contracts entered into after this date. We note BT's comment about needing longer than we originally proposed to develop a solution for business customers as well as a solution for customers on legacy mobile and broadband services and voice only services. As outlined above, we have given providers longer to implement these requirements than we proposed in our December Consultation. In addition, our revised definitions of microenterprise, small enterprise and not for profit customers mean that the requirements to notify customers when the service included in their tariff plan has been used up will only apply to businesses and organisations with 10 employees or less. This is likely to reduce the time needed to make the appropriate changes.

7. Contract duration and termination

- 7.1 The EECC includes a number of measures to help customers switch provider or terminate their services when it is in their best interests to do so, without being hindered by legal, technical and practical obstacles.²²⁸ To support this aim, Article 105 includes a set of rules relating to contract duration and termination, including requiring providers to give their customers “best tariff” information at an appropriate time.
- 7.2 As set out in section 4, the EECC is also concerned with the impact that the bundling of services may have on switching. Specifically, it is concerned that where the different elements of a bundle,²²⁹ including any terminal equipment, are subject to different rules on contract duration, termination and switching, customers are effectively hampered in their rights to switch provider for the entire bundle or parts of it.²³⁰ Article 107(1) therefore extends the application of Article 105 to all elements of any bundle which includes an internet access service (IAS) or a number-based interpersonal communications service (NBICS).
- 7.3 This section outlines our decision to make changes to our existing rules to implement requirements in Article 105 and Article 107. In summary, we have decided to implement the following in line with the approach we proposed in our December Consultation:
- changes to the scope of our existing requirement that the conditions and procedures for contract termination do not act as a disincentive to switch;
 - extending our requirement that commitment periods are not longer than 24 months to all elements of bundles with an IAS or NBICS, and to microenterprise, small enterprise, and not for profit customers, unless those customers expressly agree otherwise;
 - introducing a new rule to prevent IAS and NBICS providers from extending the duration of a contract when a relevant customer subsequently purchases an additional service or terminal equipment, unless the provider obtains that customer’s express consent; and
 - extending end-of-contract notifications and annual best tariff information to take account of bundles.
- 7.4 In addition, in this section we confirm the key changes to our existing guidance on contract requirements in order to align with the changes to our rules.²³¹ The guidance covers the following:
- conditions and procedures for contract termination; and
 - end-of-contract and annual best tariff notifications.
- 7.5 At the end of this section we also set out our decision to revise the scope of our existing annual best tariff information rules, following our July Consultation.

²²⁸ Recital 273, EECC.

²²⁹ The definition of a bundle is set out in section 4.

²³⁰ Recital 28, EECC.

²³¹ [Ofcom’s Guidance under General Condition C1 – contract requirements.](#)

7.6 The requirements that relate to the right to exit are covered in section 8. In sections 10 and 11, we set out further measures relating to the requirement in Article 105(1) that conditions and procedures for contract termination do not act as a disincentive to switch.

Disincentives to switch

EECC requirement

7.7 Article 105(1) sets out a general requirement that the conditions and procedures for contract termination should not act as a disincentive to changing provider. It applies in relation to publicly available electronic communications services (ECS), but transmission services used for the provision of machine-to-machine services are excluded from the scope of this provision.²³² Article 107(1) then extends this requirement to bundles that contain an IAS or a NBICS.

7.8 These provisions apply to residential customers. They also apply to microenterprise, small enterprise and not for profit customers, unless they explicitly agree to waive their rights.²³³

Our December proposals

7.9 To implement these requirements, we proposed to make changes to our current rule in GC C1.3 which already requires providers to ensure that the conditions and procedures for contract termination do not act as a disincentive to switch. This provision currently applies to both residential customers and to all types of businesses. It also applies to all ECS.

7.10 We proposed to make the following changes:

- Limit this rule to contracts for residential, microenterprise, small enterprise and not for profit customers only.
- Exclude transmission services used for the provision of machine-to-machine services from this rule.
- Extend the rule so that it also applies to bundles with an IAS or NBICS.

7.11 We also proposed consequential changes to our existing guidance relating to conditions and procedures for contract termination, to reflect the proposed change to the GC, so that the guidance applies to contracts for residential, microenterprise, small enterprise and not for profit customers only.

7.12 We considered that our amendments would have little to no impact on providers. The general rule on disincentives to switch already forms part of our current GCs. We therefore expected providers to already ensure that their conditions and procedures for termination comply with this requirement, including in relation to different elements of a bundle which

²³² See section 4 for definition of machine-to-machine services. Number-independent interpersonal communications services (NIICS) are also out of scope of this rule, but as the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present, this is not relevant for our purposes. We have therefore removed references to NIICS throughout the GCs.

²³³ Article 105(2) and Article 107(4), EECC.

might be affected by this rule. We recognised that the proposed revision clarified the application of the rules concerning contract duration and termination to all elements of a bundle and noted that some providers might need to review their conditions and procedures in light of this clarification.

Consultation responses

- 7.13 Three respondents commented on our proposals. Virgin Media welcomed the proposal to limit the disincentive to switch rule to residential, microenterprise, small enterprise and not for profit customers.²³⁴
- 7.14 However, CityFibre said that Ofcom had not considered the extent to which the existing practice of locking fixed broadband customers into 18- or 24-month contracts with high charges for early termination can act as a significant disincentive to switch. It argued that the combination of long minimum contract periods and high early termination charges (ETCs) placed a significant burden on consumers' freedom to change provider and was particularly damaging in the context of rollout objectives for full-fibre networks.
- 7.15 Uswitch argued that having an online non-real-time method of terminating a contract is important to customers.²³⁵ It suggested that Ofcom should amend its guidance to make clear that a letter or email would not be sufficient as the sole means of non-real-time cancellation. It said that providers that allow customers to sign-up online without a real time interaction should also offer an online method for the customer to cancel the contract (without the need for a real-time interaction).
- 7.16 Uswitch also suggested that Ofcom monitor the growing use of eSIM technology. It highlighted a possible risk that, while the number of eSIM providers is limited, customers could be constrained in their choice of provider. It considered that, in practice, this could have a similar effect as handset locking.

Our assessment of responses

- 7.17 We note CityFibre's concern that the combination of 18 and 24-month minimum commitment periods and early termination charges in fixed broadband contracts can act as a disincentive to switch. However, we are not proposing to review the impact of commitment periods and ETCs for fixed broadband contracts as part of our implementation of the EECC. We note that there is an explicit provision in the EECC for the maximum duration of contracts to be 24 months (see paragraph 7.23 below). In addition, we recently carried out a review of ETCs as part of our enforcement programme. Through

²³⁴ In addition, it raised concerns with the proposed definitions of microenterprise, small enterprise and not for profit customers. However, we have since consulted further on revised definitions for these customers and set out our decision in section 4.

²³⁵ Paragraph 1.9(a) of our current guidance under GC C1 states "*To reflect different end-users' preferences and needs, offering options to end-users to terminate contracts which include both 'real-time' and 'non-real-time' communication options. For example, by phone and/or webchat, where the end-user would speak directly in real-time to a customer service agent or using non-real-time options, such as by letter, email or via an online account, where they do not need to speak directly to the CP*". This will also be reflected in paragraph A6.22(a) of the new C1 guidance, a copy of which is at Annex 6.

this, we addressed a wide range of issues relating to providers' ETCs and the transparency of ETC information made available by providers to customers.²³⁶

- 7.18 We note Uswitch's point about the communication methods available to customers when terminating a contract and its suggestion that Ofcom amends the relevant guidance. Our current guidance is clear that we expect providers to offer a range of communication options for a customer to terminate their contract, which include both real-time and non-real-time options.²³⁷ We are not reviewing this guidance more generally at this point in time but may consider this further in the future, if we have evidence that providers are not offering an appropriate range of communication options and that this acts to disincentivise customers from terminating their contracts.
- 7.19 We have noted Uswitch's concern about eSIMs. These are a relatively new technology but if we find evidence that eSIMs are causing a disincentive for customers to switch, then we will consider whether we need to take action.

Our decision

- 7.20 We have decided to maintain the approach we proposed in our December Consultation, which was to revise the current rule on disincentives to changing provider to:
- Limit this rule to contracts for residential, microenterprise, small enterprise and not for profit customers only.
 - Exclude transmission services used for the provision of machine-to-machine services from this rule.
 - Extend the rule so that it also applies to bundles with an IAS or NBICS.
- 7.21 We have also decided to make consequential changes to our guidance, so that it only applies to contracts for residential, microenterprise, small enterprise and not for profit customers.
- 7.22 Our amendments are set out in revised GC C1.8 in Annex 5, which includes some minor drafting changes incorporating the amended defined terms used throughout GC C1. The scope of the requirement is set out in revised GC C1.1(b) and (f). Our amendments to our guidance are outlined at Annex 6.

Contract duration

EECC requirement

- 7.23 Article 105(1) requires providers to limit commitment periods in contracts to a maximum of 24 months (unless the contracts are instalment contracts exclusively for the deployment

²³⁶ See Ofcom's [Enforcement programme into early termination charges](#)

²³⁷ This will also be reflected in paragraph A6.22(a) of the new C1 guidance, a copy of which is at Annex 6.

of a physical connection).²³⁸ This is to help ensure that customers are able to change provider without being unduly hindered by long commitment periods.²³⁹

- 7.24 This provision applies to ECS, other than transmission services used for the provision of machine-to-machine services.²⁴⁰
- 7.25 Article 107(1) extends this requirement to all elements of a bundle with an IAS or NBICS, to help ensure that customers are not effectively hampered in their rights to switch the entire bundle or parts of it.
- 7.26 Both these provisions apply to residential customers, as well as microenterprise, small enterprise and not for profit customers, unless they explicitly agree to waive their rights.²⁴¹
- 7.27 In addition, Article 105(1) allows for the introduction or maintaining of rules that mandate shorter commitment periods.

24-month limit on commitment periods

Our December proposals

- 7.28 Under the existing GC C1.4, providers already need to ensure that any contract with a residential customer for the provision of an ECS does not include a commitment period of more than 24 months.²⁴²
- 7.29 To implement Articles 105(1) and 105(2), as well as Articles 107(1) and 107(4) in relation to bundles, we proposed to amend this GC to:
- exclude instalment contracts exclusively for the deployment of a physical connection;²⁴³
 - exclude transmission services used for the provision of machine-to-machine services;
 - extend the requirement to all elements of bundles with an IAS or NBICS; and
 - extend the requirement to microenterprise, small enterprise, and not for profit customers, unless the customer expressly agrees otherwise.

²³⁸ Recital 273 notes that customers might prefer longer commitment periods for such physical connections and that they can be an important factor in facilitating the deployment of very high capacity networks up to or very close to end-user premises.

²³⁹ Recital 273, EECC.

²⁴⁰ NIICS are also out of scope of this rule, however, as noted above, the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present.

²⁴¹ Article 105(2) and 107(4), EECC.

²⁴² As discussed in section 4, footnote 76, of the December Consultation, we proposed to make minor amendments to the existing "Fixed Commitment Period" definition in the current GCs. We proposed to define a "Commitment Period" as "*a period beginning on the date that contract terms agreed by a Communications Provider and a Customer take effect and ending on a date specified in that contract, and during which the Customer is required to pay for services, facilities and/or Terminal Equipment provided under the contract and the Communications Provider is bound to provide them.*"

²⁴³ We proposed to define an Instalment Contract for a Physical Connection as "*a contract in which a Consumer, Microenterprise Customer, Small Enterprise Customer or Not for Profit Customer, as the case may be, has agreed to instalment payments exclusively for the deployment of a physical connection, excluding provision of any Terminal Equipment, and which is separate from any contract or contracts for the provision of a Public Electronic Communications Service or Bundle.*"

- 7.30 We also set out our provisional view with respect to how these proposals related to ‘linked split mobile contracts.’ Split mobile contracts involve the customer purchasing both an airtime tariff and a mobile handset under two contracts, and where the monthly price to the customer is separated into prices for the airtime and handset (the handset is usually provided under a consumer credit agreement). These split contracts can be ‘linked’ such that the contract terms require that if the customer terminates the airtime contract before the handset agreement expires, they must pay off any sums still due for the handset in a lump sum.
- 7.31 We said we remained concerned that where such linked split contracts had the effect of tying customers in for periods of longer than 24-months, they could act as a disincentive to switch (contrary to the intention of the EECC) and would fall within the scope of Article 105(1). Whilst we had previously proposed early implementation of the 24-month limit for bundles of mobile services (including linked split mobile contracts),²⁴⁴ in December we proposed that the relevant changes would be implemented at the same time as other changes required to implement the EECC. We noted providers’ views, submitted in response to our previous consultation, that we had misinterpreted the effect of Articles 105(1) and 107(1) and that those provisions do not operate so as to prevent all linked split contracts which include handset repayment terms of longer than 24 months. In our view those arguments did not affect our proposed implementation of these EECC provisions in GC C1, but rather went to the application of those provisions.
- 7.32 In terms of the impact of our proposals, we expected them to have a minimal impact on standalone residential ECS contracts, and on bundles provided under a single contract comprising an ECS, because providers are already prohibited from including commitment periods of longer than 24 months in these contracts.
- 7.33 We recognised, however, that there would be some impact on providers who offer services other than ECS and/or terminal equipment under contracts in a bundle with an IAS or NBICS and have commitment periods of longer than 24 months. We also expected an impact on providers offering relevant ECS or bundles to microenterprise, small enterprise and not for profit customers with a commitment period of longer than 24 months.²⁴⁵ We noted that providers offering these types of contracts might have to make changes to their terms and conditions, consumer information material and internal systems and processes in order to ensure compliance with our proposed changes.

Consultation responses and Ofcom’s assessment

- 7.34 We received a number of comments on our proposals. These were made in relation to the following areas, which we address in turn below, before setting out our overall decision:
- a) services in scope of the requirement;
 - b) extending the requirement to business customers;

²⁴⁴ We proposed this as part of our [2019 July Mobile handsets](#) document.

²⁴⁵ See section 4 for further details on our definition of a bundle.

- c) defining and referencing a ‘commitment period’ in the GC;
- d) impact on linked split mobile contracts; and
- e) implementation timing and costs for linked split mobile contracts.

Services in scope of the requirement

- 7.35 [X] was concerned that the proposed scope of the requirement was too wide and considered that it should be limited to fixed broadband services only.
- 7.36 In addition, ITSPA asked for further clarity about how the exemption for the installation of physical infrastructure interacted with linked contracts. Specifically, it asked whether the 24-month limit on commitment periods would apply if a business customer wanted to install a new connection in addition to an existing contract for communications services.

Our assessment of responses

- 7.37 To [X]’s point, Article 105(1) sets out that the 24-month maximum contract duration applies to contracts for any ECS (with the exception of machine-to-machine transmission services), and is not limited to fixed broadband services, as [X] proposed. We need to reflect the scope of Article 105(1) in our GCs to implement the EECC.
- 7.38 In addition, Article 105(1) states that the exception for instalment of a physical connection only applies to separate contracts that are exclusively for this purpose, and does not cover terminal equipment such as a router or modem.²⁴⁶ Therefore, in answer to ITSPA’s question, providers cannot offer contracts for the installation of physical infrastructure which have a commitment period exceeding 24 months, unless they are offered in a contract separate to that for an ECS and/or the provision of terminal equipment.

Extending the requirement to microenterprise, small enterprise, and not for profit customers

- 7.39 Ombudsman Services agreed that it was appropriate for this requirement to cover microenterprise, small enterprise, and not for profit customers, because it considered that, in many cases, small business owners have similar negotiating power to residential customers. Ombudsman Services said that the level of innovation in the sector, with new services being launched and existing services becoming cheaper, meant that business customers could be put in a disadvantageous position if they were not able to shop around on a regular basis because they were tied into long contracts.
- 7.40 While FCS stated that they would prefer that the 24-month limit on commitment periods did not apply to business customers at all, it was satisfied that the option for business customers to expressly agree to a contract of longer than 24 months would make this requirement workable. However, other providers raised concerns about how this would work in practice. Virgin Media stated that this waiver was not a satisfactory solution to their concerns because customers may be apprehensive about agreeing to “waive their

²⁴⁶ See also Recital 273, which clarifies that: “Independently from the electronic communications service contract, consumers might prefer and benefit from a longer reimbursement period for physical connections” and that “such contracts should not cover terminal or internet access equipment, such as handsets, routers or modems”.

rights.” ITSPA and Gamma said that the need to secure the customer’s express agreement would complicate the sales process.

- 7.41 Other respondents raised concerns that this proposal would have negative consequences for business customers and limit them in practice to 24-month contracts. In particular:
- a) [REDACTED], Virgin Media and ITSPA were concerned that our proposal could, in practice, prevent microenterprise and small enterprise customers from being able to spread fixed costs over a period of longer than 24 months.
 - b) Virgin Media argued that extending this requirement to business customers would reduce the scope of the types of products that can be offered to those customers. In particular, it said that many business customers currently take bundled mobile handset and airtime services on 36-month contracts. It believed that the creation of alternative contracts with maximum commitment periods of 24 months (or less) would take considerable time, and that doing so could deprive customers of offers that would otherwise have suited their needs.
- 7.42 Related to this, both ITSPA and Gamma asked for clarity on whether it would be acceptable for providers to offer or advertise contracts of longer than 24 months to business customers, before they have expressly agreed to a longer contract. Gamma stated that if they are unable to advertise longer contracts, small organisations may be discouraged from switching because they would be unaware of the full range of offers available from providers.

Our assessment of responses

- 7.43 Article 105(2) states that the requirement for contracts to have a maximum 24-month commitment period should apply to microenterprise, small enterprise and not for profit customers, unless they explicitly agree to waive their right to this protection. In light of this, we need to extend this protection to microenterprise, small enterprise and not for profit customers. We have, however, revised our definition of microenterprise and small enterprise and not-for-profit customers.²⁴⁷ This means that this requirement will only apply to businesses and not-for-profit organisations with 10 employees or less.²⁴⁸
- 7.44 We note Virgin Media’s concern that the rule would limit the types of products they can offer such customers. However, we do not consider that this is the intention of the EECC. The waiver is intended to give providers greater flexibility, so that they can offer, and relevant customers can take, contracts with commitment periods of longer than 24 months, provided they explicitly agree to a longer commitment period.
- 7.45 We also note providers’ concerns about how the waiver would operate in practice and recognise that introducing the waiver may require a change to providers’ sales processes. However, we do not consider that this would be a significant change as providers should

²⁴⁷ This is in recognition of the fact that the EECC is not definitive about how these groups of customers should be defined, and in response to respondents’ comments, as set out at section 3.

²⁴⁸ Under our initial proposals the limit would have applied to businesses with up to 49 employees and there was no headcount limit for not for profit organisations.

already seek customers' agreement to the length of the commitment period. We discuss in section 5 how providers may seek business customers' express agreement to waive their rights, and we consider this also applies to any waiver sought in relation to this requirement.²⁴⁹

- 7.46 In response to ITSPA and Gamma's query, this requirement does not prevent providers from advertising contracts with longer commitment periods to microenterprise and small enterprise customers or not-for-profit customers. These customers should, though, have the option of taking a contract with a commitment period of 24 months (or less), if they wish to do so.

Defining and referencing a 'commitment period'

- 7.47 [✂] noted that, as part of our proposals, we had made changes to the definition of 'commitment period' in our GCs to remove the reference to early termination charges. It considered that this reference should be retained for clarity on how such commitment periods work.
- 7.48 O2 noted that we had used the word "*stipulate*" in our proposed GC C1.11, whereas Article 105(1) states that providers should not "*mandate*" a commitment period of more than 24 months in their contracts. It argued that this distinction was important because its Custom Plan contracts included a handset credit agreement, and such agreements might 'stipulate' an arrangement of up to 36 months, but they did not 'mandate' a commitment period. It argued this was because it was not mandatory for customers to maintain their handset agreement for the full 36 month period, and it was made clear to customers that they had the option to repay their agreement at any time (without penalty). O2 said its Custom Plans were a maximum period for the handset agreement, and not a 'minimum commitment period' which is what the provisions of Article 105(1) were intended to address.
- 7.49 O2 said it therefore strongly disagreed with our proposed wording of GC C1.11 as it considered it went beyond the requirements of the EECC and was 'gold-plating' without justification. It said we should re-draft the GC to use the word 'mandate' rather than the broader 'stipulate' term, as well as specifically referencing a 'minimum' commitment period, to avoid any implication that a maximum period over 24 months would be caught by the GC.

Our assessment of responses

- 7.50 As noted by [✂], in December we proposed to amend the definition of commitment period in the GCs to remove the reference to charges that may be required to terminate a contract. We made these changes to ensure consistency with the terminology used in, and the meaning of, the EECC. The changes reflect that the term relates to a specified period in which the Communications Provider and Subscriber have obligations under the contract. We also note that not all contracts that include a commitment period necessarily involve

²⁴⁹ See paragraph 5.104.

charges to terminate the contract, and therefore we consider it is clearer to remove this reference to potential charges in the definition.

- 7.51 In relation to O2's concerns about the use of the word 'stipulate' in our GCs, we consider that by using the term 'stipulate' in GC C1.11 we are accurately implementing the requirements of Article 105(1). Even though Article 105(1) uses the term 'mandate', in our view 'stipulate' is a clearer and more accessible term to use to explain that customer contracts (i.e. an agreement between the provider and the customer) should not provide for a commitment period that is longer than 24 months. By contrast, the word 'mandate' implies that the provider could force the customer to take a commitment period of a given length, which is a concept perhaps more commonly used to describe the effect of a piece of regulation or legislation, than the inclusion of a term or condition in a consumer contract.
- 7.52 We also note that the word 'stipulate' is used in the current GC C1.4 (i.e. the precursor to new GC C1.11). GC C1.4 implements Article 30(5) of the Universal Service Directive, which is not substantively different to Article 105(1) of the EECC on this point,²⁵⁰ although under the EECC the scope of this requirement is extended to bundles and to microenterprise, small enterprise and not-for-profit customers. In 2017 we concluded a review of all the GCs²⁵¹ and as part of that review we proposed, and consulted on, the revised wording of the contract duration requirements in GC C1.4, which came into effect in October 2018. During that consultation no stakeholders argued that using the word 'stipulate' would not accurately reflect the requirements of the Universal Service Directive. We do not consider that the changes introduced by Article 105 and Article 107 of the EECC mean that it is necessary for us to depart from the use of the term 'stipulate' in this context. We respond to O2's more specific comments about whether its Custom Plan contracts are captured by this definition in paragraphs 7.59 – 7.68 below.
- 7.53 We disagree with O2 that we should include the word 'minimum' when referring to commitment periods in GC C1.11. Whilst we note that the recital to Article 105(1) states that the provision "*does not preclude providers from setting minimum contractual periods of up to 24 months,*"²⁵² neither Article 105(1) nor our existing GC C1.4 uses the term 'minimum' in respect of the 24-month commitment period. Our proposed wording in GC C1.11 was drafted to closely align with the wording in Article 105(1), and we consider that it could be confusing to refer to a 'minimum commitment period' in this context. The objective of Article 105(1) is to make it clear that whenever a provider includes a commitment period in a contract, it should not be longer than 24 months and the customer must have the option to exit the contract without additional charge after this

²⁵⁰ Article 30(5) of the Universal Service Directive provided that "*Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months*" (emphasis added). This is consistent with Article 105(1) of the EECC which provides: "*Member States shall ensure that ...contracts concluded between consumers and providers of publicly available electronic communications services ... do not mandate a commitment period longer than 24 months*".

²⁵¹ Ofcom's September 2017 Statement, Review of the General Conditions of Entitlement, and other related documents are available on Ofcom's website [here](#).

²⁵² Recital 283, EECC.

point in time. This applies not only when a customer first signs up to a contract, but also if a customer chooses to enter into a further contract with their existing provider (for example after the expiry of their initial commitment period). We therefore consider the wording we proposed for GC C1.11 remains appropriate and accurately reflects the requirements of Article 105.

Impact on linked split mobile contracts

- 7.54 Ombudsman Services said that 24 months was an appropriate contract limit for linked split mobile contracts, because the pace of change of technology and tariffs meant that consumers could be disadvantaged by being tied into longer contracts. It also said it was clear that if a customer purchases a bundle, part of which is longer than 24 months, then the customer would be disincentivised from switching.
- 7.55 O2 and Tesco Mobile, however, both argued that Articles 105(1) and 107(1) do not prohibit linked split contracts which have a duration of more than 24 months and were concerned that Ofcom had not set out a position on this issue in the December Consultation.²⁵³ They noted they had submitted representations in response to our 2019 Mobile handsets document²⁵⁴ setting out their view that we had misunderstood the meaning of the EECC and that their mobile handset loans did not involve a ‘commitment period’. O2 argued that by not setting out a view on this issue we were creating significant regulatory uncertainty and it urged us to accept its position that its Custom Plans were compatible with the EECC.
- 7.56 O2 said that its previous representations provided evidence of consumer benefits from its Custom Plan contracts, and that limiting such contracts to no more than 24 months would be detrimental to consumers. O2 said that its Custom Plans were a very attractive and popular proposition, as consumers valued the flexibility that allows them to buy relatively expensive devices over a longer period of time on an interest free basis. Tesco Mobile similarly noted the popularity and customer demand for its 30 and 36-month contracts.
- 7.57 Both O2 and Tesco also argued that we had not produced any evidence that the requirement for customers on linked split contracts over 24 months to pay off their handset loan in a lump-sum created a disincentive to customer switching. O2, as part of its response to the 2019 Mobile handsets document, submitted a report by Alix Partners in support of its views about the benefits of its Custom Plans. It also made submissions on the potential costs if it had to ‘de-link’ its handset and airtime contracts.²⁵⁵
- 7.58 Both O2 and Tesco Mobile urged us to have regard to a recent report by the Competition and Markets Authority which found that regulation that restricts innovation and market disruption causes harm to competition.²⁵⁶ They argued that their propositions were

²⁵³ O2 and Tesco Mobile also raised concerns that our proposed amendments to GC C1.17 (the right to exit requirements) would prohibit all linked split contracts. We summarise and respond to these comments in section 7.

²⁵⁴ The non-confidential versions of those responses were published alongside our [July 2019 Mobile Handsets document](#). Tesco Mobile also submitted a follow-up letter with further representations on 3 December 2019.

²⁵⁵ The Alix partners report submitted by O2 is available [here](#). On 25 September 2020 O2 provided an additional submission on this issue. [🔗]

²⁵⁶ CMA, January 2020. [Regulation and Competition; A review of the evidence](#).

evidence of an innovative tariff proposition, developed in a competitive mobile market, and if these propositions were banned it would disadvantage consumers, distort the market and risk stifling innovation.

Our assessment of responses

- 7.59 In this statement we are implementing the requirements of the EECC in our GCs, and in this section we are setting out the specific changes we will make in order to implement Articles 105(1) and 107(1). The provisions of Article 107(1) make clear that terminal equipment (such as a mobile handset) is intended to be captured by the prohibition on contracts including a commitment period that exceeds 24 months, as set out in Article 105(1), when it forms part of a bundle as defined in the GCs.²⁵⁷ The amendments we are making to GC C1.11 therefore reflect the EECC requirements for the existing 24-month rule to be extended to bundles including terminal equipment and we consider these changes go no further than necessary to properly implement these requirements.
- 7.60 We have carefully considered the representations received by O2 and Tesco Mobile, including the Alix Partners report submitted by O2.
- 7.61 As noted in the December Consultation, O2 and Tesco Mobile's arguments about whether their mobile handset contracts contain a 'commitment period', and therefore would be caught by the 24-month limit on the commitment period, relate to the application of these rules rather than their implementation. The question of whether a contract contains a 'commitment period' as set out in the GCs will depend on the specifics of the contractual arrangements offered to customers by providers. Providers that currently sell bundles which include mobile handsets will therefore need to review their contractual arrangements to ensure that they comply with the new rules.
- 7.62 We previously set out a concern that, in principle, having to pay off a lump sum payment on a longer handset contract, such as one longer than 24 months, could act to disincentivise customers from switching their airtime contracts.²⁵⁸ We note both O2's and Tesco Mobile's submissions that we have not put forward evidence to demonstrate that such a link between the handset and airtime contracts would harm customers, and their arguments about the potential benefits associated with their specific contractual arrangements.²⁵⁹
- 7.63 The issue that we are addressing in this statement is how we should amend the drafting of GC C1 to implement the relevant rules relating to contract duration in accordance with Articles 105 and 107, given these are mandatory requirements that we must implement. For the purpose of concluding on the changes to make to the GCs to implement the relevant EECC requirements, it has not been necessary for us to come to a view on the consumer benefits or harms arising from the particular contractual arrangements offered

²⁵⁷ The definition of a bundle is set out in section 4.

²⁵⁸ In our [July 2019 Mobile Handsets document](#).

²⁵⁹ O2 also made submissions about the potential costs associated with making changes to its retail offers to remove the link between the handset agreement and airtime contract which we discuss below under the implementation timings and costs sub-heading.

currently by O2 or Tesco Mobile and nor have we taken any decisions now as to the application of the new rules to specific contractual arrangements.

- 7.64 We remain of the view that having to pay off a lump sum payment on a handset contract of over 24 months if a customer chooses to switch their airtime contract could, in principle, act to disincentivise customers from switching their airtime contracts after this point. In particular, this lump-sum payment could be substantial and the requirement to pay it off could effectively tie in the customer to their airtime contract for longer than the 24-month period permitted under the GCs.²⁶⁰ We acknowledge that evidence as to the potential for, and extent of, consumer harm and benefits would be important in determining whether specific linked split contracts create a disincentive to customer switching (in breach of the relevant GCs) and whether there would be a case for taking enforcement action.²⁶¹
- 7.65 We would consider the evidence for taking action against any specific contractual arrangements on a case-by-case basis, taking account of all relevant considerations.
- 7.66 In a case where we consider the evidence indicates that linked split mobile contracts are caught by the prohibition on contracts with commitment periods over 24 months, we would be prepared to take enforcement action, in particular where the evidence indicates such arrangements could act as a disincentive to switch after 24 months. In such a case, we would consider taking enforcement action under the rule prohibiting commitment periods longer than 24 months and/or under the rule prohibiting termination conditions or procedures that act as a disincentive to switch.
- 7.67 As indicated previously, we are aware that there are providers who offer split mobile handset contracts but without a link that requires a customer to pay off their handset in a lump-sum if they terminate their airtime contract.²⁶² Where handset contracts are not bundled with an airtime contract within the meaning of the GCs, the 24 month duration rule would not apply to them.
- 7.68 As noted in section 4 (paragraph 4.29), when assessing whether a contract or combination of contracts sold by the same provider, including split mobile contracts, falls within the definition of a bundle, we would consider the nature of any links – particularly the existence of technical, contractual and financial dependencies – between the services and/or terminal equipment. Where split mobile contracts do not include these links, we consider they are unlikely to fall within the definition of a bundle for the purposes of the 24-month duration rule. In addition, where longer handset loans are sold by the same provider alongside an airtime contract but without a link which requires customers to pay

²⁶⁰ For example, if a customer wanted to terminate their airtime but there were still several months left on their handset contract, the lump-sum payment in some cases could equate to hundreds of pounds.

²⁶¹ Our guidance on non-coterminous contracts (which we discuss in section 11) includes a framework for assessing the potential, and extent of, any customer harm. In addition to the factors outlined in that guidance, there are particular features of linked split mobile contracts that would also be relevant to any such assessment, in particular, the extent to which such contracts in effect tie the customer into their airtime contract for longer than the 24-month period permitted under the GCs.

²⁶² As explained in paragraph 7.30, split mobile contracts are those where the customer purchases both an airtime tariff and a mobile handset under two contracts, and where the monthly price to the customer is separated into prices for the airtime and handset, and the handset is usually provided under a consumer credit agreement.

off their handset in a lump-sum if they terminate their airtime contract, we do not have the same concerns about the risk of customers being disincentivised from switching and effectively being tied into contracts longer than 24 months.

Implementation timing and costs for linked split mobile contracts

- 7.69 Tesco Mobile indicated that, if it were to unlink its contracts, it would be a complicated process and would involve significant system and sales changes. Tesco Mobile also said our proposal is likely to have implications for the VAT treatment of its contracts, resulting in a financial impact on providers, and its customers.²⁶³ O2 re-iterated points made in its previous representations that its customer management systems identify customers on the basis of the customer's mobile phone number. [REDACTED].²⁶⁴
- 7.70 The CCP said that if the impact of these changes on linked split contracts could result in price increases, this should be addressed and clearly explained to consumers.
- 7.71 Vodafone, however, said it was disappointed that Ofcom was no longer proposing early implementation of the 24-month limit for bundles of mobile services, and Three also said it had significant concerns about this change in the proposed implementation timing. Both providers noted that we had identified consumer harm in relation to these contracts, but that we had yet to take any action in relation to this harm. Three said that this issue persisted and that further delay to implementation would give existing providers offering linked split contracts an extended opportunity to tie consumers into 36-month contracts. It therefore asked what had changed from a consumer risk perspective to warrant a longer implementation period. It also said that the delay in implementation would give other mobile providers a competitive advantage.
- 7.72 Finally, O2 considered that, after the end of the Brexit transition period (31 December 2020), the UK would not be bound to maintain the provisions of the EECC. It also noted that Ofcom has a duty to review the regulatory burden of any regulation introduced. It therefore argued that, in the event we concluded that O2's Custom Plans were not compatible with the EECC, and given its view there was evidence that the effect of this would operate against the interests of consumers, Ofcom would be required to review the regulation (or insert a sun-set clause) so that it was removed or amended after the end of the transition period.

Our assessment of responses

- 7.73 We recognise that, where providers of linked split contracts need to make changes to their contractual arrangements as a result of the extension of the 24-month rule to bundles including terminal equipment, there will be costs involved. Where these changes involve system changes, these costs may be significant. As discussed in section 3, we published an update in June 2020 in which we set out our intention to allow providers at least an additional 12 months from the date of this statement to implement the rules set out in the

²⁶³ A similar point about VAT was made in the [Alix Partners report](#) submitted by O2, paragraph 16(g).

²⁶⁴ In its additional submission from the 25 September 2020, O2 further noted that [REDACTED].

EECC. In paragraphs 7.126-7.128 below, we explain our decision that providers will have to implement the changes discussed in this section for all new contracts entered into from December 2021.

- 7.74 Therefore, where providers need to make changes to their systems, sales processes, the way in which they pay VAT and/or their pricing structures, we consider this 12-month extension gives them an appropriate amount of time to implement them, recognising the potential costs involved.
- 7.75 In response to the CCPs comment about potential price increases, as noted above, the new rules will only apply to new contracts. This means that if providers do need to make changes to their contracts to implement these requirements, those changes would not apply to customers already taking such contracts, and therefore it is unlikely that this would affect existing customer prices. In any case, any mid-contract price increases would need to be clearly communicated to customers in accordance with the requirements under GC C1.14 and C1.15.
- 7.76 We remain of the view that it would be disproportionate to require providers to implement the contract duration requirements early for mobile services alone, given the complexity and additional costs that would be involved. More broadly, stakeholders have made strong representations about the wide-ranging set of requirements contained within the EECC end-user rights provisions, and that implementing these requirements as a whole will require them to make extensive changes across their systems and processes. Therefore, we consider it appropriate to give providers sufficient time to make all the relevant EECC changes discussed in this section.
- 7.77 In relation to the impact of the end of the transition period on our obligations to implement the EECC, and whether we should review these conditions after the end of the transition period, we have responded to stakeholder comments on this in relation to implementing the EECC as a whole in section 3.
- 7.78 In terms of the GC amendments we are making to extend the 24-month contract limit to bundles, we have explained above that whether a mobile handset loan is captured by these provisions will depend on the specifics of the contractual arrangements. We do not consider that it is necessary, at this stage, for us to commit to a review of the new GC C1.11. However, if in future after the new obligations come into force there are any market developments or new evidence which gives us reason to believe that this requirement is imposing an unnecessary burden (taking into account the benefits of retaining it), we would have the ability to carry out a review and potentially consider revising or removing it, in line with our usual practice.

Our decision on 24-month commitment periods

- 7.79 We consider that the amendments we proposed in the December Consultation to the current rule setting a maximum 24-month commitment period (GC C1.4) are necessary to implement Articles 105(1), 105(2), 107(1) and 107(4). We have therefore decided to introduce amendments to:

- exclude instalment contracts exclusively for the deployment of a physical connection;
- exclude transmission services used for the provision of machine-to-machine services;
- extend the requirement to all elements of bundles with an IAS or NBICS; and
- extend the requirement to microenterprise, small enterprise, and not for profit customers, unless the customer expressly agrees otherwise.

7.80 These amendments are set out in revised GC C1.11 in Annex 5. The scope of the requirement is set out in revised GC C1.1.

Retaining the requirement that providers need to offer customers contracts with a commitment period of 12 months

Our December proposal

7.81 Under current GC C1.5, providers have to ensure that customers are able to subscribe to a contract with a maximum duration of 12 months. In our December Consultation, we noted that a large number of customers purchase 12-month contracts, suggesting that contracts of this length are of value to them; around 3.7 million broadband customers took up 12-month contracts in the period November 2017 to October 2018.²⁶⁵ In addition, there were around [X] ²⁶⁶ new 12-month mobile contracts in the first quarter of 2019.

7.82 There was some evidence that shorter contracts are valuable for vulnerable consumers. Specifically, the CMA found that:

- For some low-income consumers “even among those participants who preferred the certainty and fixed costs of a contract, there was a preference for contracts to be more flexible in nature, and shorter term (e.g. 12 months versus 18 months).”²⁶⁷
- Vulnerable consumers can perceive longer contracts as a barrier to getting a good deal, particularly those contracts of 18 months or more and for which “consumers incur high exit fees even if their circumstances have changed because of factors outside of their control.”²⁶⁸

7.83 We also set out that ensuring consumers can easily access the communications services they need is central to Ofcom’s work to protect all consumers, particularly those in vulnerable circumstances.²⁶⁹ We said we would be particularly concerned if removal of the current requirement were to lead to a reduction in choice and availability of 12-month contracts for vulnerable consumers, making it harder for them to get a good deal.

²⁶⁵ Based on provider responses from BT, EE, Plusnet, Sky, TalkTalk and Virgin to the Ofcom Broadband Universal Service Obligation Formal Information Request dated 21 January 2019. This calculation includes 12-month broadband contracts taken up in the period 1 November 2017 to 31 October 2018 and excludes 12 month contracts that were terminated by consumers before November 2018.

²⁶⁶ GFK data on Mobile Contract acquisition & Contract SIM Only sales units by length for Jan-March 2019. Figure redacted because of commercial confidentiality at the request of GFK.

²⁶⁷ CMA, February 2019. [Consumer Vulnerability: challenges and potential solutions](#), page 17.

²⁶⁸ Britainthinks, December 2018. [Getting a good deal on a low income: Qualitative research conducted with vulnerable consumers on behalf of the Competition and Markets Authority \(CMA\)](#), page 80.

²⁶⁹ Ofcom has a duty to further the interests of consumers, having particular regard to the “needs of persons with disabilities, of the elderly and of those on low incomes” (See section 3(4)(i) of the Act).

- 7.84 We therefore proposed to retain this requirement in revised GC C1.13, and to exclude machine-to-machine transmission services from the application of the rule, to reflect the intended scope of the current requirement in GC C1.5.²⁷⁰
- 7.85 Our assessment was that retaining this requirement would not impose an additional burden on providers as it already forms part of their existing obligations.

Consultation responses

- 7.86 Very few respondents commented on this specific proposal. Uswitch agreed that services with 12-month commitment periods can be particularly useful for more vulnerable customer groups and that other customer segments, such as students and private renters, also benefit from fixed broadband products of that duration. Post Office said that a contract period of 12 months gives customers certainty about the services and costs for the time scales that customers use.
- 7.87 Three respondents raised queries about the requirement, and one provider raised concerns about its impact and scope:
- a) Post Office and Virgin Media asked whether the requirement could be met by offering contracts shorter than 12 months, including 30-day rolling contracts or those with no minimum commitment period.
 - a) [Redacted] asked whether equivalent 12-month options should be made available as other products are, or only made available when requested by customers.
 - b) Microsoft argued that the scope of the proposed requirement was too wide because it extends to any ECS, and therefore includes specialised NBICS (such as outbound-only calling services). It considered that the requirement should be limited to fixed and mobile telephony and internet-access services.

Our assessment of responses

- 7.88 The requirement in current GC C1.5, which we proposed to retain, is for providers to offer customers the choice of a contract with a maximum duration of 12 months. In response to queries from Post Office and Virgin Media, we consider that contracts with a duration of less than this would meet this requirement,²⁷¹ and have previously noted evidence that short contracts can be valuable for vulnerable customers.²⁷² The requirement does not prevent providers from additionally offering services with a contract length longer than 12 months (up to a limit of 24 months, as set out above).

²⁷⁰ We also proposed to exclude NIICS from the scope of this rule, but, as noted above, the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present and so this is no longer relevant for our purposes.

²⁷¹ This position was set out when Ofcom consulted to introduce the rule. See Ofcom, February 2011. [*Changes to General Conditions and Universal Service Conditions. Implementing the revised EU framework. \(24 February 2011 Consultation\)*](#), paragraph 7.24.

²⁷² See paragraph 6.37 of our December Consultation, which drew on evidence from the CMA, as summarised above.

- 7.89 In response to [§], it is for providers to decide how they wish to market contracts with a maximum duration of 12 months to their customers, provided such contracts are available to their customers so that they can subscribe to them if they wish to do so.
- 7.90 In response to Microsoft's comment about the scope of the proposed rule, our proposal did not involve expanding the scope of the existing general condition, GC C1.5. This requirement currently applies to all ECS, including all NBICS, and in relation to all Subscribers. Our proposed change was to exclude the new services brought into scope of the EECC.²⁷³

Our decision

- 7.91 We have decided to retain the requirement to offer customers contracts with a maximum commitment period of 12 months, as proposed in the December Consultation, as set out in GC C1.13 in Annex 5.
- 7.92 The scope of the rule is set out in GC C1.1(e).

Extending contract duration when adding a service or equipment

EECC requirement

- 7.93 Article 107(3) requires that, where a residential customer has an existing contract for an IAS or NBICS and takes an additional service or equipment from the same provider at a later date, that provider may not extend the length of the original contract unless the customer expressly agrees to the extension. The aim is to help ensure that, when buying additional services, customers are not 'locked in' for a further commitment period without expressly agreeing to extend their contract.²⁷⁴
- 7.94 Article 107(4) extends the application of this requirement to microenterprise, small enterprise, and not for profit customers, unless they have explicitly agreed otherwise.

Our December proposal

- 7.95 To implement this requirement, we proposed a new rule to prevent IAS and NBICS providers from extending the duration of a contract when a relevant customer subsequently purchases an additional service or terminal equipment, unless the provider obtains that customer's express consent.²⁷⁵ We set out that this rule would apply to

²⁷³ This was in particular to exclude NIICS, however the Government has since decided not to include NIICS within the scope of the regulatory framework at this time in any event. Consistent with the scope of other requirements relating to contract duration and termination in C1.8-C1.12, we also proposed to exclude machine-to-machine transmission services which would otherwise be in scope of the ECS definition.

²⁷⁴ Recital 283, EECC.

²⁷⁵ The definition we proposed of 'express consent' in the revised GCs was "the express agreement of a Customer to contract with a Communications Provider, or to transfer their Public Electronic Communications Service(s) or port their Telephone Number(s), where the Communications Provider has obtained such consent in a manner which has enabled the Customer to make an informed choice."

contracts for IAS or NBICS, and to residential customers and microenterprise, small enterprise and not for profit customers (unless they expressly agreed otherwise).

- 7.96 In our consultation, we said that we expected the impact on providers to be small. In particular, we would expect providers to already be taking all necessary steps to ensure that their customers are making informed decisions, which would include expressly agreeing to any extension of their contractual period. To the extent that they do not already do so, then any additional safeguards that may be required would be an important protection for consumers and we expected operators to be able to incorporate them into their existing processes at a low cost.

Consultation responses

- 7.97 Only one respondent commented specifically on this proposed rule. Virgin Media argued that adhering to it could result in providers not being able to offer customers additional services. This could be the case if a customer who wished to add a substantive additional service was not willing to expressly consent to the new minimum term across all services. It suggested that Ofcom consider providing further guidance to allow for some discretion in obtaining consent in circumstances where the additional service cannot otherwise be provided.

Our assessment of responses

- 7.98 The purpose of this rule is to protect customers by ensuring that they are aware of, and consent to, any extension to the commitment period for an existing contract.²⁷⁶ The intention is therefore to help ensure that customers are able to make an informed choice, rather than to restrict the provision of additional services to existing customers. We are not proposing to provide additional guidance on this point, because we do not see a situation where providers would be justified in not informing customers that their original contract would be extended when taking an additional service.

Our decision

- 7.99 We have decided to introduce our proposed rule that where a residential customer has an existing contract for an IAS or NBICS and takes an additional service or equipment from the same provider at a later date, that provider may not extend the length of the original contract unless the customer expressly agrees to the extension, as set out in GC C1.12 in Annex 5. This rule will also apply to microenterprise or small enterprise or not-for-profit customer, unless they expressly agree otherwise. The scope of this requirement is set out in GC C1.1(c) and GC C1.1(g).

²⁷⁶ Recital 283 sets out that: “in order to maintain their capacity to switch easily providers, consumers should not be locked in with a provider by means of a contractual de facto extension of the initial contract period”.

Extending end of contract notifications and annual best tariff information to bundles

EECC requirement

- 7.100 The second part of Article 105(3) requires that, before a contract is automatically prolonged, providers shall inform customers about the end of their contract and the means by which they can terminate their contract. At the same time, providers must give customers best tariff advice relating to their services. Providers are also required to provide customers with best tariff information at least annually.
- 7.101 Article 107(1) extends the requirements to send end-of-contract notifications and annual best tariff advice to all elements of a bundle²⁷⁷ of services or services and terminal equipment that include at least one IAS or a NBICS, when these bundles are offered to a consumer. Furthermore, Article 107(4) extends these bundling requirements to all end-users that are micro- or small enterprises, or not for profit organisations, unless they have expressly agreed to waive the provisions.
- 7.102 The aim of these provisions is to ensure that customers are given useful and effective information in order to make informed choices about the services they buy and to change providers when it is in their best interest to do so.

May 2019 Statement

- 7.103 In May 2019 we published a statement which confirmed the early implementation of the provisions of Article 105(3) in relation to public electronic communications services (the 'May 2019 Statement').²⁷⁸ In particular our statement confirmed that, from February 2020 onwards, new GCs would come into effect requiring providers to start sending end-of-contract notifications and annual best tariff information to customers taking these services.
- 7.104 We said in our May 2019 Statement that additional changes would be needed to the requirements we had imposed in order to implement the bundling provisions of Article 107, in particular to extend them to include non-electronic communications services when sold as part of a bundle, both for consumers and for microenterprises, small enterprises, or not for profit organisations (in accordance with Article 107(4)).

Our December proposal

- 7.105 In our December Consultation we proposed to amend the end-of-contract notification and annual best tariff information rules in GC C1 as follows:
- a) to add a requirement for end-of-contract and annual best tariff notifications sent to customers to include details of other contracts taken by the customer as part of a

²⁷⁷ See section 4 for a definition of bundles.

²⁷⁸ Ofcom, [May 2019 Statement](#).

bundle,²⁷⁹ and the dates on which the commitment periods end for those other contracts;

- b) to add a requirement for end-of-contract notifications sent to microenterprise, small enterprise, and not for profit customers, to include details of other contracts taken by these customers as part of a bundle, unless the customer has expressly agreed otherwise; and
- c) to add a requirement for annual best tariff information provided to microenterprise, small enterprise, and not for profit customers, to extend to any contract forming part of a bundle, unless the customer has expressly agreed otherwise or that bundled contract continues to be subject to a commitment period.²⁸⁰

7.106 Our December Consultation also set out a number of proposed amendments to our guidance on how we expect providers to comply with the requirements to send end-of-contract and annual best tariff notifications to consumers (contained in our Guidance under General Condition C1). In particular, we proposed amendments to ensure consistency of terminology across our implementation of the EECC, including aligning the references to ‘bundles’ and ‘linked contracts’, as well as clarifications relating to how providers should list contracts that constitute a bundle in their end-of-contract and annual best tariff notifications, and include these as part of their best tariff advice where relevant.

7.107 We recognised that our proposed modifications to these conditions might mean providers (particularly those who sell non-electronic communication services as part of a bundle) would have to make additional changes to their end-of-contract and annual best tariff notifications after their implementation in February 2020. We noted however, that our proposed amendments to the associated guidance were consistent with our existing guidance on the treatment of linked contracts in the notifications, and we expected this consistency to help limit the extent of any changes providers need to make to their notifications to incorporate these new provisions relating to bundles.

7.108 With respect to microenterprises, small enterprises and not for profit customers, we said we were making the extension to bundles on a similar basis as for residential customers and, as such, we would expect providers to adopt a similar approach to implementation as that outlined in our May 2019 Statement on the treatment of business customers. In particular, we said providers should be mindful of the objectives of the EECC when determining the best way to comply with the requirements, and that where a business shares significant characteristics, behaviours and needs with residential customers, we

²⁷⁹ A bundle for these purposes means one including an internet access service or number based interpersonal communications services – see section 4. This is an addition to the existing requirements for end-of-contract and annual best tariff notifications to include details of other contracts for public electronic communications services (GC C1.11(e) and C1.16(e)), which our existing C1 guidance confirms should include ‘financially linked and interdependent’ contracts. As explained in paragraph 7.107 we have also proposed to make amendments to this wording in the guidance for consistency.

²⁸⁰ We also proposed a number of drafting amendments to align the language used with the remainder of Condition C1 – e.g. use of “Relevant Customer”; “Relevant Communications Service”, etc. We confirmed that these amendments were not intended to have any substantive effect.

would expect them to receive information as part of an end-of-contract or annual best notification that is broadly similar to that received by residential customers.²⁸¹

Consultation responses

- 7.109 Sky argued that Ofcom had misinterpreted Article 105(3) and were proposing requirements which went significantly further than those in the EECC. In particular, it said that Article 105(3) required providers to send an end-of-contract notification if a contract was “*automatically prolonged*” and it believed this was clearly intended to only apply to the automatic prolongation of a contract with a new commitment period, not the continuation of supply under a rolling monthly contract. It argued that the reference in Article 105(3) to “*where a contract or national law provides for automatic prolongation*” would be a “very odd way” of describing a customer continuing to receive a service after expiry of a commitment period given this was the most widespread and consumer-friendly way of dealing with the expiry of a contract compared with the alternative of a service being stopped unless the customer took action. It said this meant that Ofcom’s current GC C1 and associated guidance was inconsistent with the EECC and the GC would need to be narrowed and the guidance re-issued.
- 7.110 Sky also said that Ofcom’s proposed approach to defining a ‘bundle’, and in particular the types of linkages we proposed to look at in considering what combination of contracts would fall within that definition, was very broad. It said this would have an impact on end-of-contract notifications because it would mean a customer would receive best tariff advice for a bundle of services merely because of a minor and inconsequential linkage which may not have played a part in the customers transactional decision when taking up those services.
- 7.111 [X] noted that supplying customers with details of bundled products through end-of-contract and annual best tariff notifications were likely to clash or repeat other notifications required by other sectoral obligations, and such repeated notifications would be likely to reduce their effectiveness. It said it was important for Ofcom to work with other regulators to ensure communications with customers were aligned, and to remove any uncertainty about which regulators would have primacy with regards to any enforcement activity.
- 7.112 Microsoft said that NBICS which were provided at a single (or standard) monthly rate should not be required to provide ‘annual best tariff information’ because it would be irrelevant to customers of these services. It said the relevant rule should therefore be revised to make clear that best tariff information need only be sent to customers annually if the provider offered more than one tariff plan.
- 7.113 With respect to business customers, FCS noted that there was no significant change in the requirements under our proposals, and it believed the current requirements were proportionate for business customers. However, UKCTA and CityFibre said there were

²⁸¹ May 2019 Statement, section 8 and paragraphs 8.14 and 8.19 in particular.

already difficulties in complying with the end-of-contract notification and annual best tariff advice provisions in many business contexts involving resellers and they were concerned that extending these provisions to bundles would add further complexity. They said it was unclear in particular how these GCs would apply to a relationship where a reseller set the customer tariff, but the customer was billed by the communications provider who provided the service (with the reseller receiving a commission payment).

Our assessment of responses

- 7.114 We disagree with Sky's interpretation that the reference to 'automatic prolongation' in Article 105(3) is intended to only refer to a situation where a customer is rolled into a new commitment period. As part of our previous consultation and May 2019 Statement on the implementation of the end-of-contract notification rules we made clear our view that 'automatic prolongation' refers to the situation where, at the end any commitment period, the contractual relationship between the provider and customer carries on and the services continue to be provided (usually on a rolling monthly basis).²⁸² We note that Sky did not comment on this interpretation in response to our previous consultation, whereas other stakeholders commented specifically on the reference to 'automatic prolongation'. As part of responding to those comments, we confirmed our view on the meaning of this term when reaching a decision on this point.²⁸³
- 7.115 We remain of the view that our existing GCs (and associated guidance), and the amendments we are making to extend these to bundles, are appropriate for implementing, and consistent with the objectives of, the provisions of Article 105(3).
- 7.116 We respond to Sky's comments about our definition of bundles in section 3. In addition, and related to the concern raised by [X] about potential regulatory clash, we explain in section 4, that the Government has now confirmed that the types of service which would be captured outside of electronic communication services in its definition of a 'bundle' are information society services, content services, and terminal equipment. We consider that this amended definition means that any potential for the type of regulatory clash [X] was concerned about has substantially reduced. In any case, our approach to extending the existing end-of-contract notification and annual best tariff requirements to bundles already took account of the potential overlap with regulations in other sectors. In particular, we proposed that providers would not be required to send standalone notifications for non-electronic communications services within a bundle (recognising that there may already be similar notification requirements for those services), but that certain limited details in relation to the contracts for those services should be included where a notification is being sent for the public electronic communication service. As part of our proposed changes to

²⁸² For example, Ofcom, [December 2018 consultation](#) (see paragraph 5.4 for example) and May 2019 Statement, paragraphs 3.30-3.38.

²⁸³ We also note that automatically renewable contracts for public electronic communications services (i.e. automatic renewal from a commitment period to further commitment period) are prohibited for residential and small business customers in the UK (currently by GC C1.3, which was preceded by GC 9). Our comments in the December 2018 consultation and May 2019 Statement about how we intended to implement the reference to 'automatic prolongation' would therefore have been understood by stakeholders in this context.

the associated guidance, we made clear how we expect such bundled services to be referenced in the notifications.

- 7.117 We disagree with Microsoft that annual best tariff information should only be sent where a provider offers more than one tariff plan. The objective of the requirements in Article 105(3) is to ensure customers are given useful and effective information about the services that they buy so they can make informed choices and change providers when it is in their best interests to do so. The current rules (implemented as part of our May 2019 Statement) specify that annual best tariff notifications should include not just the best tariffs available to the customer, but also details about the services provided under their contract, the current price, and the different options available to the customer (amongst other things).²⁸⁴ All of these elements are required to ensure that the customer has the information they need to make an informed choice about whether the service they are taking is right for their needs. The fact that a particular provider may only offer one type of tariff would only impact the specific information they provide in the annual notification about the provider's 'best tariffs' for that customer.²⁸⁵ In the example of a single tariff offered by a provider, our guidance on selecting the best tariffs to display is unlikely to be relevant, and instead the provider might just specify that there is only one tariff available for that particular service.
- 7.118 Finally, we recognise that there can be additional complexities which need to be considered when implementing end-of-contract notifications and annual best tariff information for business customers. This is why we have allowed additional flexibility in how the requirements are implemented for business customers. On the specific example of certain reseller relationships, providers will need to determine the most appropriate approach to complying with their requirements where there are resellers involved in providing the service to customers. As an example, and as indicated in our May 2019 Statement, there is nothing in the rules that would prevent providers from entering into commercial arrangements with a third party to deliver the notifications on their behalf.²⁸⁶

Our decision

- 7.119 We have decided to introduce our proposed changes to extend end-of-contract notification and annual best tariff information rules to include certain non-electronic communications services when sold as part of a bundle, in accordance with the requirements of Article 107 of the EECC. These changes are set out in revised GCs C1.23 to C1.36 in Annex 5. The scope of these requirements is set out in revised GC C1.1(e) and (g).
- 7.120 We have also decided to make our proposed associated changes to our Guidance under GC C1, which can be found in Annex 6.²⁸⁷

²⁸⁴ Specifically, the existing GC C1.18.

²⁸⁵ Required by GC C1.18(h) (as currently numbered).

²⁸⁶ Ofcom, [May 2019 statement](#), paragraph 5.63.

²⁸⁷ In addition to the changes we proposed in the December Consultation, we have made a few minor and non-substantive drafting changes to the Guidance to reflect the changes to the definition of "Bundle" in the GCs (explained in section 3 of

Implementation

Our December proposals

- 7.121 We proposed that:
- a) all our requirements should apply to any new contracts entered into from 21 December 2020; and
 - b) the requirements that apply throughout the duration of the contract should also apply to contracts that were entered into before that date.
- 7.122 We acknowledged that requirements that must be complied with when entering into a contract (e.g. rules on contract duration) can only be applied to contracts taken out after that date.

Consultation responses

- 7.123 As discussed in section 3, many providers raised concerns with our proposed implementation deadline (of 21 December 2020) for all the proposed changes to our regulatory rules to implement the EECC.
- 7.124 With regard to specific comments on the requirements discussed in this section, Virgin Media said that the creation of an alternative proposition of less than 24 months (compared to 36 month) mobile contracts for business customers will take time and Ofcom should allow a suitable period of transition so that current propositions are allowed to continue (beyond the implementation deadline), whilst replacements are developed.
- 7.125 We also received a number of comments from mobile providers about the implementation timing for linked split mobile contracts. We set out these comments at paragraphs 7.69-7.72 above.

Our assessment of responses and decision

- 7.126 In light of the comments we received and the Covid-19 pandemic, we are giving providers 12 months from when we publish the final notification in December 2020 to implement the requirements discussed in this section i.e. until December 2021.
- 7.127 Specifically:
- a) All our requirements will apply to any new contracts entered into after the implementation date of December 2021.
 - b) From December 2021, the requirements that apply throughout the duration of the contract will also apply to contracts that were entered into before that date. These are the revised rule on disincentives to switch, and the new rule to obtain an existing customer's express consent when extending contract duration when adding a service

this Statement) and for ease of reading (e.g. replacing references to “*the date of entry into force of Condition C1.19*” with a reference to the actual date).

or equipment. In addition, the new rule to extend end-of-contract and annual best tariff notifications to take account of bundles will apply to any notifications sent on or after the implementation date of December 2021.

- c) However, the requirements that must be complied with when entering into a contract, specifically the revised requirements on maximum 24 month commitment periods, will only apply to new contracts taken out after that date, i.e. after December 2021.

7.128 In response to Virgin Media's comments, we note that our revised definitions of microenterprise, small enterprise and not for profit customers mean that providers would only be required to offer a contract with a commitment period of a maximum of 24 months to businesses and not for profit organisations with 10 employees or less. Therefore, this is likely to reduce the time needed to make the appropriate changes. We respond to the comments on implementation timing for linked split mobile contracts in paragraphs 7.73-7.78 above.

Amending the scope of the annual best tariff advice requirements

EECC requirement

7.129 As explained earlier in paragraph 7.100, the second part of Article 105(3) requires that, before a contract is automatically prolonged, providers shall inform customers about the end of their contract and the means by which they can terminate their contract. At the same time, providers must give customers best tariff advice relating to their services. Providers are also required to provide customers with best tariff information at least annually.

May 2019 Statement and July 2020 proposals

7.130 Our May 2019 Statement confirmed the early implementation of these rules for public electronic communications services, and in particular confirmed that, from February 2021 onwards, providers of these services would be required to send annual best tariff information to customers whose contracts are not subject to a fixed commitment period.²⁸⁸

7.131 In July 2020, following stakeholder comments in response to the December Consultation, and ongoing engagement with industry after our May 2019 Statement, we set out revised proposals on the scope of our annual best tariff rules in GC C1.²⁸⁹ In particular, having considered concerns from stakeholders about the application of these rules to pre-pay mobile contracts, we proposed that annual best tariff information would only need to be sent where the customer was initially tied into a fixed commitment period that has since

²⁸⁸ As set out in Annex 5, as part of this statement we are making changes to the definition of 'fixed commitment period' in our GCs, including removing the reference to 'fixed'. Because this change will only come into effect from December 2021, and the issues discussed in this section relate to the existing GCs, we have referred to the existing 'fixed commitment period' definition here, and throughout the rest of this section.

²⁸⁹ Ofcom, [July Consultation](#), section 3.

expired. We noted that the proposed amendment would mean that any contract which was not previously subject to a fixed commitment period would no longer be in scope of the requirement to send an annual best tariff notification, and that this will exclude most, if not all, pre-pay mobile contracts.

- 7.132 To reflect our proposed changes to the scope of the annual best tariff information rules in GC C1, we also proposed to make a consequential amendment to our Guidance under GC C1 in relation to the timing of annual best tariff notifications (in particular to remove text which would no longer be relevant under our proposed changes).
- 7.133 We said that we expected these proposed changes would reduce costs for providers, in particular those that sell contracts without a commitment period given they would no longer be required to send annual best tariff information for these contracts. We did not expect our proposal to have a significant negative impact on consumers as we considered, given existing features of the market and requirements on the provision of contract information at the point of sale, customers on contracts without a commitment period would still be in a position to make informed choices about their options (in line with the objectives of the EECC).

Consultation responses

- 7.134 Several providers (including BT, Magrathea, O2, TalkTalk, Three, Virgin Media and Vodafone), as well as Ombudsman Services, agreed with our proposals. O2 said our approach was a pragmatic and sensible solution. Magrathea noted that our revised approach would create less of a burden on providers and provide benefits to customers where it is most needed. Virgin Media similarly noted that the revised scope provided a better and more proportionate approach to the provision of customer information.
- 7.135 Some providers commented on the range of tariffs available to pre-pay customers, and the flexibility they offer. In particular, BT said that pre-pay customers have the information and flexibility needed to navigate between the various packages available to them. Three said pre-pay customers are well informed about the different tariffs available in the market and can, and do, exercise choice by switching between tariffs and providers.
- 7.136 Vodafone said our revised approach reflected the requirements of Article 105(3) and the correspondence between Vodafone and the European Commission which it had shared with Ofcom. Three similarly noted its view that Article 105(3) only requires annual best tariff information when a contract is automatically prolonged. O2 and [redacted] also said pre-pay customers did not fall within the intended scope of the provision.
- 7.137 BT noted Ofcom's recommendation that providers send periodic reminders to customers not subject to a commitment period, and said it already proactively sent notifications to its EE pre-pay customers, typically to notify them that there are other pre-pay packages that may be better suited to their needs. [redacted].
- 7.138 However, Which? and ITSPA disagreed with our proposals. Which? said it was concerned our revised approach would mean pre-pay customers would not benefit from receiving a notification that gave a point in time for these customers to consider whether their current

deal is meeting their needs, and reminds them that they may wish to engage in the market to get a better deal. ITSPA said that just because customers were not subject to a commitment period did not mean that there was no potential for them to suffer harm from being on out-dated, and relatively inflated prices. It argued that a customer on a pre-pay tariff that is prevented from making a call or sending a message because they need to top-up is more likely to do so without checking what other offers are available in the market. It said this suggested that consumers would not necessarily be making a conscious decision to top-up, as suggested in our consultation.

- 7.139 ITSPA believed that, because Ofcom had originally consulted on the issue separately from the EECC provisions, we had the freedom to interpret the EECC requirements in line with our original proposals. It argued that any pre-pay tariff which had an automatically recurring payment would be captured by the meaning of the EECC, if it features any time-based expiry of credit. At the same time, it also suggested that these type of arrangements could already be captured by the existing GC C1.3, which prohibits automatically renewable contracts.
- 7.140 ITSPA said it was concerned that Ofcom had allowed itself to be influenced by submissions from just one relevant stakeholder group, whereas the issue at hand applied also to other tariffs offered to small businesses by non-mobile providers (such as NIICS providers). It urged Ofcom, at the first available opportunity, to appropriately review the pre-pay market to ensure it had made the right decision on the scope of these rules.
- 7.141 Which? also said we should undertake further research to understand whether customers on pre-pay tariffs really are making a conscious purchasing decision when selecting a tariff and whether they are aware of the alternative options available to them. It noted we had not set out any specific data on the extent to which customers are switching between different deals or how many pre-pay customers are paying automatically, which would help understand how many customers could be impacted.
- 7.142 Citizens Advice Scotland agreed with our good practice guidance and urged providers to be mindful of it. However, it also believed providers should be obligated to send customers periodic reminders on the best tariffs available to them. It said this would be an important way to raise consumer awareness about alternative options. It also asked us to consider whether such reminders should include information on debt advice, as seen in other markets.
- 7.143 Finally, Three sought clarification as to whether the revised proposals meant that annual best tariff notifications should only be sent to those who had previously received an end-of-contract notification. In particular it asked whether annual best tariff information should be sent for customers on 30-day rolling contracts if the customer remained with the same provider for more than one year. Three said it assumed that contracts drafted with an indefinite term with a 30-day notice period would be outside the scope of the revised GC.

Assessment of responses

- 7.144 We recognise the concerns raised by ITSPA and Which? and we agree that there are likely to be benefits to some customers on pre-pay tariffs receiving periodic reminders. As indicated in July, we consider it is best practice for providers to send periodic reminders to all customers in contracts that are not subject to a commitment period, with details of the service they are buying, how this compares to their usage, and whether there are alternative tariffs available that may be cheaper given their usage. We welcome the fact that some providers already send such reminders to their pre-pay customers. We will take account of such practices in considering whether providers are treating their customers fairly under our Fairness for Customers commitments and will continue to encourage providers to send such reminders.²⁹⁰
- 7.145 However, as noted the July Consultation, given the specific characteristics of pre-pay tariffs, and the existing rules on the provision of contract information at the point of sale, we remain of the view that the objectives of Article 105(3) can still effectively be achieved in practice if the scope of our regulation is narrowed to specify that annual best tariff information only needs to be given where a contract was previously subject to a commitment period that has since expired. In particular, whilst we note ITSPA's comments that customers topping up their credit may not always be in a position to engage with the market each time they top-up, we remain of the view that the top-up process means these customers more frequently need to engage with the services they buy compared with customers on contracts which were previously subject to a commitment period. In addition, as noted in July, there are existing rules on the provision of contract information at the point of sale which mean customers will be told about the tariff they are choosing, and we consider that the flexibility that pre-pay tariffs offer is likely to be a key factor in a customer's decision to choose this type of tariff. It is therefore likely that these customers will be aware that they are not tied into their pre-pay contract and are able to change their tariff at any point in time.
- 7.146 As indicated in our May 2019 Statement, we will be monitoring whether the approach providers take to implementing end-of-contract notifications and annual best tariff information is effective in achieving the objectives of the EECC, in particular in ensuring that customers are able to make informed choices and they have the information they need to give them the confidence to actively engage in the market.²⁹¹ In particular, as part of this monitoring work we will be collecting data from providers and conducting consumer research. In addition to this, as part of our reporting on pricing trends,²⁹² we continue to gather data and report on the take-up, prices, and range of tariffs available for pre-pay mobile services. We are also continuing to monitor providers' performance against the Fairness for Customers commitments, including their practices for keeping customers informed as set out in paragraph 7.144. We consider that all of these ongoing areas of

²⁹⁰ Ofcom, 2019. [Fairness for Customers commitments](#).

²⁹¹ See section 9 of the [May 2019 Statement](#) where we set out our monitoring plans.

²⁹² Ofcom, [Pricing trends for communications services](#).

work will enable us to keep under review the extent to which pre-pay mobile customers are being treated fairly and whether the scope of our annual best tariff information rules remain appropriate in this respect.²⁹³

- 7.147 We are required to ensure that our implementation of the end-of-contract notification and annual best tariff information rules is consistent with the provisions of Article 105(3). As noted elsewhere in this statement, these provisions are subject to full harmonisation which means we cannot depart, or go further than, these requirements. The fact that we previously consulted on similar requirements before the EECC entered into force does not change our obligations in this respect. We also note several providers have re-iterated their interpretation of the annual best tariff requirements in Article 105(3) as only applying where a “*fixed duration contract*” has been automatically prolonged.
- 7.148 ITSPA also suggested that hybrid pre-pay contracts with an automatically recurring payment and time-based expiry of credit could be captured within the meaning of Article 105(3), as well as the existing requirements in GC C1.3 which prohibit automatically renewable contracts. Our amendments to the annual best tariff rules now specify that the requirements apply only to contracts which were previously subject to a fixed commitment period. Similarly, the rules in GC C1.3 around automatically renewable contracts relate specifically to a scenario where a customer reaches the end of a fixed commitment period. Whether a particular pre-pay mobile contract falls within the scope of these rules will depend on the specific contract terms offered by the mobile provider in question, and whether those contract terms include a ‘fixed commitment period’ as currently defined in our GCs. However, in general (and having reviewed a sample of pre-pay contract terms available in the market), we consider it unlikely that a hybrid pre-pay tariff with an automatically recurring payment would involve a ‘fixed commitment period’, and therefore we consider it unlikely that such tariffs would be captured under these rules.
- 7.149 With respect to ITSPA’s concern about our reasoning for making changes to the scope of these rules, as made clear in July, the reasons for our proposal (and the decision we have now taken) were based on the information we gathered about the current offers available, how pre-pay customers interact with the services they buy, and our assessment of how this aligns with the requirements of the EECC. Whilst we have therefore, necessarily, taken account of mobile providers’ views in particular, those views are not the sole basis for the changes we are making. In addition, in response to ITSPA’s comment about the application of these rules to other types of providers, GC C1.16 specifies that the requirement to send annual best tariff information only applies in respect of contracts for public electronic communications services²⁹⁴ (and therefore does not apply to contracts for NIICS).

²⁹³ This monitoring work will also be reviewing the extent to which the information provided in the notifications is sufficient, or whether other additional information may be helpful. With respect to the specific suggestion on the inclusion of debt advice in these notifications, as suggested by Citizens Advice Scotland, we have a separate ongoing project looking at debt practices within our sector, particularly in light of the impact of Covid-19. As part of that work we are reviewing the information provided to consumers about debt advice and whether improvements can be made.

²⁹⁴ Other than machine-to-machine transmission services.

7.150 With respect to Three’s query about the scope of these rules, the amendments to GC C1.16 (as currently numbered) and our associated guidance²⁹⁵ (see paragraph 1.80 of the guidance) make clear that annual best tariff information needs only to be provided for contracts that were previously subject to a fixed commitment period, and that these notifications should generally be sent within 12 months of the date on which a provider sent an end-of-contract notification in relation to that contract.²⁹⁶ The application of these requirements to 30-day rolling contracts will be fact specific, depending on the customer’s contract terms, in particular whether those terms include a ‘fixed commitment period’²⁹⁷ as defined in our GCs.

Our decision

7.151 We have decided to revise the scope of the annual best tariff information rules in line with our proposed changes in the July Consultation. The changes we are making to GC C1.16²⁹⁸ are set out in the Notification in Annex 12.

7.152 We have also decided to make our proposed associated changes to our Guidance under General Condition C1. Specifically, we have amended paragraph 1.80b) of this guidance as follows (with the wording in bold deleted):

*“b) For contracts entered into after the date of entry into force of Condition C1.19, the first annual best tariff notification must be sent within ~~the first 12 months of the contract term.~~ **An exception to this is where the contract contains a commitment period. In that case, the annual best tariff notification should be sent within** 12 months of the date on which the CP has sent an end-of-contract notification in relation to that contract.”*

Implementation of the revised annual best tariff information rules

7.153 The existing GCs in relation to annual best tariff information came into effect on February 2020 but, under our guidance, providers have until February 2021 to send the first tranche of these notifications. In the July Consultation, we proposed a reduction in the scope of these requirements and we considered this should take effect prior to February 2021 when the first tranche of notifications is due. Specifically, we proposed that these changes should apply from 21 December 2020, as this was consistent with the proposed date for making the broader set of changes to our GCs to implement the end-user rights provisions of the EECC.

²⁹⁵ [Ofcom’s Guidance under General Condition C1 – contract requirements](#)

²⁹⁶ An exception to this would be under paragraph 1.80(a) of our Guidance. If the contract was in existence on 15 February 2020 (when the GCs in relation to annual best tariff notifications entered into force), but its fixed commitment period had already expired, then the first such notification should be sent within a year of that date.

²⁹⁷ This is currently defined in our GCs as: “a period beginning on the date that contract terms agreed by a Communications Provider and a Subscriber take effect and ending on a date specified in that contract, and during which the Subscriber is required to pay for services and facilities provided under the contract and the Communications Provider is bound to provide them and in respect of which the Subscriber may be required to pay a charge to terminate the contract”.

²⁹⁸ This GC will be renumbered as a result of the other changes to the GCs set out in the rest of this Statement.

- 7.154 We received no comments from stakeholders in response to the July consultation raising concerns in relation to the timing of implementation. However, as discussed in section 3, we have now extended the implementation period for the broader set of changes required to implement the new EECC provisions. On this basis, we no longer see any reason to wait until December 2020 to reduce the scope of the annual best tariff information requirements. In our view, we should proceed to make these changes to the GCs as soon as possible in order to provide regulatory certainty.
- 7.155 The revised scope of our annual best tariff information rules in GC C1.16, and the associated amendment to our guidance under GC C1, will therefore come into effect immediately from the date of this statement. Given our guidance in relation to the timing of annual best tariff notifications, providers will still have until February 2021 to send the first tranche of annual best tariff notifications.²⁹⁹

²⁹⁹ The earliest date on which an annual best tariff notification can be due is 12 months after the date on which GC C1.19 entered into force. GC C1.19 entered into force on 15 February 2020. See paragraph 1.80(a) of our guidance (as currently numbered).

8. Right to exit

- 8.1 As noted in section 7, the EECC includes a number of measures to help customers switch provider or terminate their services when it is in their best interests to do so, without being hindered by legal, technical and practical obstacles.³⁰⁰ It also extends the right to exit to all elements of any bundle that includes an internet access service (IAS) or a number-based interpersonal communications service (NBICS).
- 8.2 This section outlines our decision to make changes to our existing rules to implement the requirements in Article 105 and Article 107 that relate to the right to exit. Specifically, it covers the following areas:
- the revisions we are making to our rules on the right to exit following contractual changes, including the extension of this right to all elements of a bundle for residential, microenterprise, small enterprise and not for profit customers. We have made some minor clarificatory changes to the proposed rules and decided not to set a specific rule that providers offer a customer with linked split mobile contracts the choice of just exiting their airtime contract only while continuing to pay off any handset loan in instalments;
 - how we have revised our guidance to provide further clarification about how the rules regarding right to exit work in practice;
 - the new rule to ensure that when customers with contracts that roll over reach the end of their commitment period, they have the right to exit with one month's notice. We are implementing this as proposed in the December Consultation, with a clarification of how this would apply to bundles.³⁰¹

Right to exit following contractual changes

EECC requirements

- 8.3 Article 105(4) gives customers the right to exit their contract without incurring further costs when notified of changes to their contractual conditions, unless the changes are exclusively to the benefit of the end-user, are of a purely administrative nature and have no negative effect on the customer, or are directly imposed by law.

³⁰⁰ Recital 273, EECC.

³⁰¹ The EECC also makes provision for national law remedies to be available to consumers in specific circumstances, e.g. Article 105(5) on the right to exit where there are service performance discrepancies. The Government has made the necessary changes to implement these requirements. These provisions are therefore not covered in this consultation. See [Government response to the public consultation on implementing the European Electronic Communications Code](#), July 2020, page 54. The relevant legislative changes are being introduced via the [Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020](#) (the "EECC Regulations") which were laid in draft before Parliament on 12 October 2020.

- 8.4 The requirement applies to providers of all ECS,³⁰² and in relation to all categories of customer. However, it only applies to providers of transmission services used for machine-to-machine services where the end-users are residential, microenterprise, small enterprise or not for profit customers.³⁰³
- 8.5 Providers must notify customers at least one month in advance of changes to their contractual conditions and, at the same time, inform them of their right to exit without incurring any further costs. The notification should be clear and comprehensible, and provided on a durable medium. Customers should be able to exercise their right to exit within one month of receiving the notification.
- 8.6 In addition:
- Where a customer has the right to exit before the end of the commitment period pursuant to the EECC (e.g. for proposed contractual modifications that are not exclusively to the benefit of the customer), or pursuant to other provisions of Union or national law, Article 105(6) specifies that *“no compensation shall be due by the end-user other than for retained subsidised terminal equipment.”* If the end-user chooses to retain any terminal equipment that is bundled with the contract, *“the compensation due should not exceed its pro rata temporis value or the remaining part of the service fee until the end of the contract, whichever is smaller.”*
 - Article 105(6) also requires that *“the provider shall lift any condition on the use of that terminal equipment on other networks free of charge at a time specified by Member States and at the latest upon payment of the compensation.”*
 - Under Article 107(1), the requirements in Article 105(4) and Article 105(6) also apply to bundles with at least an IAS or NBICS sold or provided to residential customers, and to micro- and small enterprise customers and not for profit organisations, unless they explicitly agree to waive their rights.³⁰⁴

Notification of contractual modifications and of the right to exit where changes are not to the benefit of the customer

- 8.7 The current GCs set rules about contractual modifications that are likely to be of material detriment to customers (GCs C1.6 – C1.9). Specifically, providers are required to give customers at least one month’s notice of any such changes mid-contract as well as the right to exit the contract without penalty. GCs C1.7 and C1.8 specify how this obligation applies to increases in the core subscription price for a service. We have also issued guidance on how we are likely to apply those conditions in relation to changes made to contracts for residential customers and small business customers.³⁰⁵

³⁰² This would include NIICS. However, as explained in section 2, the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present. We therefore will not be applying the requirements in this section to NIICS providers.

³⁰³ Article 105(7), EECC.

³⁰⁴ See section 4 for the definition of a bundle.

³⁰⁵ [Ofcom’s Guidance under General Condition C1 – contract requirements.](#)

Our December proposals

- 8.8 To implement Article 105(4), we proposed to revise our rules so that providers are required to:
- give at least one month's notice of all changes to the contractual conditions for the provision of public electronic communications services (ECS);³⁰⁶
 - give such notice on a durable medium³⁰⁷ and in a clear and comprehensible manner;
 - allow their customers to exit their contract without extra costs, unless the changes are exclusively to the benefit of the customer, are purely administrative and have no negative effect on the customer, or are directly imposed by law;
 - inform the customer of their right to terminate the contract (where applicable);
 - allow the customer to terminate their contract(s) within one month of the notice; and
 - ensure the termination takes effect from the day before the proposed modification comes into effect, unless the customer expressly agrees otherwise.
- 8.9 We also proposed to remove the requirements in current GCs C1.7– C1.9, which set out the circumstances where changes to the core subscription price are likely to be of material detriment. However, we proposed to cover price variations in our guidance.
- 8.10 In addition, we proposed to make a number of amendments to our guidance on rules on contract modifications to reflect the above proposed changes to the GCs.³⁰⁸
- 8.11 We noted in our December Consultation that the rule is designed to protect customers from contract changes that are not beneficial to them. We also recognised that implementation of this rule would have some impact on providers. In particular, there would be some costs associated with sending notifications of all proposed contractual changes, which we acknowledged some providers may not do currently. We recognised that costs are likely to be higher where providers send such notifications by post.³⁰⁹ In contrast, we considered that the costs of sending out electronic notifications (such as email or SMS) are lower, although there will be some costs associated with generating the notifications.

Consultation responses

- 8.12 The CCP, Ombudsman Services, Which?, Uswitch and five individual respondents supported the proposals for customers to have a stronger right to exit if their provider makes a contractual modification. Ombudsman Services said that the proposed rule would

³⁰⁶ We proposed to exclude NIICS from the scope of this rule. However, as noted above, the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present and therefore this is no longer relevant for our purposes. We have amended the proposed drafting throughout the GCs to remove references to NIICS.

³⁰⁷ 'Durable Medium', as defined in the GCs, means paper or email, or any other medium that: (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored.

³⁰⁸ See paragraph 6.75 in our [December Consultation](#).

³⁰⁹ This may be because, for example, the provider does not have an email address or mobile telephone number to contact the customer via other means and/or some of their customers may have stated a preference to receive such communications by letter.

be clearer than the current material detriment rule which it considers is open to interpretation.

- 8.13 In contrast, all the providers and industry bodies that responded to these proposals had concerns with the proposed new rule. Their main concern related to the range of potential contractual changes that would give rise to the right to exit. In addition, some providers had concerns about the categories of customers that were protected by it. We summarise the responses in these two areas in turn below along with other queries raised.

Contractual changes that give rise to the right to exit

- 8.14 In its response, Virgin Media said that it was vital that the right to exit only applied to changes to *contractual conditions*, so that changes to a service within the terms of the contract would not trigger the right to exit. BT argued that where a change was clearly and prominently set out in a contract at point of sale and explained when and how a change would happen (e.g. in line with CPI/RPI), then that change should not give rise to the right to exit.³¹⁰
- 8.15 Some providers however felt that it was unclear which changes would trigger the right to exit as, for example, they considered it was unclear what terms such as “exclusively to the benefit of the customer” and “purely administrative” meant.³¹¹ In addition, Gamma asked if providers can include certain price modifications in the contract terms, for example that call charges to a certain country will be charged up to a certain price per minute but may vary below that stated rate.
- 8.16 Other providers and industry bodies³¹² were concerned that the proposed rule would mean that customers would be able to leave their contract in response to an overly wide range of changes such as:
- a) minor, inconsequential changes that may not affect the customer, e.g. changes to late payment charges for customers who have never defaulted on their bill, changes to paper billing charges for customers who do not require their bills in hard copy, or changes to services never or not recently used by the customer; and
 - b) changes to services that are outside the direct control of providers, e.g. price increases for directory enquiries, premium rate services, termination rates on international calls, roaming in non-EU countries or changes to third party content available to pay TV customers.
- 8.17 Some of these respondents³¹³ considered that this would put a disproportionate burden on providers and significantly limit their ability to invest and innovate if many customers leave before the end of their commitment periods. In addition, a number of respondents said they considered there was a risk of negative unintended consequences from the proposed new rule. For example, BT, Three and Virgin Media were concerned that it could result in

³¹⁰ BT made this point in its response to the July Consultation.

³¹¹ BT, [redacted], ISPA and O2 said we needed to clarify these terms.

³¹² BT, Gamma, Hyperoptic, ISPA, ITSPA, O2, Sky, [redacted], Three, UKCTA, Verastar and Virgin Media.

³¹³ BT, Hyperoptic, ISPA, Verastar and Virgin Media.

information overload for customers; ITSPA argued providers might add a clause in contracts which gives them the right to discontinue certain services if wholesale prices are increased by more than a certain amount; and several respondents³¹⁴ noted that providers may respond with higher upfront prices for the overall length of the contract.

- 8.18 Many respondents said that they considered the current material detriment rule in the GCs to be a more proportionate approach.³¹⁵ Some therefore argued that we should maintain the current rule, or consider reducing the scope of the proposed GC so that it only gives the right to exit when there are changes to the customer's subscription price and/or key aspects of their service/contract.³¹⁶ Three referred specifically to an exception set out in a Court of Justice of the European Union (CJEU) case³¹⁷ and said that the "material detriment" analysis remains applicable to interpreting Article 105(4). Therefore, in its view, maintaining the current material detriment test would be compatible with Article 105(4).

Our assessment of responses

- 8.19 We support the intention of the EECC provision here, which is to protect customers from changes to their contractual terms mid-contract.
- 8.20 As Virgin Media has emphasised, the relevant provision and proposed GC are concerned with modifications to the *contractual terms and conditions*. This means that, for example, where a provider's contract includes a term under which a customer has to pay different prices at different times during their commitment period, the requirements in revised condition C1.14 will not apply so long as, at the time the customer signed the contract:
- a) those terms were sufficiently prominent and transparent; and
 - b) the provider ensured the customer was fully informed about the different amounts they would have to pay at different times, *such that the customer can be said to have agreed to those terms*.³¹⁸
- 8.21 In relation to the point made by BT and the question posed by Gamma, price variation clauses can be included in customer contracts. However, we would only expect such clauses to be used where there is reasonable justification on practical grounds, and where the two criteria set out at paragraph 8.20 are met. We would be concerned if the use of variation clauses became significantly more widespread than currently, in light of the risk that this could make contracts harder to understand and therefore customers would have less certainty about important terms of the contract at the point that they enter into it.
- 8.22 A similar approach would also apply for non-price variation terms because we recognise that there are aspects of the provision of a service more generally that might vary in

³¹⁴ ITSPA, O2, Three and Verastar

³¹⁵ BT, FCS, Focus Group, Gamma, Mobile UK, O2, Sky, Tesco Mobile, Three and Verastar.

³¹⁶ Gamma, Hyperoptic, ISPA, ITSPA, Mobile UK, O2, Three and Verastar. In particular, BT and Three said that our proposal needed to be viewed in the context of the right to exit provision in current Universal Service Directive (Article 20(2)) which required a degree of interpretation and had led to the use of the material detriment test in our current GCs.

³¹⁷ Case C-326/14 *Verein für Konsumenteninformation* EU:C:2015:782.

³¹⁸ This is set out in our revised guidance on contractual modifications (see Annex 10)

accordance with the contractual terms and conditions in a way that does not involve a modification of those contractual terms and conditions.

- 8.23 In relation to the terms “exclusively to the benefit of the customer” and “purely administrative” we have outlined in our guidance that an example of the first term could be a speed upgrade and an example of the second term could be a change in the address or bank details of the provider.
- 8.24 In response to comments and questions about which changes would trigger the right to exit, we have amended our guidance to clarify our expectations of how providers should apply the rule in practice. Specifically, the guidance now states that we recognise that providers will need to identify which customers need to be notified of a particular change to the contractual terms and conditions, as not all customers will necessarily be affected by every change. For example:
- a) Under the terms of a contract, a provider may enable customers to take ancillary services or facilities for which it levies an additional charge.³¹⁹ If the provider were to increase the charge for such ancillary services, for example paper billing, only customers who have opted to take that ancillary service would need to be notified of the change and offered the right to exit.
 - b) However, in contrast, just because a customer has never been late paying their bill, providers cannot assume that they will never be late making payment in the future. Therefore, providers would need to notify all customers of an increase in their late payment charge.³²⁰
- 8.25 In addition, in response to comments about services provided by third parties, we note that where a customer chooses to take an additional service offered by a third party under separate terms and conditions that apply between the customer and the third party, the communications provider would not be expected to notify the customer of changes made by the third party to those additional services.
- 8.26 This would include where a third party markets directory enquiries or other premium rate call services, for which the third party sets a service charge that does not form part of the contract between the provider and their customer. Where there is an increase in the third party’s service charge, the communications provider would not need to offer the customer the right to exit their contract.
- 8.27 In contrast, where the access charge for calling a premium rate service is levied by the communications provider and forms part of the communications provider’s contract with its customer, an increase in the access charge *would* be captured by the new rules and trigger the right to exit (unless the increase was in line with a price modification clause, see paragraph 8.20 above).

³¹⁹ See paragraphs 8.56-8.61 for add-on services provided as part of a bundle, where those add-ons do not have a commitment period.

³²⁰ Unless the increase was included as a price modification clause in the contract at the time the customer entered the contract as explained at paragraph 8.20 above.

- 8.28 We note some providers' concerns that, compared to the current rule,³²¹ too wide a range of changes would be caught, and that we should retain our current approach instead. However, the right to exit under Article 105(4) is broader than our current rule. It is designed to ensure that customers are notified of, and protected from, contractual modifications that are not beneficial to them, which is a wider set of modifications than those that are likely to give rise to material detriment. This provision is subject to full harmonisation and retaining the current rule would not meet the requirements of Article 105(4).
- 8.29 In this context, we note Three's reference to a CJEU case, which clarified that if a price change is introduced that is permitted by an existing contractual condition which provides that prices will increase in accordance with a consumer price index, then that price change does not involve a modification of the contractual terms and conditions within the meaning of Article 20(2) of the Universal Service Directive (which Article 105(4) of the EECC replaces).³²² Our approach to clauses that permit price variations (and to price increases in accordance with such clauses which do not therefore constitute contractual modifications) is entirely consistent with this case.
- 8.30 We consider that the clarifications and further practical guidance we have provided here, which have also been reflected in our guidance, should alleviate some of the concerns raised by providers about the impact of the new rule and reduce the risk of unintended consequences. We have been clear that providers only need to notify those customers that are affected by the contractual modification of their right to exit the contract, which should reduce the number of notifications needing to be sent. We have also been clear that where providers include price variation/modification clauses in their contracts, it will be important to ensure that these are in line with the criteria set out at paragraph 8.20.
- 8.31 As noted above at paragraph 8.11 and in our December Consultation, the rule is designed to protect customers from contract changes that are not beneficial to them, however, we recognise that implementation of this rule may have a significant impact on providers. Costs are likely to be higher where providers need to amend systems and processes as a result of this rule. We also expect the impact to be greater for providers who make, and continue to make, a lot of non-beneficial contractual modifications during the course of their customers' commitment periods. Ultimately, we would welcome this practice reducing, which would limit the costs involved.

Categories of customers protected by the proposed rule

- 8.32 A number of respondents³²³ were concerned that the proposed rule would apply to *all end-users* because this would capture large business customers, who they thought did not require the same protection from contract modifications as residential, microenterprise and small enterprise customers. They argued that large businesses have stronger

³²¹ Under which the right to exit only applies if a contractual change would give rise to material detriment for a customer.

³²² See paragraph 29 of the judgment, [Case C-326/14 Verein für Konsumenteninformation EU:C:2015:782](#).

³²³ BT, Business Carrier Coalition (BCC), ISPA, UKCTA and Virgin Media.

bargaining power and are often on bespoke contracts with terms that they negotiated with their provider which might include specific termination clauses. In addition, BT argued that Ofcom should take a purposive interpretation of the EECC, which it argued only intended to extend protections to business customers with a similar bargaining position to residential customers, and exclude larger business customers from the right to exit rules.³²⁴

- 8.33 Focus Group added that the right to exit would not work in the business market where financial leasing agreements are in place with third party leasing companies. BCC and UKCTA both suggested that we could take the same approach as for end-of-contract notifications where we have given providers flexibility on how they notify their business customers.

Our assessment of responses

- 8.34 We note respondents' concerns that the right to exit rule applies to all end-users, which includes large business customers. However, Article 105(4) states that this protection applies to all end-users and, as it is subject to full harmonisation, we are required to set the same scope for the revised rule. In response to BT's point, the EECC clearly intends to extend some protections to large businesses, one of which is the right to exit as set out in Article 105(4).³²⁵
- 8.35 We agree with respondents that it is more likely to be the case that large businesses will have negotiated bespoke contracts with their provider and in some cases, they may have negotiated specific variation terms to protect themselves from certain contract modifications. In light of this, we have revised our guidance to note that it may be more relevant for residential customers and business customers on standard terms and conditions, rather than for businesses on bespoke terms.

Other issues relating to the application of the proposed new rule

- 8.36 Sky said that the proposed GC C1.15 as drafted indicates that the exception to the requirement to notify a change requires all three elements to be satisfied, e.g. it suggested that these elements were cumulative such that a modification providing a significant new benefit but which was not purely administrative would trigger a right to exit.³²⁶ It asked Ofcom to confirm that the exceptions are not cumulative.
- 8.37 Sky also noted that under the proposed rule, customers would have one month in which to terminate their contract. Sky said that one month could vary between 28 and 31 days and therefore asked Ofcom to specify a 30 or 31 day period for clarity.
- 8.38 Virgin Media said it was concerned with the proposal (in proposed GC C1.20) for the contract to end on the day before the modifications come into effect, because if customers cancelled at the last minute, it would give rise to practical difficulties for the provider. It

³²⁴ BT made this point in its response to the July Consultation.

³²⁵ There are other protections that it only extends to microenterprise, small enterprise and not for profit customers, and it is these categories of customer that it considers have a bargaining position similar to that of residential customers.

³²⁶ As set out at paragraph 8.43 we have made some clarificatory changes to the wording of GC C1.14 and GC C1.15 and as a result the three elements are now in C1.14(a).

said it agreed that customers should not have to pay more to receive the service during the notice period but said that there were other more practical ways to achieve this such as not requiring the customer to pay increased charges even if some or all of the notice period falls after the date on which the price increase is due to take effect.

Our assessment of responses

8.39 In response to Sky's request for clarity on the practical application of the exceptions to the rules, we can confirm that the three exceptions to the requirement to give notice are *not* cumulative. For the avoidance of doubt, this means that providers do not need to notify and give customers the right to exit if a proposed contractual modification falls under *any one* of the following categories (although we note that some changes could fall under more than one of them):

- it is exclusively to the benefit of the customer;
- it is of a purely administrative nature and has no negative effect on the customer; or
- it is directly imposed by law.

8.40 We have clarified this point in the related guidance at Annex 10.

8.41 In response to Sky's request for clarity on the number of days that would constitute "one month", we note that our existing guidance on contractual modifications states that the minimum period of time that providers should give subscribers the ability to exit the contract is 30 days (even though the existing GC C1.6 refers to a period of "one month"). Our position on this remains the same and is set out in our revised guidance, i.e. we consider that providers should give customers at least 30 days' notice in order to comply with this requirement. Providers may give their customers a period of more than 30 days in which to withdraw from the contract if they so wish.

8.42 We note Virgin Media's concerns about the practical difficulties of terminating contracts the day before the changes take effect if the customer only informed the provider that they want to exercise their right to exit towards the end of the notice period. In such circumstances, we consider it reasonable that the provider can terminate the contract as soon as reasonably possible after this date, provided the relevant contractual modification is not applied to the customer and the customer is not required to pay any additional charges other than as specified under C1.16, i.e. the existing service fee up to the date the contract is terminated. We have revised GC C1.20 to this effect and also clarified this point in the guidance.

Our decision

8.43 We have decided to proceed with the changes to the GCs as outlined above, as set out in revised GCs C1.14, C1.15 and C1.20 in Annex 5. We have made some clarificatory changes to the wording of GC C1.14 and GC C1.15 to make clear that there is an obligation to notify customers of a contractual modification if the relevant conditions are met and to inform those customers of, and allow them to exercise, their right to exit. We have also made some clarificatory changes to GC C1.20 as explained in paragraph 8.42 above.

- 8.44 We have amended our guidance to make it clearer how we would expect providers to apply the rules in practice. We have clarified that providers only need to notify, and give the right to exit to, those customers that are contracted to receive the particular service or are liable to pay the charge that is subject to the relevant contractual modification. In addition, our guidance also clarifies that where providers have price variation terms in their contract and make changes in line with those terms, they would not trigger the obligations under GC C1.14 and GC C1.15, provided they meet the criteria set out at paragraph 8.20. We have also made some further minor changes to clarify and tidy up the revised guidance which is at Annex 10.
- 8.45 The scope of the right to exit requirement is set out in revised GC C1.1(d) where we have replaced the reference to 'End-User' with 'Subscriber'. Given that the main distinction between an 'end-user' and a 'subscriber' is that a 'subscriber' has a contract with the provider, and as the right to exit requirement relates to the contract that a customer has with their provider, we have clarified that this rule should apply to 'subscribers' (consistent with the right to exit under GCs C1.6-C1.9 currently).

Extending the notification of contract changes and the right to exit to bundles

Our December proposal

- 8.46 We proposed to add a new requirement to extend the notification of contractual changes and the right to exit to all elements of a bundle comprising an IAS or NBICS in order to implement Article 107. We proposed that this extension would apply to residential, microenterprise, small enterprise and not for profit customers. We explained that this requirement is in line with the requirements of the EECC.
- 8.47 We set out that this would mean that if a provider makes a contractual modification to any element of a bundle (including a service that is not an IAS or NBICS), it would need to notify affected customers of the change. In addition, for non-beneficial contractual changes, the provider would need to give the customer the right to exit some or all of their bundle without incurring extra costs, should they wish to do so.
- 8.48 As part of this, we also proposed that the notification should make clear whether the customer is able to retain any bundled terminal equipment and, if so, any fees payable for retaining that equipment on termination (in addition to any fees for using the service until contract termination – see below). We proposed adding this to our guidance on contract modifications.

Consultation responses

- 8.49 Uswitch and Ombudsman Services both agreed that any non-beneficial contractual modifications should give the customer the right to exit the whole bundle without any additional cost. Ombudsman Services also said that there should be clear guidelines on the right to exit in relation to bundled services.

- 8.50 However, BT and ISPA argued that extending the right to exit to bundles may disincentivise providers from offering certain types of bundles and reduce innovation in the provision of bundles.
- 8.51 In addition, Gamma and Virgin Media raised concerns about how the extension to bundles would work for add-ons provided on monthly rolling contracts. In particular:
- a) Gamma did not agree that there should be a right to exit the whole bundle if only one minor element of a bundle was subject to an unavoidable price increase.
 - b) Virgin Media said that the new rules should not be interpreted in such a way that core products and additional add-ons, e.g. bolt-on supplementary/ancillary services which can be taken on 30-day rolling contracts, are automatically regarded as constituting a single bundle. In such cases, Virgin Media said the customer would be able to continue or cancel that rolling contract without impacting their core bundle.
- 8.52 BT argued that a customer should not have the right to exit part of the bundle which has not been impacted by a modification and can be distinguished as an individual part of the bundle.³²⁷
- 8.53 Finally, BT and Sky, questioned the feasibility of allowing customers to decide which services in a bundle they want to keep or cancel, particularly where the elements of the bundle were not available on a standalone basis (e.g. because of strong technical dependencies). For example, Sky said that if a provider only offers voice and broadband as a bundle, it should not be required to create a new broadband-only product to allow a customer to cancel their voice service only. It asked Ofcom to confirm that providers would not be required to create new products in this way, which would require significant system and product changes.

Our assessment of responses

- 8.54 We note providers' concerns about the scope of the proposed rules. As discussed above and set out at paragraph 8.24, providers only need to give those customers that are affected by the contractual modification the right to exit the contract, however they do need to allow those customers to exit the bundle as a whole³²⁸ (including elements of the bundle that are not directly affected by a contractual modification, though see below our comments on optional add-on services and retaining elements of the bundle).
- 8.55 In addition, our rules would only apply to a modification of the terms and conditions between the customer and their communications provider for the services and/or terminal equipment provided as part of a bundle, as defined in section 4.³²⁹ This is in line with the requirements of the EECC, and is subject to full harmonisation, which means that we do not have discretion as to the scope of its application. (As set out above at paragraphs 8.25

³²⁷ This point was made in BT's response to the July Consultation.

³²⁸ As defined in section 4.

³²⁹ Note that the scope of the bundle is now narrower than when we published our December Consultation, following a change in the Government's approach to implementation. This is outlined in section 4.

and 8.26, they would not apply to services provided by a third party under separate terms and conditions.)

Optional add-on services

- 8.56 We acknowledge the points raised by providers about services that are not part of the core service and are not subject to a commitment period (i.e. they are renewable month by month or are provided on 30 day rolling terms). We recognise that optional add-ons can provide customers with greater flexibility over the duration of the contract for their core service.
- 8.57 In the case of such optional add-ons, if there are changes to the terms and conditions of the add-on itself, the customer will already have the right to exit that add-on by giving notice of 30 days or less, or by choosing not to renew the add-on service the following month. Therefore, the customer is unlikely to suffer the detriment that the EECC is aiming to address, namely that customers continue to be bound by the terms of a contract that has since changed.
- 8.58 As a result, where a contractual modification is made to an optional add-on service, we do not consider that the right to exit should apply to the rest of the bundle, as long as the add-on service is:
- a) not, in practice, part of the core service that the customer takes,³³⁰ and
 - b) offered on a short-term basis (i.e. a contract period of no more than 30 days, including one which may be automatically renewed for further periods of time unless the customer gives notice to terminate) or is not subject to a commitment period (for example is offered with no minimum contract period and may be terminated on notice of no more than 30 days).
- 8.59 However, when contractual modifications are made to an optional add-on service, we would expect providers to assess whether that service is genuinely an optional add-on to the customer's core service(s).
- 8.60 For example, a provider may provide a customer with a landline bundle which has an 18 month commitment period for the line rental service and a call package on a 30 day rolling basis (this could vary from basic options covering calls to UK landline and mobile numbers to more expensive options which might include larger allowances or international calls). Faced with a price increase for the call package, the customer could move to a different call package on 30 days' notice, however, their provider might not be able to offer them a different call package that meets their needs. Once a customer has entered a commitment period for a line rental service, they are in effect tied to that provider for landline calls for the duration of the commitment period for the line rental contract. Therefore, we would consider the call package part of the core service taken by the customer. If there was a

³³⁰ For example, an add-on might be considered to be part of the core service if a customer is likely to consider it central to the service that is being provided and if a recurring charge for that add-on appears on their bill each month.

change in the terms of the call package that was not exclusively to the benefit of the customer, and the customer wished to terminate that element of their bundle, the customer would not be able to switch to a landline call package from another provider unless they also take line rental with that other provider. In this example, if a contractual modification is made to the call package, the customer should also be given the right to exit the line rental for which they are tied into a commitment period, as well as any other bundled services.

- 8.61 Furthermore, we would be concerned if providers were to structure their contracts and apply the right to exit in a way that undermines customers' right to exit as envisaged under the EECC. If we see evidence that this is the case, we would consider intervening and assessing whether any further rules or guidance are required.

Retaining elements of the bundle

- 8.62 We acknowledge the points made by BT and Sky about the feasibility of customers choosing to retain some, but not all, elements of the bundle where they have the right to exit. We would not expect providers to create new standalone services in the event that a customer wished to retain one element of a bundle, while exiting the other elements in the bundle. For example, we recognise that provision of a fixed broadband service is typically reliant on the customer also having a landline with that provider. If a provider does not offer a fixed broadband service on a standalone basis, the customer would need to exit both the landline and broadband service, if they chose to exercise a right to exit.
- 8.63 The rule is not intended to allow customers to retain the element of the bundle that is subject to the non-beneficial contractual change, while terminating other elements that are not subject to the change. This is because the right to exit is triggered by the non-beneficial contract change so that the customer may protect him/herself from that change by exiting the contract, and may in addition choose to switch other elements of the bundle (or retain them where those elements are offered by the provider separately to the service that is subject to the contractual modification). We have made a few minor clarificatory changes to GC C1.15 to make our position on terminating parts of the bundle clearer and we have also sought to clarify this in our guidance.

Our decision

- 8.64 We have decided to implement the revised rules in GC C1.14, C1.15 and C1.20 for the right to exit to apply to all elements of the bundle, as well as the scope provisions set out in GC C1.1(f) (see Annex 5). However, as set out above, the right to exit may not apply to all elements of the bundle where the contractual modification has been made to an optional add-on service that does not form part of the customer's core service(s) and which is offered on a short-term basis or not subject to a commitment period. We have made some clarificatory changes to the wording of GC C1.14 and GC C1.15 to make clear that there is an obligation to notify customers of a contractual modification if the relevant conditions are met and inform those customers of their right to exit.

- 8.65 We have also made some clarificatory changes to GC C1.15 as explained at paragraph 8.63 and to GC C1.20 as explained at paragraph 8.42.
- 8.66 We have amended our guidance to clarify how we would expect providers to apply the rule in practice as explained above. This revised guidance is set out at Annex 10.

Fees payable where a customer has the right to exit

- 8.67 Our GCs currently require that where a customer chooses to exercise their right to exit a contract following notice of a contractual change, they should be allowed to do so “without penalty.” However, there are currently no provisions in the GCs setting out what customers may be required to pay in these circumstances, including in relation to any retained terminal equipment.

Our December proposals

- 8.68 To give full effect to the requirement in Article 105(4) that customers exercising the right to exit should not incur any further costs when doing so, we proposed to include a specific provision that, where a customer exercises their right to exit a contract or contracts for an ECS or a bundle comprising at least an IAS or NBICS (with the exception of bundles including terminal equipment (see below)), they should only be required to pay the “Service Fee” due under those relevant contracts for the period up until the date on which their contract is terminated. We said this would be the day before the proposed modification comes into effect, or the date requested by the customer.
- 8.69 We proposed to define the term “Service Fee” as “*the amount sought by a Communications Provider for the provision and usage of an Electronic Communications Service or any other service included in a Bundle with an Internet Access Service and/or a Number-based Interpersonal Communications Service*”. This may include the customer’s monthly subscription charge³³¹ (or a pro-rata amount of the monthly subscription charge if the contract is terminated part way through a billing month) and any other usage charges.³³²
- 8.70 To provide further clarity as to the amount that customers may be required to pay in these circumstances, we also proposed to expressly stipulate that customers should not be required to pay any early termination charges in addition to their service fee.

Payment for bundled terminal equipment

- 8.71 We proposed to make specific provisions in relation to the compensation due by a customer where they chose to terminate a bundle comprising terminal equipment. The EECC envisages that, in these circumstances, providers may require the customer to pay a fee for the equipment. In particular, Article 105(6) stipulates that where a customer

³³¹ This is the price that the customer is bound to pay to the provider at monthly intervals for services and/or facilities the provider is bound to provide in return for that price.

³³² For example, any charges incurred for using additional services that are not included in the monthly subscription charge.

exercises their right to exit any such bundles and chooses to retain the terminal equipment:

- i) *“no compensation shall be due by the end user other than for retained subsidised terminal equipment”*; and
- ii) *“any [such] compensation shall not exceed its pro rata temporis value [...] or the remaining part of the service fee until the end of the contract, whichever is the smaller.”*

8.72 To implement Article 105(6), we proposed that, with the exception of linked split mobile contracts (see below), where a customer wishes to retain the equipment (where possible³³³), they should pay their service fee until their contract is terminated, **and** whichever is the smaller of the following:

- a) **The remaining value of the terminal equipment.** This is *“an amount calculated in accordance with the terms set out in the contract and which should reflect the value of the equipment on the day on which the contract is terminated, taking into account any depreciation in its value considering the length of time for which it was used, minus any payments already made towards the cost of the equipment”*; ³³⁴ or
- b) **The “Terminal Equipment Fee”** for the period from the day on which the contract is terminated following the customer’s request to cancel until the end of the original commitment period. We proposed to define terminal equipment fee as *“a proportion of the Core Subscription Price which reflects the provision of Terminal Equipment included in a Bundle with an Internet Access Service and/or a Number-based Interpersonal Communications Service. It excludes any amount due under a Mobile Device Loan Agreement.”* (We proposed taking a different approach to bundles with terminal equipment that is taken under mobile device loan agreements, i.e. linked split mobile contracts, and this is set out below.)

8.73 We explained that information on any fees due on early termination of the contract, including fees on retaining terminal equipment should be set out in the contract, as required under Article 102(1).³³⁵

8.74 We proposed to make specific provision in relation to certain types of bundles including a mobile device. We noted that, in the UK, there are two main types of mobile contracts for airtime that include (or are bundled with) a mobile device:

- The first is where a customer has a single contract for both the airtime and mobile device, and pays a single monthly price (we refer to these types of contracts as **“bundled mobile contracts”**).

³³³ We noted that customers on bundles with terminal equipment may not be able to retain their equipment in all cases following contract termination. For example, some providers require customers to send back their equipment e.g. broadband routers, TV set-top boxes, when they cancel their contract.

³³⁴ We consider this is consistent with the reference in Article 105(6) to the pro-temporis value of terminal equipment, which we understand reflects the market value of the equipment at the date the contract is terminated taking into account that the value of the equipment may have depreciated compared to when it was new.

³³⁵ See section 5 which implements the information requirements for contracts in Article 102(1).

- The second is where a customer takes a mobile airtime contract and a linked contract for a mobile device that is generally provided as a consumer credit loan (we refer to these as “**linked split mobile contracts**”). In these cases, the monthly cost to the customer is separated into a price for the airtime and a separate charge for the handset.³³⁶ We considered that our above proposals would readily apply in relation to bundled mobile contracts. However, in the case of **linked split mobile contracts**, we proposed that the customer should be able to do either of the following:
 - a) **Terminate their airtime contract only.** In this scenario, the customer should only be required to pay their service fee up to and including the day the airtime contract is terminated. They should not incur any additional costs for terminating the airtime contract, including any early termination charges. They should be allowed to continue with their separate handset contract. Providers should not be able to **require** the customer to terminate this separate handset contract, (which would require repayment of the outstanding amount of the handset loan), because it is the provider who has triggered the customer’s right to exit (by making a contractual modification that is not exclusively to the benefit of the customer).
 - b) **Terminate the airtime contract and handset contract.** In this scenario, the customer should be required to (i) pay for their use of the service until the contract is terminated and (ii) pay the outstanding principal amount of the loan for the handset for terminating the handset contract if the terms allow for this. For (ii) customers should not be required to pay any penalty charges for early repayment of the handset loan. We considered this to be consistent with the EECC provision that customers may be required to pay compensation in relation to any retained terminal equipment but should not incur any further costs in this respect.

8.75 We set out that we expected affected providers would need to change their contract terms to reflect the new requirements and may incur costs associated with systems and process changes. For example, where terminal equipment is included in a single contract with the other elements of the bundle, we said that providers would have to amend their contract terms to (i) set out how they would calculate the remaining amount of any terminal equipment retained by the customer in accordance with our proposals, and/or (ii) include the terminal equipment fee.

Consultation responses

8.76 Both O2 and Tesco Mobile raised concerns about our proposals on linked split mobile contracts, specifically our proposal that when a customer exercises their right to exit due to contractual changes to their airtime contract, providers must not require the customer to terminate their mobile device loan agreement (but should let them terminate the loan agreement if they wish to do so). They considered this requirement would have a

³³⁶ This amount is different to that payable under bundled mobile contracts, because the principal amount agreed under the Mobile Device Loan Agreement will not have changed, even if the mobile handset has depreciated in value. Therefore, a customer would be expected to pay the remaining principal amount in line with the Mobile Device Loan Agreement.

significant impact on their business because it would in effect require all mobile device loans to be 'de-linked' from the associated airtime contract.

- 8.77 O2 argued that requiring a customer to repay a loan is not imposing "any further cost" on the customer within the meaning of Article 105(4), it is just requiring them to settle an outstanding loan. It noted that Ofcom was still considering O2's representations in response to the July 2019 Mobile handsets document in relation to the impact of the contract duration requirements of the EEC on linked split contracts³³⁷ and it said the proposed requirement in GC C1.17 should therefore be removed until we had concluded on that issue.
- 8.78 More generally, BT asked Ofcom to clarify that providers are not required to proactively ask customers if they want to retain or return their terminal equipment.

Our assessment of responses

- 8.79 For linked split mobile contracts and our approach to allow customers to terminate their airtime contract only, we have considered O2's argument that requiring customers to repay a loan is not a further cost.
- 8.80 In section 7, we set out our concerns about the potential for linked split mobile contracts to deter switching. The same considerations would apply where a customer with linked split mobile contracts is given the right to exit following a contractual change. If a customer is required to pay off the entire handset loan in one go (instead of having the choice to continue spreading this over a number of months in line with their mobile device loan agreement), this could, in some cases, give rise to a further cost that deters the customer from exercising their right to exit. This could in turn undermine customers' ability to exercise their right to exit effectively. Paragraph 1.41 of our existing guidance under GC C1 sets out that when a provider gives a customer the right to exit, they should also take account of what the cancellation process is to ensure that it does not undermine the right to exit.³³⁸
- 8.81 However, we acknowledge that whether or not these sorts of arrangements would be liable to undermine customers' ability to exercise their right to exit effectively, will depend on the specifics of the contractual arrangements offered in a particular set of circumstances and how they work in practice. Therefore, we now consider that it would be more appropriate not to impose a requirement that providers must offer a customer with linked split mobile contracts the option of exiting their airtime contract *only* while continuing to pay off the handset loan in installments.
- 8.82 However, if we identify evidence that the terms of particular mobile contracts (in particular those which require customers to repay a handset loan in full on termination of their airtime without giving the customer an option to avoid re-paying this loan in a lump-sum) disincentivise customers from exercising their right to exit in practice, we may seek to take

³³⁷ See paragraphs 6.25-6.26 of the December Consultation.

³³⁸ [Ofcom's Guidance under General Condition C1 – contract requirements](#)

further action on a case-by-case basis under GC C1.8 and/or the new right to exit rules. Whilst it will depend on the specifics of the contractual arrangements involved, in principle we consider there could be a risk that a customer's right to exit is undermined if they are required to pay off their handset loan as a lump-sum as part of exercising that right. We therefore encourage providers, where relevant, to allow customers the opportunity to continue paying their handset loan in instalments. We have responded to O2's comments about the impact of the contract duration requirements of the EECC on linked split contracts in section 7 (see paragraphs 7.59-7.68).

- 8.83 Separately, we agree with BT's comment that providers should not be required to proactively ask customers if they wish to retain rather than return their terminal equipment. If a provider's normal practice is to ask customers terminating their contract to return their equipment (e.g. a router) then they can continue to do so. Payment for the equipment would only apply where customers are able to retain such equipment and where they choose to do so.

Our decision

- 8.84 We have decided to proceed as proposed in the December Consultation but with modifications relating to two points.
- a) The first relates to a small revision to the wording of C1.20 to reflect the circumstances, as set out at paragraph 8.42, where a customer exercises their right to exit late during the notice period, and the provider is unable to terminate the contract the day before the changes take effect. In such cases, it is reasonable for the termination to occur as soon as reasonably possible after the changes have taken place, so long as the customer isn't subject to the modification. In such cases the customer would be expected to pay the Service Fee for the period up until the date on which their contract is terminated.
 - b) The second relates to linked split mobile contracts and is outlined above at paragraph 8.81. In light of comments made by respondents, we have decided not to proceed with setting a specific rule to offer the customer a choice of just exiting their airtime contract only, so we are not including that requirement in C1.17 as initially proposed.
- 8.85 For contracts with bundled terminal equipment, we will proceed with our rules as proposed in GC C1.16(b), which sets out the fees payable by customers for any retained terminal equipment when they exercise their right to terminate their contract.
- 8.86 The revised rules associated with the fees payable when a customer has the right to exit are set out at GC C1.16, GC C1.17, GC C1.18 and GC C1.20, as well as the scope provisions set out in GC C1.1(d) and GC C1.1(f) (see Annex 5).

Lifting conditions on the use of terminal equipment

Our December proposals

- 8.87 Where a customer chooses to retain terminal equipment when exercising their right to exit their contract following a contractual modification, Article 105(6) requires providers to lift any condition on the use of that terminal equipment on other networks, free of charge.
- 8.88 To implement this, we proposed a new requirement to ensure that when a customer chooses to exercise their right to exit and wishes to retain terminal equipment, providers that impose conditions on the use of the terminal equipment on other networks should take all necessary steps to remove those conditions, free of charge, on or before the day on which the contract is terminated.
- 8.89 We considered that, overall, the requirement would ensure that consumers are not hindered in their ability to switch providers in response to a contractual modification that is not to their benefit. We recognised that this would have an impact on mobile providers who have customers with mobile devices that are locked to their network and are still within their commitment period. We proposed that providers would be required to proactively notify their customers of the relevant information at a reasonable point in time to enable them to unlock their handset as soon as the contract is cancelled.
- 8.90 We noted that if we proceeded with a new rule to ban locked devices for residential customers (see section 10), our proposals on the lifting of conditions on the use of terminal equipment would only apply to business customers and any residential contracts comprising handsets that were locked before the ban took effect.

Consultation responses

- 8.91 Only Uswitch commented on this proposal. It noted that some broadband providers lock the router equipment they provide to their own network. It said that in the event providers allow customers to retain broadband routers on cancellation or switching, the equipment should be unlocked so that the customer can use it for their new broadband connection.

Our assessment of responses

- 8.92 We note Uswitch's comment about routers. In most cases we understand that currently providers typically require customers who are cancelling their broadband contract to return the router to them for recycling or reconfiguring/redistribution (and note in paragraph 8.83 above that if a provider's normal policy is to ask customers terminating their contract to return their equipment then they can continue with this policy). Nevertheless, we have amended the wording of GC C1.19 to make it clear that it applies to all terminal equipment, not just mobile handsets, which is in line with the position set out in the December Consultation.

Our decision

8.93 We intend to implement the requirement as proposed in our December Consultation, but we have amended revised GC C1.19 to clarify that it applies to all terminal equipment as intended, not just mobile devices. The scope for this provision is set out in GC C1.1(d) and GC C1.1(f). These revisions are set out in Annex 5.

Right to exit if a contract rolls over

EECC requirement

8.94 Where the commitment period in a contract can be extended automatically, Article 105(3) requires that, after it has been extended, customers should have the right to exit at any time with a maximum one-month notice period, and without incurring any charges (except for the charges for receiving the service during the notice period).

8.95 The provision applies to providers of ECS other than transmission services used for the provision of machine-to-machine services.³³⁹ It also applies to both residential and business customers.

8.96 In addition, the provision applies to all bundles with an IAS or NBICS that are provided or sold to residential customers, as well as microenterprise and small enterprise customers, and not for profit organisations, unless they explicitly agree to waive this right.³⁴⁰

Our December proposals

8.97 To implement Article 105(3), we proposed a new requirement (new GC C1.22) to ensure that when customers with contracts that will be automatically prolonged reach the end of their commitment period, they have the right to exit with one month's notice and, should they choose to exercise this right, they should only be required to pay for services used up to the point at which their contract is terminated.³⁴¹

8.98 In addition, we proposed to extend the requirement to bundles for residential, microenterprise, small enterprise and not for profit customers in GC C1.22(b). However, we noted that how this would work in practice would depend on whether the contracts in the bundle have commitment periods that align or not:

- **where the commitment periods of the different elements of the bundle align**, the contracts would be automatically extended at the same time. In which case, we proposed that the customer should be able to give notice to exit the whole bundle at

³³⁹ NIICS are also out of scope of this rule, however, as noted above, the UK Government has decided not to extend the UK telecommunications regime to cover NIICS at present and therefore we have updated our proposed GCs to remove reference to NIICS throughout.

³⁴⁰ Article 105(2) and 107(4).

³⁴¹ We also proposed some minor consequential amendments to current GC C1.10 (revised GC C1.21) in order to reflect new defined terms and make clear it applied to new GC C1.22.

the same time, without incurring any costs other than the service fee for the notice period; however

- **where the contracts in the bundle have commitment periods that do not align**, they will reach the point at which they may be automatically extended at different times. Here we proposed that the right to exit the contract(s) for the elements of the bundle with longer commitment period(s), should only apply once the customer has reached the end of those commitment period(s). This would therefore maintain the commitment period(s) that the customer agreed to when taking out those contracts.

- 8.99 We also proposed to retain our current rule to protect residential customers and small business customers from being entered into a new commitment period without their express consent (current GC C1.3), though we clarified in the relevant GC that this consent needed to be provided in relation to each new commitment period.³⁴² We considered it important that providers have an obligation to seek express consent from these customers to ensure that contracts are not automatically renewed. We also proposed to retain our guidance on automatically renewable contracts with some minor consequential changes.³⁴³
- 8.100 We noted in our December Consultation that the rule is designed to ensure that the automatic extension of contracts does not result in a customer being tied into a contract for a further commitment period and that they do not incur undue costs when they decide to terminate an automatically renewed contract. We also considered that these requirements would have little to no impact on providers in relation to contracts for residential customers and businesses with fewer than 10 employees. The terms in most contracts for these customers already allow them to terminate the contract after the end of the commitment period by giving at least one month's notice as reflected by the requirements of the current rule in GC C1.3.
- 8.101 However, we considered that there would be some impact on providers that offer automatically renewable contracts to business customers with more than 10 employees and not for profit organisations. We considered that providers would have to make changes to their contract terms to reflect the new requirement and they may be required to put system changes in place and to train staff.
- 8.102 We also considered that there would be little to no impact on providers who offer bundles of communications services to residential and microenterprise customers because the proposed new requirement would be consistent with their contracts now, where these customers can exit at the end of the commitment period by giving at least a month's notice. However, we recognised that there might be some impact on providers who offer

³⁴² This rule means that, for example, if a customer takes a contract with a two-year commitment period, the provider is not able to roll that customer on to another two-year commitment period without first getting that customer's express consent to do so.

³⁴³ The changes to the guidance are: amending the references to the GCs to align with the numbering and text of the revised GCs and removing references to "existing ARCs customers affected by the amendments" and "migration process" which relate to when the rule was introduced in 2011 and would no longer be relevant for contracts for residential and small business customers today.

bundles of communications services with non-communications services to ensure that the requirements apply to all elements of the bundle.

Consultation responses

8.103 FCS said it did not agree with the extension to small enterprise customers of the right to exit when a contract rolls over.³⁴⁴

Our assessment of responses

8.104 The extension of the new rule on automatic prolongation of contracts to bundles for residential, microenterprise, small enterprise and not for profit customers, is a requirement of the EECC (under Article 107, as noted above). This means that we are required to extend the requirement to bundles to these categories of customer. However, we have subsequently decided to revise the definitions of microenterprise or small enterprise customers and not-for-profit customers and as a result the extension of the protection to bundles will only apply to businesses and organisations with no more than 10 employees.³⁴⁵

Our decision

- 8.105 Our decision is to implement the new rule in GC C1.22 (and make the consequential changes to GC C1.21) as proposed, subject to certain minor amendments to GC C1.22(b) to clarify how it applies to bundles. We have also clarified the scope of this condition to make clear that it applies to providers of bundles to consumers and to microenterprise or small enterprise or not for profit customers (unless they have agreed otherwise), to the extent stated in C1.22 (see revised GC C1.1(g)). These amendments are set out in Annex 5.
- 8.106 The new rule will apply to all subscribers as required by Article 105(3) of the EECC, and to all subscribers of bundles that are residential customers, microenterprise or small enterprise, or not for profit customers (unless they have expressly agreed otherwise), as required by Article 107 of the EECC.
- 8.107 We provide some further explanation here about how the rule would apply to bundles for residential, microenterprise or small enterprise and not for profit customers, where the contracts in the bundle do not have commitment periods that align. In this situation:
- a) When the first element of the bundle reaches the end of its commitment period, a customer may choose to provide one month's notice to exit that element of the bundle at that point in time. Once further elements of the bundle have also reached the end of their commitment period(s), the customer would then be able to choose to terminate

³⁴⁴ Separately, Sky said that Article 105(3) only covers the automatic prolongation of a minimum term contract and did not apply to situations where a customer moves onto a monthly rolling contract. Sky's response on this point is addressed in section 7 at paragraphs 7.114.

³⁴⁵ See section 4.

those elements on one month's notice, even if they are not ECS (but provided they fall within the definition of a bundle as set out in section 4).

- b) Alternatively, the customer may choose to wait to terminate elements of the bundle for which the commitment period has expired until the final commitment period elapses, at which point the customer can exit all elements of the bundle at the same time, by giving one month's notice.

8.108 We have also decided to maintain the existing rule in GC C1.10 (as renumbered from C1.3) to protect residential customers and small business customers from being entered into a new commitment period without their express consent, subject to the proposed minor drafting changes for consistency and clarity. As set out in section 15, we are proposing an amendment to the scope of this rule (as set out in GC C1.1(b)(iii)) so that in place of the current 'Domestic and Small Business Customers' definition, it would be aligned with the new 'Consumers', 'Microenterprise or Small Enterprise Customers' and 'Not-for-Profit Customers' definitions.

Implementation

Our December proposals

8.109 We proposed that these requirements should apply to all new contracts from 21 December 2020. In addition, we stated that as the requirements apply throughout the duration of the contract, they should also apply to existing contracts from that date.

Consultation responses

- 8.110 As discussed in section 3, many providers raised concerns with our proposed implementation deadline of 21 December 2020 for all of the proposed changes to the regulatory rules.
- 8.111 With regards to the right to exit, BT said extending the right to exit to bundles, alongside the removal of the material detriment threshold, would require them to undertake significant systems development or build new systems in order to identify and link services in a bundle. Therefore, they said a more realistic timeframe to implement would be [X] months from our final statement.
- 8.112 Sky said that they require at least 12 months from our statement to implement any new rules. They also said that the new right to exit rules should only apply to those products which a customer buys or enters into a new contract after the implementation date so that there is certainty for customers on the products they have and to prevent information overload which may occur if providers have to explain to existing customers why some things are changing while they are still in their commitment period.

Our assessment of responses and decision

- 8.113 We note Sky's comment that the rules should only apply to new contracts. However, to implement the EECC, the new right to exit rules should apply throughout the duration of contracts once they have come into effect.³⁴⁶ Therefore the right to exit rules should apply to existing contracts and not just new contracts.
- 8.114 We recognise that providers will need to identify which types of changes will trigger the right to exit in accordance with the new rules in revised GC C1.14 – C1.20. They may also need to make some significant changes by providers to their systems and processes, including to ensure that the new right to exit rules apply to all subscribers (including large businesses); that the right to exit is extended to all services and equipment in a bundle for residential, microenterprise, small enterprise and not for profit customers (and therefore that there are links between relevant services and equipment in providers' systems and processes); to reflect new rules on payment for bundled terminal equipment, and to ensure that the rules apply to both new and existing contracts (as the rules are relevant throughout the duration of the contract).
- 8.115 For these reasons, we consider 12 months is unlikely to be long enough and have decided to give providers 18 months from the date that we publish the final notification of the revised GCs in December 2020, to implement these requirements (i.e. until June 2022).³⁴⁷ In practice this means that we are giving providers 20 months from publication of this statement to implement the new requirements, which we consider to be sufficient. As a result, the right to exit rules set out in current GCs C1.6 – C1.9 will stay in force until June 2022 (subject to minor changes to defined terms, updated cross-references and renumbering), as will the current guidance on contractual modifications.
- 8.116 In addition, C1.20 includes a cross reference to the changes being made to the switching rules set out in GC C7 (as explained in section 9). As the changes to GC C7 will not come into effect until December 2022, this wording in GC C1.20 will also not come into effect until December 2022.
- 8.117 The new rule in GC C1.22, and clarificatory revision to C1.10, will require less significant changes and we have therefore decided to give providers 12 months from the date that we publish the notification of the revised GCs in December 2020, i.e. until December 2021 to implement these changes.
- 8.118 We explain when modifications to GC C1 will come into effect in the period between December 2021 and December 2022, and how GC C1 will therefore apply at relevant points in time, in Table 2, Part B at Annex 5.

³⁴⁶ We note that if a provider needs to make changes to existing contracts to reflect the new right to exit when it comes into effect, they would not need to give customers the right to exit in respect of those changes, because they are changes required by law, and in addition would be changes to the benefit of customers.

³⁴⁷ This also means that the revised guidance would also not come into effect until June 2022.

9. Switching and porting

Overview

- 9.1 It is important that customers can exercise choice and take advantage of competition in communications markets by being able to switch provider easily. Unnecessary difficulties when switching can cause harm or create barriers that prevent customers switching. Effective switching is also important to support future investment in, and take-up of, faster and more reliable broadband. Ensuring customers can switch easily is a long-standing priority for Ofcom and we have previously put in place a number of reforms to help achieve this objective.³⁴⁸
- 9.2 In this section, we explain how we implement Articles 106 and 107 of the EECC on switching (where a customer changes their fixed or mobile provider) and porting (where a customer keeps their telephone number when they switch provider).³⁴⁹ For fixed services, this statement focuses on switching provider at the same location and does not consider switches when customers are moving location (e.g. moving home).³⁵⁰
- 9.3 In summary, we have decided to:
- a) put in place new general switching rules which set out providers' high-level obligations in relation to all switches. These include rules on the timing of a switch, information and a requirement that all switches are led by the gaining provider. These rules are required in order to implement Article 106 of the EECC and will give customers a baseline level of protection when switching providers (see paragraphs 9.54, 9.68(a), 9.88, 9.121, 9.173(a), and 9.185(a));
 - b) introduce new specific rules for residential customers (in addition to the general rules noted above) on information, consent and compensation when things go wrong and to issue guidance on our new compensation rules (see paragraphs 9.68(b), 9.185(b), 9.173(b) and (c));
 - c) introduce a prohibition on notice period charges beyond the switch date for residential customers switching fixed services (see paragraph 9.77);
 - d) make limited changes to our current rules in relation to porting, that include giving customers the right to port their number for one month after they have terminated their contract and a prohibition on charging customers to port their number (see paragraphs 9.121-9.122); and

³⁴⁸ Ofcom, December 2017. [Consumer Switching: Decision on reforming the switching of mobile communications services](#) and Ofcom, December 2013. [Consumer Switching: A statement on the Gaining Provider Led Notification of Transfer elements](#).

³⁴⁹ In this statement, we sometimes refer to switching to cover switching both with and without a number port.

³⁵⁰ This statement also does not consider provider-initiated migrations (e.g. providers migrating their customers from copper to full-fibre broadband).

- e) give providers additional time to comply with the new switching and porting requirements. Our new general and specific rules will come into force 24 months after the publication of the notification of the revised GCs (see paragraphs 9.194-9.195).

9.4 We discuss our decisions in more detail in the following sections below:

- a) scope;
- b) rules relating to the mechanics of the switching process;
- c) information and notice period charges;
- d) refunds;
- e) porting;
- f) compensation; and
- g) consent.

9.5 Article 106(6) of the EECC specifies that Ofcom may establish the details of the switching and porting processes and, in addition, Article 106(1) requires Ofcom to ensure that all switching processes are simple and efficient. In our December Consultation, we explained that we had asked the Office of the Telecommunications Adjudicator (OTA) to work with industry to develop a new switching process for residential switching fixed services that met the EECC requirements.³⁵¹ ³⁵² Industry has to date been unable to agree on a single fixed switching process and proposed a number of options. We will shortly publish a consultation on our assessment of these options with proposals to establish a new fixed switching process for residential customers.

Scope

EECC requirements

9.6 The provisions of Article 106 apply to internet access services ('IAS') and/or number-based interpersonal communication services ('NBICS'), and to both residential and business customers (except for a business which is itself a communications provider).³⁵³ ³⁵⁴

³⁵¹ [Office of Telecommunications Adjudicator](#)

³⁵² [December Consultation](#), paragraphs 7.218-7.223, page 110.

³⁵³ We note that for provisions in Article 106 relating to NBICS, the text only refers to the porting of numbers. However, we consider that the intention of the EECC was for these obligations to also apply in the context of switching of NBICS that do not involve porting (e.g. a customer switching a traditional landline voice only service without keeping their number). In particular, given the emphasis that the EECC places on the importance of switching, it is our view that it could not have intended to leave customers who choose to switch their NBICS without porting their number unprotected. We consider the instances in which a customer would be switching only an NBICS and not porting a number would be limited but, given our view of the intention of the EECC, we have ensured these are included in our implementation of Article 106.

³⁵⁴ In our revised GCs we use the term "Switching Customer." This term as it relates to switching refers to any subscriber that is party to a contract with a provider of public electronic communications services for the supply of such services and who has requested, is requesting or considers requesting the switching of such services. This makes clear that the end-user to which a provider has obligations under our switching rules is the end-user that has a contractual relationship with either provider.

9.7 Article 107 extends the provisions of Article 106(1) to apply to all elements of a bundle if the bundle comprises at least an IAS or NBICS.³⁵⁵ It also gives Member States the power to apply other Article 106 requirements to all elements of a bundle.

Our December proposals

9.8 To implement Articles 106 and 107, we proposed new general switching rules that would apply to IAS and/or NBICS and all residential and business customers, irrespective of the size or nature of the business.^{356 357} These general rules covered:

- a) maintaining switching processes;
- b) the process being gaining provider led;
- c) timing and date of switch;
- d) continuity of service;
- e) responsibilities of third-party providers;
- f) information;
- g) refunds;
- h) porting;
- i) compensation; and
- j) consent.

9.9 We noted that the new general switching rules would ensure an appropriate baseline level of protection for all switches within the scope of the EECC and make switching easier, quicker and more reliable for customers. They would also avoid or reduce loss of service during the switch and help address some of the process related factors that can deter certain customers from considering switching or going through with a switch.

9.10 We also proposed specific rules for residential customers relating to information, consent, notice period charges and compensation.

9.11 As required by Article 107(1), we proposed that some of our following general rules would also apply to services or terminal equipment when provided as part of a bundle:

- a) Maintaining switching processes
 - Ensuring that all switching processes are simple and efficient.³⁵⁸
- b) Timing and date of switch

³⁵⁵ In this section where we refer to all elements of a bundle we mean any services or terminal equipment provided as part of a bundle comprising an IAS or an NBICS. See section 4, paragraphs 4.15-4.31 for the definition of bundles.

³⁵⁶ [December Consultation](#), paragraphs 7.27-7.31, pages 77-8.

³⁵⁷ [December Consultation](#), paragraphs 7.33-7.34, page 78.

³⁵⁸ [December Consultation](#), paragraph 7.38, page 79.

- Ensuring that switching is carried out within the shortest possible time on the date and within the timeframe agreed with the end-user.³⁵⁹
- c) Continuity of service
- Ensuring that there is continuity of service, where technically feasible, and that loss of service during the switching process does not exceed one working day.³⁶⁰
 - For the losing provider to continue to supply the end-user on the same terms until they are notified that the new service is activated.³⁶¹
- d) Information
- Providing adequate information before and during the switching process.^{362 363}

9.12 Although Article 107(5) allows Ofcom to apply all switching requirements in Article 106 to all elements of a bundle, we did not propose to do so. The only rules we proposed to apply to bundles were those required by Article 107(1) and listed above. We did not propose to use our discretion to apply any additional general or specific rules to bundles.

Consultation responses

- 9.13 Citizens Advice agreed that both residential and business customers should be within the scope of our new rules, and that residential customers should benefit from additional protection. Similarly, BT generally welcomed our approach of setting high-level obligations for all switches and taking a more flexible approach for business customers.
- 9.14 CityFibre, ISPA, UKCTA and [X] argued that the scope of our proposals failed to recognise the differences between retail and business markets. They were concerned that the proposed GCs did not meet the needs of large businesses and said Ofcom should allow for tailor-made arrangements for business switches. UKCTA and ISPA noted that business switching is complex, in part, due to large volumes of lines, bespoke arrangements and the avoidance of porting in business hours. They argued that some of those characteristics clashed with the requirements of Article 106.
- 9.15 Sky said it was unable to comment meaningfully on our general and specific switching and porting proposals without knowing what the new fixed switching process will be.

Our assessment of responses

- 9.16 The EECC makes clear that the requirements set out in Article 106 apply to all end-users, which includes all residential and business customers, irrespective of the size or nature of

³⁵⁹ [December Consultation](#), paragraph 7.54, page 81.

³⁶⁰ [December Consultation](#), paragraph 7.63, page 83.

³⁶¹ [December Consultation](#), paragraph 7.63, page 83.

³⁶² [December Consultation](#), paragraph 7.96, page 87.

³⁶³ For the avoidance of doubt, we proposed that only rules required by Article 107(1) would apply to bundles. Any remaining rules relating to maintaining switching processes, timing and date of switch, continuity of service and information that are not listed (e.g. automatically terminating customers' contracts on the day the switch is completed) would not apply to bundles.

the business. The Government has also stated that Ofcom should proceed to transpose all of the end-user rights requirements in full.³⁶⁴

- 9.17 We recognise that business and residential customers can sometimes have different needs when switching. Businesses are generally better equipped with the skills and resources to manage their communications services than residential customers, and they are likely to have better knowledge of the services provided under their contract and more resources to find out about those services and to consider the implications of switching providers. In addition, the business landscape is large and varied, and there are differences in the composition, character and behaviour of businesses. The diversity among businesses means it may not be appropriate to specify certain rules that would apply to all business customers in the same way. Therefore, we have not included businesses within the scope of any of our specific requirements on information, consent, compensation and notice period charges.
- 9.18 In relation to Sky's response, we do not agree that providers were not able to meaningfully comment on our proposed requirements. The general and specific switching and porting rules will apply whichever new fixed switching process is put in place. Our December Consultation clearly set out the EECC requirements, our proposed implementation approach and the draft GC text for stakeholders to comment on.

Our decision

- 9.19 We have decided to proceed with our December proposals to implement the EECC requirements by introducing:
- a) general switching rules applying to IAS and NBICS and all residential and business customers; and
 - b) specific rules for residential customers relating to information, consent, notice period charges and compensation.
- 9.20 We discuss these general and specific rules in more detail below. We have only applied rules listed at paragraph 9.11 to bundles and have decided not to apply any other switching rules to bundles at this stage.

Rules relating to the mechanics of the switching process

- 9.21 In this section, we have grouped together decisions relating to the mechanics of the switching process, in the following areas:
- a) maintaining switching processes and a gaining provider led process; and
 - b) the timing and date of a switch, including continuity of service and responsibilities of third-party providers.

³⁶⁴ DCMS, July 2020. [Government response to the public consultation on implementing the European Electronic Communications Code.](#)

EECC requirements

Maintaining switching processes and a gaining provider led process

- 9.22 Article 106(1) requires Ofcom to ensure that all switching processes are simple and efficient. Article 106(6) provides that Ofcom may establish the details of the switching and porting processes. It also stipulates that both the losing and gaining provider should cooperate in good faith and should not delay or abuse the switching or porting processes.
- 9.23 Article 106(6) requires that any switching or porting process should be led by the gaining provider.³⁶⁵

Timing and date of switch, continuity of service and responsibilities of third-party providers

- 9.24 Both Articles 106(1) and 106(5) include obligations on losing and gaining providers to:
- a) ensure that switching and porting are carried out within the shortest possible time on the date and within the timeframe expressly agreed with the end-user;
 - b) ensure the end-user's number is activated within one working day from the date agreed with the end-user; and
 - c) ensure continuity of service, unless technically not feasible. Any loss of service during the switching and porting process should not exceed one working day.
- 9.25 The losing provider is required to:
- a) continue to supply the end-user on the same terms until the new service is activated by the gaining provider;
 - b) automatically terminate end-users' contracts upon conclusion of the switching process; and
 - c) reactivate the number and all related services where a process fails and until the port is successful.
- 9.26 Article 106(5) also places a complementary obligation on providers whose access networks or facilities are used by losing or gaining providers to ensure there is no loss of service that would delay the switching or porting process.

Our December proposals

Maintaining switching processes and a gaining provider led process

- 9.27 We proposed that providers maintain switching processes that are simple and efficient including in relation to retaining or returning terminal equipment.

³⁶⁵ Article 106 refers to the "receiving provider" and the "transferring provider." In this document and the GCs we refer to the Communications Provider to whom a customer is switching, or considering switching, their services *to* as the 'gaining provider.' We use the term 'losing provider' to refer to the provider *from* which a customer is switching, or considering switching, their services.

- 9.28 For switches of IAS and NBICS only, we proposed that providers be required to:
- a) take all necessary steps to complete a switching process in accordance with relevant industry processes;
 - b) cooperate in good faith to complete a switching process in accordance with our requirements and any applicable industry processes; and
 - c) not delay or abuse the switching process.³⁶⁶
- 9.29 We also proposed that the gaining provider:
- a) be required to allow customers to use switching processes they have in place in accordance with Article 106, where requested; and
 - b) leads the switching and porting process on behalf of the customer.
- 9.30 In our December Consultation, we explained that we had asked the OTA to work with industry to develop a new switching process for residential customers switching fixed services that met the EECC requirements.³⁶⁷
- 9.31 Our December Consultation also discussed the existing Notification of Transfer and Auto-Switch processes. We explained our view that these processes were consistent with the obligation that the gaining provider leads the switching and porting process on behalf of the customer.

Timing and date of switch, continuity of service and responsibilities of third-party providers

- 9.32 We proposed that losing and gaining providers should ensure that a switch is completed on a specific date and this should be a date chosen by the customer where technically possible. Where a customer does not choose the date of the switch, the date should be as soon as possible. Additionally, where a customer does not choose a date, or the date they choose is not technically possible, we proposed to specify the latest date for the switch.
- 9.33 This means that for IAS and NBICS, other than mobile switches, the date of the switch should be no later than the working day after the date on which:
- a) all necessary validation processes have been completed;
 - b) the network connection is ready for use; and
 - c) where relevant, the porting of any phone numbers is ready to be activated.³⁶⁸

³⁶⁶ [December Consultation](#), paragraphs 7.41-42, page 80.

³⁶⁷ [December Consultation](#), paragraphs 7.218-7.223, page 110.

³⁶⁸ Where the service is a mobile service, the date of the switch should be no later than the working day after the customer gives their PAC or STAC to the gaining provider (if the customer has already activated a SIM) or the day after SIM activation (where the customer has already given their PAC or STAC to the gaining provider). As part of our proposals on timing in relation to mobile services, we addressed an inadvertent narrowing of the scope of the porting requirements as a result of GC changes we made when introducing the Auto-Switch process. The changes made at that time meant that there were no longer provisions for the time in which a port must be completed for mobile services involving 25 numbers or more.

- 9.34 On the date a customer's services are switched, we proposed the losing provider must cease to provide its services and the gaining provider must start to provide its services.³⁶⁹ Where relevant, any numbers must also be ported and activated on this date.
- 9.35 We proposed losing and gaining providers should ensure that there is continuity of service, where technically feasible, and that loss of service during the switching process does not exceed one working day.
- 9.36 We proposed obligations on losing providers to:
- a) continue, where technically feasible, providing their services on the same terms until the switch has been completed and the customer's services have been activated by the gaining provider;
 - b) automatically terminate the customer's contract on the day the switch is completed; and
 - c) where a porting process fails, reactivate the number and the customer's relevant services until the port is completed successfully.³⁷⁰
- 9.37 We also proposed that providers of communications networks used by either the gaining or losing provider, or both, must ensure there is no loss of service that would delay switching and porting.³⁷¹

Consultation responses and our assessment

Maintaining switching processes and a gaining provider led process

- 9.38 The Communications Consumer Panel (CCP) suggested that if a customer's accessibility requirements are not met by the gaining provider, it should be easy for them to switch back to the losing provider. This would be in keeping with a process that is simple and efficient for the customer.
- 9.39 Which? welcomed our proposal to require gaining provider led switching and Post Office said it was likely to bring some benefits to switching or porting customers. Uswitch said gaining provider led switching was vital to support fibre roll-out and that Ofcom should make clear we would pursue it regardless of the EECC.
- 9.40 CityFibre argued services bundled with broadband, such as mobile and Pay TV should be within scope of a gaining provider led switching process. It said broadband customers with additional bundled services would not benefit from using a gaining provider led process if it

³⁶⁹ [December Consultation](#), paragraphs 7.60-61, page 82.

³⁷⁰ [December Consultation](#), paragraphs 7.65-7.68, pages 83-84.

³⁷¹ We proposed the GCs would contain two related conditions. The obligation in GC C7 would apply where a provider's network is used by either the gaining provider or the losing provider, or both, as part of the switching process. The related obligation in GC B3 would apply where a provider's network is used by either the 'Donor Provider' or the 'Recipient Provider', or both, as part of 'Number Portability' or 'Portability'. The use of the terms 'Donor provider' and 'Portability' ensures that, in relation to porting, the obligation also includes providers that may have to activate a port to a customer's new provider and provide ongoing forward routing for that number but may be neither the losing provider nor the gaining provider.

only applied to the broadband part of the bundle. It added this would also not meet the EECC's requirement for automatic termination of the losing provider contract.

- 9.41 Openreach stated that the existing Notification of Transfer process did not require a customer to contact their losing provider. Therefore, it believed it was a gaining provider led process. Post Office said that the Notification of Transfer process broadly meets the requirements of the EECC and there is not a need for Ofcom to implement a new switching process.
- 9.42 CityFibre argued Auto-Switch was not gaining provider led as it requires a customer to contact their losing provider to initiate the process.

Our assessment of responses

- 9.43 We note the CCP's point on an easy process to switch back to the losing provider if a customer's accessibility requirements are not met. Customers who wish to return to their previous provider after successful completion of a switch will likely need to go through the switching process again, unless providers have put bespoke arrangements in place. The EECC requires the switching process to be simple and efficient for all customers.
- 9.44 In practice, we would expect relatively few customers would want to switch again immediately after successful completion of the switch due to issues relating to accessibility requirements. This is because GC C5 specifies support services that providers are required to make available to disabled customers. There are also requirements in place to help ensure customers can make informed decisions about the terms they are signing up to with a new provider before a switch. For example, we are requiring losing providers to inform disabled customers of any impact that switching will have on the additional support services that providers are required to make available.³⁷² Guidance from providers on the switching process must inform customers that they can continue to use additional support services. Customers must be made aware that these services can be accessed regardless of who will be providing their service after the switch and that they are likely to need to inform the gaining provider they want to use them before they agree to the switch.³⁷³
- 9.45 In response to CityFibre, the EECC does not mandate that the gaining provider led requirement should apply to all elements of a bundle. Our switching rules focus on implementing the mandatory requirements of the EECC and we have decided not to extend the gaining provider led requirement to all elements of a bundle at this time.
- 9.46 The EECC seeks to make switching a seamless experience for customers by requiring the gaining provider to lead the process and offer a "one-stop-shop."³⁷⁴ As we set out in our December Consultation, central to this is the requirement for the gaining provider to manage the switch so that a customer does not have to coordinate the end of one service

³⁷² This requirement is part of our specific information requirements for residential customers, discussed at paragraph 9.58 and Annex 9, paragraphs A9.13-A9.14.

³⁷³ Annex 9, paragraph A9.13

³⁷⁴ Recital 281, EECC.

and the start of another, contact the losing provider to terminate the old contract, or deal with two providers throughout the process or if something goes wrong.³⁷⁵

- 9.47 For a gaining provider led process to be effective, providers must cooperate and a customer will need to give the gaining provider sufficient information to enable them to accurately identify the losing provider, the customer and the relevant services which the customer wishes to be switched. It is also important that a customer gives sufficient information to the gaining provider to enable them to verify with a losing provider that the customer is authorised to request a switch.
- 9.48 In relation to the Notification of Transfer process, we agree that it is consistent with the obligation that the gaining provider leads the switching and porting process on behalf of the customer. However, the Notification of Transfer process rules are limited to switches between providers using the Openreach or KCOM copper networks. It does not cover switches between providers on different networks nor does it cover switches to or from full-fibre broadband services, even within the same network. A new fixed switching process is therefore required to address these gaps.
- 9.49 Industry has been working hard to develop detailed proposals for a fixed switching process for residential customers, with the support of the OTA. To date, however, providers have been unable to agree on a single fixed switching process and have instead proposed a number of options. We will shortly publish a consultation on our assessment of these options. We received a number of responses to our December Consultation relating to industry's fixed switching process proposals and we will address these in more detail in the forthcoming consultation.
- 9.50 We consider that the existing switching process for mobile services (Auto-Switch) as currently designed, is consistent with the EECC requirement that the gaining provider should lead the switching process on behalf of customers. As part of the Auto-Switch process the gaining provider coordinates with the losing provider the end of one service and the start of another and the contract is automatically terminated when the new service starts. Customer contact with the losing provider to obtain a Porting Authorisation Code (PAC) or Service Termination Activation Code (STAC) is also restricted to the minimum necessary to enable the switch of mobile provider.³⁷⁶ Customers can simply send a text message to the losing provider in order to switch.

Timing and date of a switch, continuity of service and responsibilities of third-party providers

- 9.51 BT and Openreach agreed with our proposals regarding the timing and date of a switch. BT also agreed with our proposals on continuity of service. Tesco Mobile asked for clarity on whether we would permit a short loss of service (of much less than 24 hours) during mobile switching and porting.

³⁷⁵ [December Consultation](#), paragraph 7.49, page 81.

³⁷⁶ As we do not intend to proceed with our proposed changes in relation to the Auto-Switch process at this stage (see paragraphs 9.186-9.188), some of the GCs in C7 still refer to "N-PAC". These inconsistencies will be resolved in our forthcoming switching process consultation.

Our assessment of responses

- 9.52 In response to Tesco Mobile’s query, we note that the EECC and our corresponding proposed GCs make clear that providers should ensure continuity of service where technically feasible, and that loss of service during the switching process should not exceed one working day.³⁷⁷ In the case of mobile porting, we set out in our Auto-Switch Statement that any loss of service should be limited to six hours at most (i.e. to between 10am and 4pm on the next working day after a request to port).³⁷⁸ This is consistent with our proposals around loss of service, and given the importance of communications services to customers, we encourage providers to minimise any loss of service wherever possible.
- 9.53 To correct for errors contained in the proposed definitions in our December Consultation, we have reverted to the definition of ‘Porting Authorisation Code’ or ‘PAC’ used in the existing GCs, with a minor change to reflect a new defined term, and changed the definition of ‘Service Termination Authorisation Code’ or ‘STAC’ used in relation to GC C7.3. These changes are set out in Annex A5.

Our decision

- 9.54 We have decided to proceed with our December proposals to implement the EECC requirements by introducing general rules for all switches in relation to:
- a) maintaining switching processes (GC C7.4);
 - b) the process being gaining provider led (GC C7.5);
 - c) the timing and date of a switch (GC C7.3);
 - d) continuity of service (GCs C7.4(d) and C7.7(a)-C7.7(c)); and
 - e) the responsibilities of third-party providers (revised GC B3.4 and C7.17).

Information

EECC requirements

- 9.55 Articles 106(6) and 106(9) require Ofcom to take appropriate measures to ensure end-users are adequately informed throughout the switching and porting process, including about their rights to compensation. Article 106(1) specifically requires that, when switching between IAS providers, end-users are given adequate information before and during the switching process.
- 9.56 Article 111(1)(b) requires Ofcom to specify requirements on providers to ensure disabled people benefit from the choice of undertakings and services available to the majority of end-users.

³⁷⁷ [December Consultation](#), paragraph 7.67, pages 83-84.

³⁷⁸ [Auto-Switch Statement](#), paragraph 3.105, page 37.

Our December proposals

- 9.57 The EECC emphasises the importance of the availability of transparent, accurate and timely information on switching to increase customer confidence in switching.³⁷⁹
- 9.58 We proposed a general rule that providers take all reasonable steps to ensure all customers are adequately informed before and during the switching process.³⁸⁰ This includes informing customers of the right to compensation. It also includes a requirement on all providers to provide easy to understand information on the switching process and to publicise this information and make it readily available on their websites.³⁸¹ This information must include details of the steps a customer may need to take to ensure they can continue to use any additional support services for disabled customers (see Annex A9 paragraph A9.14)
- 9.59 We noted that residential customers need additional protections in terms of the information they require before and during a switch and proposed further specific rules for these customers. We said residential customers are less likely than business customers to have knowledge and an understanding of the services provided under their contract and less likely to have resources to find out about those services and to consider the implications of switching providers.
- 9.60 Therefore, we considered that these customers should be provided with specific information about the impacts on their services as a result of any switch to support them making informed switching decisions. We said this additional information should increase customers' confidence in switching and may make them more willing to engage actively in the competitive process.
- 9.61 We also said that residential customers should be at least as informed as part of any new switching process as they are under the existing Notification of Transfer and Auto-Switch processes. Our specific information proposals for residential customers are set out in Annex A9.

Consultation responses

- 9.62 BT and Which? agreed with our general information requirements.
- 9.63 Citizens Advice welcomed the specific protections that we proposed for residential customers. One individual suggested that any charges levied for retaining a losing provider's email address needed to be explained more clearly.

³⁷⁹ Recital 277, EECC.

³⁸⁰ [December Consultation](#), paragraphs 7.99-7.102, pages 87-88.

³⁸¹ Ofcom's [2018 consumer research](#) showed 18% of those switching fixed services and 28% of those switching mobile services experienced difficulties understanding the relevant steps to switch provider (Ofcom, [2018 Switching Experience Tracker](#), Q19A/B/C, table 44, page 230). In this research, fixed services include triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV. 14% of dual play switchers experienced difficulties understanding the relevant steps to switch provider.

- 9.64 As noted in paragraphs 5.109 – 5.110, Hyperoptic and Sky were concerned about the proposed contract information requirement which would require gaining providers to provide customers with the date for provision of the service.

Our assessment of responses

- 9.65 The EECC and our proposed GC require customers to be adequately informed before and during the switching process. This means customers need to have access to sufficient information about the implications of switching to make an informed decision about whether to switch. We therefore proposed that losing providers must tell residential customers the impacts the switch will have, financial or otherwise, on the services they provide as well as telling them which services will remain unaffected by the switch.³⁸² This includes information on the impact of switching on additional services, such as email addresses, that could be terminated and any resulting changes to prices or contractual terms.
- 9.66 In relation to Hyperoptic and Sky’s concerns regarding the provision date, we have amended the date requirement in Annex 1 to Condition C1 (see section 5, paragraphs 5.112-5.114). Providers will be required to give information on the arrangements for the provision of the service, including “*as accurately as possible, the likely date of provision of the service(s)*”. Our guidance also clarifies that we expect that, in most cases, providers should be able to include an exact date for the start of the service (or the migration date for switching customers) in the customer’s contract information.³⁸³ If providers are unable to include an exact date, there should be objective technical or practical reasons for this, and, rather than an exact date, they should instead set out, as accurately as possible, the latest date by which they undertake to deliver the customer’s service. In these circumstances, we would expect these customers to be subsequently informed, prior to the provision of their services, of the exact date on which their service will be provided (see Annex A7, paragraph A7.21).
- 9.67 As noted in the December Consultation, information from gaining providers regarding switching forms part of the key information that is to be provided at the point of sale to allow customers to consider the consequences of switching before consenting to the terms of the contract.³⁸⁴ We will consider whether there is a need for further specific requirements on how this information is provided by gaining providers as part of our forthcoming process consultation.

³⁸² [December Consultation](#), paragraph 7.113, page 90.

³⁸³ When providing information about the migration date, providers also need to comply with the requirements of GC C7.3, including ensuring that this date is, where technically possible, one requested by the customer or, where not the date requested by the customer, it is as soon as possible.

³⁸⁴ [December Consultation](#), paragraph 7.130, page 93.

Our decision

- 9.68 We have decided to proceed with our December proposals to implement the EECC requirements by introducing:
- a) a new general rule that providers take all reasonable steps to ensure all customers are adequately informed before and during the switching process, including informing customers of the right to compensation (GC C7.10); and
 - b) specific rules on the information that gaining and losing providers need to provide to residential customers before and during a switch and how that information should be provided (GCs C7.11-13).

Notice period charges

EECC requirements

- 9.69 Article 106(6), as described above (paragraph 9.25), requires losing providers to automatically terminate customers' contracts upon conclusion of the switching process. It also requires Ofcom to "take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching and porting process".
- 9.70 The recitals note that the possibility of switching providers is key to effective competition.³⁸⁵ They also emphasise that it is essential to ensure that customers are able to make informed choices and switch providers without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures and charges.³⁸⁶

Our December proposals

- 9.71 We proposed extending our prohibition on notice period charges beyond the date of the switch for mobile customers switching up to 24 numbers to apply to residential customers switching fixed services.³⁸⁷ This would prohibit losing providers from charging for the provision of any services or for any notice period beyond the date of the switch and the automatic termination of the contract.³⁸⁸
- 9.72 We said we would expect providers to calculate any final service charges on a pro-rata 'time period' basis, meaning that customers would only be charged for the period between day one of their monthly billing cycle and the day of their switch on a pro-rata basis. We noted that providers should take this approach rather than, for example, basing the charges on how much the customer had used of their inclusive monthly allowance at the point of the switch. We said providers would still be able to require the payment of early termination charges (ETCs).

³⁸⁵ Recital 277, EECC.

³⁸⁶ Recital 273, EECC. See also Article 105(1).

³⁸⁷ [December Consultation](#), paragraphs 7.181-7.195, pages 101-5.

³⁸⁸ Requirements relating to the automatic termination of the contract are discussed in paragraph 9.36.

- 9.73 We considered that a prohibition on notice period charges beyond the switch date for residential customers switching their fixed services would help ensure they can switch without double paying and lead to a smoother switching experience as customers would not have to worry about trying to anticipate, time and coordinate the start and end of their contracts.
- 9.74 Our 2018 consumer research showed that:
- a) 15% of customers that switched their fixed services experienced a contract overlap and therefore were likely to be double paying for their services.³⁸⁹ Of those the majority of customers did not want a contract overlap.³⁹⁰
 - b) The most likely reasons given by customers for the contract overlap reflect a desire to ensure continuity of service, to switch on a particular date, difficulties in coordinating start and stop dates, cancelling the service, availability of engineer appointments and not to miss out on a deal. Lack of awareness of notice period requirements was also a factor for around one in ten.³⁹¹
 - c) Double paying can deter some customers from switching. Over a third (35%) of fixed customers that considered but decided not to switch said the worry that they might have to pay two providers at the same time was a factor in their decision not to switch.³⁹² One in five (20%) residential customers that switched their fixed services said they experienced difficulty in arranging not to pay for an old and a new service at the same time.³⁹³
 - d) More than two in five (43%) residential customers that considered but subsequently decided not to switch their fixed services said concern about arranging for services to start and stop at the same time was a factor in their decision.³⁹⁴
- 9.75 We anticipated that the costs to fixed providers of prohibiting notice period charges would not be significant because:

³⁸⁹ Ofcom, [2018. Switching Experience Tracker](#), Q36, table 89, page 602. In this research, fixed services include triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV

³⁹⁰ Ofcom, [2018. Switching Experience Tracker](#), 10% of fixed switchers (i.e. triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV) had a contract overlap and did not want the overlap. Bespoke analysis suggests the findings are similar for dual play switchers (landline and broadband) with 14% (44 respondents) experiencing a contract overlap. Base size is too low to report on the length of the overlap or whether they wanted this.

³⁹¹ Ofcom, [2018. Switching Experience Tracker](#), fixed: Q41B, table 98, pages 642-649.

³⁹² Ofcom, [2018. Switching Experience Tracker](#), Q44A/B/C, tables 116-8, pages 815, 842 and 869. One in ten (12%) fixed customers who considered but chose not to switch i.e. triple play (landline, broadband and pay TV), dual play (landline and broadband) and standalone pay TV, said that concern around paying two providers at the same time was a major factor (12%) in their decision, a further 22% said this was a minor factor - 35% combined due to rounding. Bespoke analysis suggests a broadly comparable combined figure among dual play considerers (landline and broadband – 247 respondents) (30%).

³⁹³ Bespoke analysis. Ofcom, [2018. Switching Experience Tracker](#), Q19A/B/C, tables 42-44, pages 198, 214 and 230. Fixed switchers who experienced difficulty in arranging not to pay for their old and new services at the same time – major 6% and minor 14%.

³⁹⁴ Bespoke analysis. Ofcom, [2018. Switching Experience Tracker](#), Q44A/B/C, tables 116-118, pages 817, 844 and 871. Fixed customers who were concerned about arranging for the old and new services to start and stop at the same time and decided not to switch – major 14% or minor 29%.

- a) Many fixed providers already reduce or align the notice period with the switch date for certain types of fixed switches. Fixed providers tend to include in their terms and conditions for residential customers a notice period of 30 or 31 days for fixed services. Where residential customers switch through the Notification of Transfer process, most of the largest providers (BT, Sky and TalkTalk) reduce this notice period and the associated charges or align it with the 10-working day transfer period built into the process so customers do not pay notice charges beyond the switch date. Some of the smaller providers also reduce the notice period they apply when residential customers switch using the Notification of Transfer process. This reduces the number of required systems or process changes.
- b) The implementation costs for those fixed providers that don't already align the notice period with the switch are likely to be small. These providers will incur systems or process related costs, or both. For example, to identify where contract termination occurs because of a switch rather than for another reason and to recalculate any remaining notice period charge. Such changes could be incorporated into the broader systems and process changes that providers will need to make to comply with our other new switching requirements.

Consultation responses

9.76 BT, Citizens Advice, Uswitch and Which? agreed with our proposed prohibition on notice period charges. No respondents specifically objected to our proposals.

Our decision

9.77 We have decided to proceed with our December proposals to implement the EECC requirements by introducing a prohibition on notice period charges beyond the date of the switch for residential customers switching fixed services (GC C7.8(b)).

Refunds

EECC requirement

9.78 Article 106(6) requires losing providers to refund, upon request, any remaining credit to customers using pre-paid services. A refund may be subject to a fee only if this is provided for in the contract, and it must be proportionate and in line with the actual costs incurred by the losing provider in offering the refund.

Our December proposals

9.79 We proposed to implement this requirement by placing a general obligation for the losing provider to refund credit upon request reflecting the text in the EECC.³⁹⁵

³⁹⁵ [December Consultation](#), paragraphs 7.70-7.71, page 84.

Consultation responses

- 9.80 One respondent, [REDACTED], Mobile UK and O2 were concerned with the practicalities of providing refunds to pre-paid customers. For example, providers do not have direct contact with, or payment details for, pre-paid customers who pay in cash for services in third-party retail stores.
- 9.81 One respondent, [REDACTED], asked for advice on what a provider should do if they were unable to contact a customer because they had provided incorrect details and paid with cash. It asked how long credit could go unclaimed before the provider should act and how to respond in such cases. Mobile UK and Vodafone said there should be a time limit to claim refunds and Mobile UK suggested 30 days.
- 9.82 O2, Tesco Mobile and Vodafone said the requirement to refund pre-paid customers on request risked an increase in fraud or money laundering, or both, given the anonymity of pre-paid customers. One respondent, [REDACTED], and O2, suggested that providers should be allowed to take a “best endeavours” approach, allowing them the discretion to refuse transactions that could be fraudulent or practically near impossible to verify. O2 argued that these proposed limitations on the requirement should be made explicit in the relevant GC. Vodafone suggested only offering refunds to those customers who had registered their details and made a direct payment to their provider.
- 9.83 Vodafone asked whether the refund of credit for pre-paid customers would also apply pro-rata for unconsumed bundles (both in terms of usage and, if a time limit applies to the bundle, the number of days remaining) that have been added to an account.

Our assessment of responses

- 9.84 It is important that the process by which a customer receives a refund for unused credit is easy and efficient. The EECC and our proposed rule provides a baseline level of protection for customers by requiring providers to process refunds on request. The rules do not require providers to proactively contact customers that they do not have correct contact details for. They can process refunds in such circumstances following a request from the customer.
- 9.85 We acknowledge providers’ concerns around the difficulties they can face when verifying the identity of some pre-paid customers. When considering such refund requests, we agree that providers must continue to comply with their obligations to prevent money laundering and fraud. Therefore, where a particular request for a refund raises such concerns, we accept that there may be an impact on the particular approach providers take, or the time it takes to process a refund. We would not take enforcement action in cases where there is evidence that an account is being used for money laundering or to commit fraud, or where it was reasonable for the provider to think this might be the case. However, we do not consider that the relevant GC needs to state that providers should continue to meet their existing obligations to mitigate money laundering or fraud and therefore do not intend to make any changes.

- 9.86 We acknowledge respondents' comments that there should be a time limit to claim refunds. However, we have decided not to specify a time limit for customers to request a refund as part of our rules. This is because there may be valid reasons why a customer is not able to claim a refund within a specific time period. If providers want to put a time limit in place, we would expect them to set a reasonable time period and to take into account mitigating factors if a particular customer has not been able to claim within the timeframe. We have not seen any evidence that 30 days would be a reasonable time limit for claiming a refund as suggested by Mobile UK. We are, therefore, unlikely to consider that the fact a claim was made after 30 days as a sufficient justification for refusing a request. We will take these factors into account when assessing compliance with the new rules.
- 9.87 We note Vodafone's question on refunds for unconsumed bundles on a pre-paid account and welcome providers giving refunds on a pro-rata basis for bundles that have been partially used. If a bundle is completely unused, we would expect providers to refund the full charge for the bundle given that, by definition, the customer will not have used any of their entitlement.

Our decision

- 9.88 We have decided to proceed with our December proposals to implement the EECC requirements by introducing a new general rule for all customers using pre-paid mobile services that providers must refund, upon request, any remaining credit (GC C7.7(d)).

Porting

EECC requirements

- 9.89 Article 106(2) requires Ofcom to ensure that all customers have the right to port their numbers and Article 106(3) extends that right for a minimum of one month after the date of termination, unless the end-user renounces it.
- 9.90 Article 106(4) requires Ofcom to ensure that customers are not charged when they port their number.

Our December proposals

- 9.91 In order to produce a consolidated set of switching and porting rules, we proposed moving a number of the requirements in GC B3, concerning providers' obligations to customers in relation to porting, to GC C7 or incorporating them into broader requirements in GC C7. We noted that GC B3 would continue to set out providers' obligations towards other providers in relation to facilitating porting.³⁹⁶

³⁹⁶ [December Consultation](#), paragraphs 7.199-7.203, pages 105-106.

- 9.92 We also proposed to introduce a new general obligation on providers to allow all customers to port their number for at least a month after the termination of their contract unless the customer expressly agrees otherwise when terminating that contract.³⁹⁷
- 9.93 We proposed a prohibition on providers from charging any customer directly for porting their number(s).³⁹⁸
- 9.94 We also proposed to address an inadvertent narrowing of the scope of GC B3 as a result of the changes we made to the definition of ‘Subscriber’ as part of our last GC Review.³⁹⁹ Those changes meant that the requirements in GC B3 no longer applied to all relevant providers in the supply chain e.g. wholesale resellers. We proposed to bring these back into scope as they are important for ensuring that number portability works effectively.

Consultation responses and our assessment

- 9.95 We received a wide range of comments from stakeholders on our proposed porting requirements. Below, we have first set out the comments we received about the right to port a number for one month, and our response, before setting out and responding to other porting comments.

The right to port a number for one month

- 9.96 We received comments on our general approach to implementing the right to port for one month, how the requirement applies in cases where the provider has terminated a customer’s account and whether it is compatible with our Auto-Switch rules. These are addressed in turn below.

General approach to implementation

- 9.97 A number of respondents stated that they did not understand the consumer harm that was intended to be addressed with by the EECC provision that gives customers the right to port a number for a minimum of one month.⁴⁰⁰ The Mobile Number Portability Operator Steering Group (OSG), Three and Virgin Media were concerned that the requirement was not proportionate due to the lack of demonstrable consumer harm occurring under the current arrangements. Some noted that it would require complex systems changes and take approximately 12-24 months to put in place.⁴⁰¹ The OSG argued that if there was scope for Ofcom to disapply some of the EECC requirements, we should not implement this rule.
- 9.98 One respondent, [redacted], requested more information on how a customer could request their previous number a month after a switch had occurred. Virgin Media thought that the new

³⁹⁷ [December Consultation](#), paragraph 7.80, page 85.

³⁹⁸ [December Consultation](#), paragraph 7.81, page 85.

³⁹⁹ We changed the definition of ‘Subscriber’ from ‘any person’ to ‘any End-User who is party to a contract with a provider of a Public Electronic Communications Services for the supply of such services’. Ofcom, [Consultation and statement on the Review of the General Conditions](#).

⁴⁰⁰ BT, OSG, Mobile UK, Three, Virgin Media and Vodafone.

⁴⁰¹ BT, OSG, [redacted] and Tesco Mobile.

switching process for residential customers switching fixed services would limit porting failures and the need to re-enable a terminated service. Therefore, it argued that, we should at least wait for the new process to be implemented before considering whether such revisions to the porting rules were required.

- 9.99 In contrast, Openreach thought it should be straightforward to implement the requirement as it already had a process in place that quarantines numbers for at least 30 days when numbers are ceased as part of a contract termination.
- 9.100 Vodafone asked whether a customer had to request and complete the port a month after contract termination, or whether they could request to port their number at any point for a month after termination. It suggested that this would in effect increase the period that the number had to be available to 60 days given a Porting Authorisation Code (PAC) is valid for 30 days.

Provider-instigated account termination

- 9.101 Gamma and the OTA asked whether the right to port for one month would still apply where a provider, as opposed to the customer, terminated the contract. The OTA noted possible reasons for a provider terminating a contract could include bad debt or because of suspected fraud or misuse.

Compatibility with Auto-Switch

- 9.102 The OSG and Mobile UK stated that the right to port for one month was not compatible with the UK's code-based mobile porting process and believed it had been designed for other EU Member States. The OSG said that customers would not be able to use Auto-Switch to transfer a number from a terminated account as the code they receive relates to the current number, not the old one. It also said the gaining provider will need to advise them to contact the losing provider to arrange the transfer which could potentially cause customer confusion.
- 9.103 Vodafone asked whether we would expect customers who requested a PAC once they had terminated their account to be given their code within the same timescale as an active customer (i.e. within a minute of the request and by SMS after a call with an agent). It noted that data protection checks would need to be conducted to validate the customer and that typically these took 24 hours. Vodafone also queried how a PAC could be issued to a customer if they had already requested a STAC. It also asked what channels we would expect them to provide to customers taking up their right to port after terminating their contract. The OSG said providers should have discretion when deciding which channels to use for porting requests.

Our assessment of responses

General approach to implementation

- 9.104 The provision concerning the right to port for one month is a mandatory provision of the EECC and this means that we are required to implement that rule. The Government has

also stated that we should proceed to implement the end-user rights articles of the EECC in full.⁴⁰² We have taken into account respondents' concerns regarding the time it will take to make systems changes in our decision on when our new switching rules will come into force.⁴⁰³

- 9.105 In terms of how the right to port for one month will apply to fixed customers, we do not intend to specify a particular process for industry to follow. However, we note that providers will need to put new processes in place to ensure that if a customer terminates their contract without porting their number, the number is still available and can be ported for at least one month if the customer subsequently decides they want to port their number.
- 9.106 In response to Virgin Media's comment related to the new fixed switching process for residential customers, we note that the intention of the right to port for one month is not to remedy porting failures but to give customers greater choice and flexibility when switching their services.
- 9.107 In response to Vodafone's query regarding whether the port had to be completed within a month after termination of their contract, the EECC mandates that end-users have the right to port their number for at least a month after they have terminated their contract.⁴⁰⁴ This means that the port request has to be made within one month, but the port does not have to be completed within that timeframe.
- 9.108 As required by our rule to ensure customers are adequately informed before and during the switching process, the provider will need to ensure that they clearly explain any process they put in place including any time limits that apply and the channels available for requesting a port.⁴⁰⁵

Provider-instigated account termination

- 9.109 Article 106(3) and our corresponding proposed GC make clear that the right to port a number for one month applies in cases where the account is terminated by the customer, not the provider. However, we note that recent enforcement cases and the industry porting manuals for fixed and mobile services make clear that debt should not be used as a reason to refuse to port a number.⁴⁰⁶ ⁴⁰⁷ While these relate to customers whose accounts are active, we would welcome providers allowing customers to port their numbers for a

⁴⁰² DCMS, July 2020. [Government response to the public consultation on implementing the European Electronic Communications Code.](#)

⁴⁰³ See paragraphs 9.194-9.195.

⁴⁰⁴ Article 106(2) states that "Member States shall ensure that all end-users with numbers from the national numbering plan have the right to retain their numbers, upon request, independently of the undertaking providing the service, in accordance with Part C of Annex VI." Part C of Annex VI states: "The requirement that all end-users with numbers from the national numbering plan, who so request can retain their numbers independently of the undertaking providing the service shall apply: (a) in the case of geographic numbers, at a specific location; and (b) in the case of non-geographic numbers, at any location...".

⁴⁰⁵ See paragraph 9.58 above.

⁴⁰⁶ Ofcom, November 2018. [Notifications under s96C and s139A of the Communications Act 2003 served on Cloud M,](#) page 45, paragraph 5.57.

⁴⁰⁷ [Geographic Number Portability \(GNP\) end to end process manual,](#) paragraph 11.4, page 23.

[UK mobile switching and service termination process manual,](#) paragraph 6, page 9.

month after their account has been terminated by their provider because of bad debt. We consider this would demonstrate a provider's ambition to meet Ofcom's Fairness for Customers Commitments.⁴⁰⁸

- 9.110 We consider that it may be reasonable, in certain circumstances, for a provider to refuse to port a customer's number if they have evidence that a number is being used for money laundering or to commit fraud or in cases where it is reasonable for the provider to think this is the case.

Compatibility with Auto-Switch

- 9.111 In response to stakeholders' concerns that the Auto-Switch process is not compatible with the right to port for one month, we note that Auto-Switch was designed to improve the switching experience of mobile customers that are still in contract with their provider. The Auto-Switch rules do not apply in situations where customers have already terminated their contract but subsequently decide to port their number. The Auto-Switch rules apply to "Mobile Switching Customers" which, as defined, do not include those customers that request a port after terminating their account. In contrast, the right to port for one month (GC C7.6(b)) applies to 'Switching Customers' which captures a broader range of customers including those that have already terminated their contract. As set out in our December Consultation, we expect providers to ensure that customers can contact them regarding porting a number after the termination of a contract through a variety of means, such as online, by phone or in person in a store and to make that clear in any information that is provided as set out in paragraph 9.58 above.⁴⁰⁹
- 9.112 We also recognise that providers may need to follow a slightly different process when dealing with porting requests from customers with terminated accounts in comparison to those from active customers and we note that the need to validate a customer's identity may take a little more time.
- 9.113 We note Vodafone's query as to how a customer who has already requested a STAC can then request a PAC. Under the Auto-Switch process, a customer can request a PAC or a STAC from their losing provider depending on whether they wish to retain their number or not. A PAC is valid for 30 days and, when passed to the gaining provider, confirms that the customer wishes to keep their number. In contrast, a customer can request a STAC, also valid for 30 days, if they would like to switch and get a new mobile number. However, if that customer does not redeem the STAC code with a new provider, there is nothing preventing that customer requesting a PAC too, as they will still be in contract with their existing provider.
- 9.114 Article 106(3) makes clear that the right to port for one month after termination applies unless a customer renounces that right. We consider it is reasonable for providers to judge that a customer has renounced the right to port their number at a later date if they

⁴⁰⁸ [Ofcom's Fairness for Customers Commitments](#) (6) require that "Customers can be confident that fair treatment is a central part of their provider's culture. Companies can demonstrate that they have the right procedures in place to ensure customers are treated well. They keep these effective and up-to-date."

⁴⁰⁹ [December Consultation](#), paragraph 7.80, page 85.

request and redeem their STAC.⁴¹⁰ Providers would need to make clear to a customer that by redeeming their STAC they would be renouncing their right to port their number in future and that if they wish to retain their number they should instead use a PAC.

Third-party obligations

- 9.115 Gamma believed that further amendments to GC B3 were required to ensure that network providers also had complementary obligations to support retail providers to meet the right to port for one-month requirement.
- 9.116 Regarding the prohibition on charging customers for porting, FCS sought a guarantee that customer-facing providers would not be charged by wholesale providers and therefore have to absorb the costs.

Our assessment of responses

- 9.117 We note that the EECC requires the retail provider to facilitate the right to port after contract termination and consider that the obligations on network providers to support the porting process, set out in proposed GCs B3.4 and C7.17, are sufficient to ensure cooperation. Therefore, we do not consider that the GCs need to be amended further to put an additional complementary obligation on network providers to support the right to port a number for one month at the retail level as Gamma suggested.
- 9.118 In relation to FCS's query about wholesaler charges for number portability, we note that GC B3 states that providers should provide portability on "reasonable terms." GC B3.2 specifies that any charges must, subject to the requirement of reasonableness, be "cost oriented and based on the incremental costs of providing portability". Therefore, although the charges set for number portability remain a commercial decision between retail and network providers, the latter are required to ensure any charges levied are reasonable, cost-oriented and based on incremental costs.

Splitting multi-line number blocks

- 9.119 Gamma sought clarity on providers' responsibilities where a customer wanted to port some, but not all, numbers in a block. It said that numbers should be portable regardless of block allocation but noted that some providers were unable, or unwilling, to split blocks of numbers.

Our assessment of responses

- 9.120 We agree with Gamma that customers are entitled to port some, or all, of their telephone numbers when switching provider regardless of block allocation. Operators of legacy network equipment, like BT, should continue to facilitate this using techniques such as splitting blocks where they can. We recognise that this might not be possible in all circumstances due to limited decode capacity in certain legacy equipment. We expect this

⁴¹⁰ We note that a STAC is valid for 30 days, but where it is not redeemed, the customer is free to submit a request for a PAC.

to be resolved once telephone services are migrated to IP in the coming years. In the interim, we encourage industry to maintain robust processes to support block splitting requests and set these out within relevant porting process manuals so that providers can give switching customers clear advice on porting.⁴¹¹

Our decision

- 9.121 We have decided to proceed with our December proposals to implement the EECC requirements by introducing:
- a) a new general rule that providers must allow all customers to port their number for at least a month after the customer has terminated their contract unless they expressly agree otherwise when terminating that contract (GC C7.6(b)); and
 - b) a new general prohibition on providers charging customers directly for providing number porting (GC C7.6(c)).
- 9.122 We have also proposed a new definition of “Porting Process” which is discussed in section 15 paragraphs 15.29-15.35.

Compensation

EECC requirement

- 9.123 Article 106(8) requires Ofcom to set rules regarding the compensation of customers by providers for failures to comply with the obligations of Article 106. It specifies that compensation should be given in an “easy and timely manner” and should include compensation for “delays in, or abuses of, porting and switching processes, and missed service and installation appointments.”

Our December proposals

General rule on compensation for all customers

- 9.124 In our December Consultation, we proposed to require all providers to compensate customers in an easy and timely manner for failure to comply with the switching and porting obligations set out in GC C7 and for any missed service and installation appointments.⁴¹²
- 9.125 Our proposals did not set out in detail all of the specific circumstances in which providers would need to compensate customers. We proposed providers would need to ensure they put appropriate arrangements in place to provide compensation if they fail to comply with their switching or porting obligations. This would include for example:
- a) failure to ensure the customer is adequately informed about the switch;

⁴¹¹ See Office of Telecommunications Adjudicator [number porting manuals](#).

⁴¹² [December Consultation](#), paragraphs 7.154-7.156, page 97.

- b) switching or attempting to switch a customer without their express consent;
- c) delays to the switch or porting of a number;
- d) loss of service; and
- e) for any missed service and installation appointments.

General rule on compensation for missed appointments for all customers

- 9.126 We noted that in our Automatic Compensation Statement, we set out evidence that in a minority of cases providers arrange appointments for an engineer visit and then fail to meet them. When this happens customers can incur significant harm and disruption.⁴¹³
- 9.127 We set out that harm from missed appointments for residential customers can include:
- a) the unnecessary cost of having to take additional time off work for the rearranged appointment;
 - b) having to stay at home preventing customers from carrying out other activities; and
 - c) spending time contacting the provider to enquire about and rearrange appointments.
- 9.128 We noted business customers can also suffer harm from missed appointments. This can include:
- a) unnecessary disruption to employees and their business activities; and
 - b) spending time contacting the provider to enquire about and rearrange appointments.
- 9.129 We therefore considered, in our Automatic Compensation Statement, that for any provisioning appointment where an engineer does not attend at the time agreed with the customer the provider should automatically pay compensation, except where:
- a) the appointment is rearranged with more than 24 hours' notice given to the customer; or
 - b) the appointment is rearranged with less than 24 hours' notice but the provider has obtained the customer's recorded permission to reschedule the appointment for another time on the same day.⁴¹⁴
- 9.130 We used the same considerations in designing the December proposals. We proposed that providers pay compensation to residential and business customers for missed appointments unless either of the above exceptions apply. We considered this approach still provided flexibility for providers to agree additional protections and service level agreements including the amounts payable to meet the specific needs of their customers.

⁴¹³ Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#), pages 44-46, paragraphs 5.69-5.76.

⁴¹⁴ Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#), pages 46-47, paragraphs 5.82-5.86.

Specific rule on the timeframe for paying compensation to residential customers

- 9.131 For residential customers, we additionally proposed a timeframe for paying compensation for delays and missed service or installation appointments (even if a customer has not submitted a claim) of no later than 30 calendar days from:
- a) a missed appointment; or
 - b) in the case of delays, the completion of the switch or the customer or gaining provider terminating the new contract.
- 9.132 We proposed the process for obtaining compensation should be clear and not excessively time-consuming for customers. We noted that in our Automatic Compensation Statement, we concluded that compensation should be paid to residential customers within 30 calendar days if they experience a delay or a missed appointment.⁴¹⁵ We concluded that it was appropriate for providers to apply a credit of the amount due within 30 calendar days whether or not a bill was issued at that point and did not expect providers to make changes to the way they bill their customers. Given our expectation that providers would apply a credit in the vast majority of cases, we judged that the implementation costs would be limited. We considered a window of 30 calendar days to strike the right balance between a provider processing a claim for missed appointments or delays and delivering timely payment to residential customers.
- 9.133 We applied the same consideration in designing our December proposals. Where a provider misses a service and installation appointment, we proposed it should pay any compensation due to residential customers within 30 calendar days from the date of the missed appointment. Where there is a delay to the switch, we proposed a provider should pay any compensation due within 30 calendar days from the date on which the switch is successfully completed or the customer or the provider cancels the contract.

Guidance for residential customers

- 9.134 We proposed draft guidance on delays, compensation levels, the method of payment and responsibility for payment. This was to give providers further clarity about what steps were needed to ensure compliance with the specific rules for residential customers and how they should be implemented in practice.⁴¹⁶

Delays

- 9.135 We noted that our Automatic Compensation Statement showed that where residential customers experience unexpected delays, they can suffer harm including:
- a) frustration that the installation is taking longer than planned;
 - b) wasted time trying to contact a provider to set a new installation date; and

⁴¹⁵ Ofcom, November 2017. [Automatic Compensation Statement: Protecting consumers from service quality problems](#), page 56, paragraph 5.132.

⁴¹⁶ [Draft guidance on General Conditions C7.43-45 on compensation](#).

c) the inability to access cheaper services, or services more suited to their requirements that they are trying to switch to.

9.136 The proposed guidance set out how we would expect providers to compensate residential customers when the provider fails to comply with the obligation to complete a switch on the switch date.

9.137 We would expect providers to pay customers compensation for each full calendar day after the date of a switch when the switch does not occur on that day. They should continue to receive compensation for every day until the switch occurs or is cancelled by the customer or the provider.

Compensation levels

9.138 Our proposed guidance set out some of the factors that providers should consider in determining minimum levels of compensation. It included the principle that compensation should reflect the length of any delay, service disruption and inconvenience caused to the residential customer.⁴¹⁷

Method of payment

9.139 In line with our Automatic Compensation Statement, we set out in the proposed guidance our expectation that compensation provided to residential customers should be financial unless the customer gives their consent for another form of compensation. In such instances, any form of non-financial compensation should be worth the same or more than the financial offering.

Responsibility for payment

9.140 Our proposed guidance set out that the provider responsible for a service failure should generally be responsible for paying compensation. It also sets out that providers should determine responsibility in accordance with the obligations set out in GC C7 and any relevant industry agreed processes. It should not be left to customers to try to work out whether it is the losing provider or the gaining provider that is responsible.

Consultation responses and our assessment

Compensation when things go wrong with a switch

9.141 Citizens Advice, Uswitch and Which? welcomed our proposals for compensation when things go wrong with a switch.

9.142 FCS asked for clarity on whether we would require providers to pay compensation for failure to comply with all of the switching requirements of our GCs, including to business customers.

⁴¹⁷ Recital 282, EEC. Ofcom, May 2011. [Changes to the Universal Service Conditions: Implementing the revised EU framework](#), page 78, paragraph 10.112.

9.143 Hyperoptic suggested there were inconsistencies between the requirement to give information to certain customers about the date of the provision of the service, the compensation rules and the information available to providers that deliver a service using physical infrastructure access.⁴¹⁸

Our assessment of responses

9.144 As required by the EECC, providers must pay compensation for failing to comply with any of the GC C7 requirements to all end-users, including business customers. We nevertheless recognise that business and residential customers can require different levels of protection and hence have only proposed general rules for business customers in relation to compensation. We consider this gives business customers and providers flexibility to agree their own specific compensation arrangements.

9.145 We consider that the changes we have made to the information that providers are required to give to certain customers in the Annex to C1 (see section 5 paragraph 5.112-5.114) largely address Hyperoptic's concerns.⁴¹⁹ These changes, and the accompanying guidance, make clear our expectation that, in most cases, providers should be able to include an exact date for the start of the service (or the migration date for switching customers) in the customer's contract information.⁴²⁰ If providers are unable to include an exact date, there should be objective technical or practical reasons for this, and, rather than an exact date, they should instead set out, as accurately as possible, the latest date by which they undertake to deliver the service. In these circumstances, we would expect these customers to be subsequently informed, prior to the provision of their services, of the exact date on which their service will be provided.

9.146 As a result of the changes to the information required in the Annex to Condition C1, we have amended the guidance for residential customers in relation to compensation due for delays to the switch (see Annex 8, paragraph A8.9). This clarifies our expectation that customers should be compensated when a switch does not occur on or by the date set out in the contract information. Where the contract information sets out the latest date by which a provider undertakes to deliver the customer's service and the provider subsequently confirms an earlier exact switch date, we expect that a customer should be compensated if the switch does not occur on the earlier date given.

Easy and timely compensation

9.147 BT sought clarity regarding whether our proposals require compensation to be paid automatically. It said some providers who are not signatories to the Automatic

⁴¹⁸ See section 5, paragraph 5.109

⁴¹⁹ We recognise there may remain circumstances in which a provider that delivers a service using physical infrastructure access is unable to provide a service within the time period set out in the contract information because of the need for civil engineering work to be completed by Openreach first. We will keep under review whether there is a need for limited exceptions to the requirement to pay compensation for delays in the provision of the service in these circumstances.

⁴²⁰ When providing information about the migration date, providers also need to comply with the requirements of GC C7.3, including ensuring that this date is, where technically possible, one requested by the customer or, where not the date requested by the customer, it is as soon as possible

Compensation Scheme do not have systems with the necessary “triggers” to automatically pay compensation for delays without a customer claim.⁴²¹ For example, it said some providers would lack the systems to measure and translate delays into automatic bill credits. It said for these providers it should be enough to offer a simple, easy claims process and asked us to clarify if we intend compensation to be paid automatically without the need for a customer to make a claim.

- 9.148 BT further argued that requiring automatic payment would result in disproportionate costs and was not required to meet the EECC’s “easy and timely” requirements. It also said our current porting and mobile switching compensation rules (based on the current EU framework) were similar to the EECC’s requirements and implied the need for a customer to claim compensation.
- 9.149 ISPA was similarly concerned that applying large parts of the Automatic Compensation Scheme to all customers would not be proportionate or account for the business models of providers beyond the current signatories.
- 9.150 Tesco Mobile asked if providers must make a compensation payment within 30 calendar days or whether the customer should receive it within this window.

Our assessment of responses

- 9.151 As set out in paragraphs 9.131-9.133, we expect compensation to be paid within 30 calendar days where a residential customer experiences:
- a) a delay to a switch; or
 - b) a missed service or installation appointment.
- 9.152 In these two specific circumstances, we expect payment within 30 calendar days irrespective of whether a customer submits a claim or not. The EECC requires the compensation process to be “easy” and in these cases we consider the easiest process for the customer is one where they do not need to submit a claim to receive compensation.
- 9.153 We understand that providers will generally be aware of missed appointments or delays to a switch date through their existing information flows and without the need for a customer to raise it with them (e.g. through notifications from the engineers they use). Providers already have to provide compensation when things go wrong and therefore they should have systems and processes in place to provide compensation to customers. We noted that they may have to update these systems and processes to comply with the new compensation rules.
- 9.154 Signatories of the Automatic Compensation Scheme, accounting for the vast majority of the fixed residential market, are likely to already have systems in place to accommodate automatic processing of compensation.
- 9.155 Other providers may decide to use a manual internal process. Providers have flexibility in how they would process compensation payments for the customer, provided they do so

⁴²¹ The [Automatic Compensation Scheme](#) launched in April 2019.

within 30 calendar days. We expect providers to apply credit in the vast majority of cases and we do not expect providers to make changes to the way they bill their customers.⁴²² We therefore expect our GCs will not require extensive systems changes for most providers and consider our proposals in relation to missed appointments and delays give full effect to the requirements of Article 106(8).

- 9.156 In implementing the EECC requirements, we have sought to align our switching compensation rules with the Automatic Compensation Scheme where possible. This means that if a provider meets the Code of Practice for the Automatic Compensation Scheme, including the exceptions that apply for missed installation or service appointments or delayed switches, then they would likely also comply with our requirement for compensation to be paid within 30 calendar days.^{423 424}
- 9.157 Therefore, we wish to clarify that our requirement for compensation to be paid within 30 calendar days of a delayed communications provider migration (GC C7.61(a)) only applies to switching and not porting. We have made a minor amendment to the rule to that effect and have also made corresponding changes to our compensation guidance. For the avoidance of doubt, the general requirement to provide compensation for failure to comply with our switching and porting obligations (GC C7.60) does apply to porting but it is not mandatory for porting related compensation to be paid within 30 calendar days.
- 9.158 We do not agree with BT that the compensation requirements of the current EU framework and the EECC are the same. While our existing rules for porting require compensation for delays and abuses of the porting process, the EECC requires compensation in an “easy and timely” manner.⁴²⁵ Our proposals (GC C7.60), in place of our existing porting rules, reflect the updated language used in the EECC.
- 9.159 In response to Tesco Mobile’s question, we expect providers to pay compensation for missed appointments and delays within 30 days rather than the customer receiving payment within 30 days. Where compensation takes the form of bill credit, we expect providers to apply it within 30 calendar days whether or not a bill has been issued. Where a customer is compensated by other methods as set out in our guidance (such as a cheque or bank transfer) providers should have proof of sending payment within 30 calendar days. We recognise in these cases payment will not always reach a customer’s bank account immediately but we expect the provider to be able to prove it has sent the payment within 30 calendar days.

⁴²² [December Consultation](#), paragraph 7.163, page 98.

⁴²³ [Communications Providers’ Voluntary Code of Practice for an Automatic Compensation Scheme](#).

⁴²⁴ We recently published a [review of the Automatic Compensation Scheme](#) in which we concluded the Scheme is operating as intended and signatories have taken steps to address issues that have occurred. We found that the Scheme has increased the amount of compensation paid to broadband and landline customers when things go wrong. We will continue to monitor the effectiveness of the Scheme including collecting data on the amount of automatic compensation paid.

⁴²⁵ [EU Directive 2009/136/EC](#), Article 30(4).

Responsibility for payment of compensation

- 9.160 Hyperoptic said the provider responsible for harm should be responsible for payment. For example, it said the gaining provider should not be liable if the losing provider does not cease billing after the switch.
- 9.161 ISPA said our proposals did not distinguish between delays caused by rollout issues at the network level and those caused by the switching process which were within the retail provider's control.
- 9.162 Zen was concerned that retail providers could be "short changed" by wholesalers where service level guarantee payments are less than the compensation owed by the provider to its customers.

Our assessment of responses

- 9.163 As set out in our guidance, we agree with the view that the provider responsible for a service failure should generally be responsible for paying compensation to the customer. Our guidance also sets out that it is the retail provider's responsibility (whether in the position of gaining or losing provider) to pay compensation to the customer even if the 'fault' lies with the network operator or other third parties.
- 9.164 In the example raised by Hyperoptic, if a losing provider failed to terminate the customer's contract and continued to charge for services after the day the switch is completed successfully, the losing provider would be responsible for paying compensation to the customer.
- 9.165 In cases where the network operator is at fault, as raised by Zen and ISPA, we expect the gaining provider to pay the compensation to the customer and to resolve any issues with the network operator and losing provider 'behind the scenes'. We believe this would be best dealt with through negotiations and commercial arrangements between the network operator and retail providers. There is also a framework of regulation which provides for payment of compensation by network providers with significant market power (SMP) to retail providers for breach of certain service level commitments.⁴²⁶

Guidance on compensation levels

- 9.166 Citizens Advice welcomed our suggested minimum compensation levels in line with the Automatic Compensation Scheme. Uswitch said more explicit guidance on compensation levels would make it easier to explain to customers and the amounts in our guidance should be a minimum. Vodafone said basing compensation levels on "costs incurred by customers" goes beyond the requirements of the EECC.

⁴²⁶ In particular, KCOM and Openreach are required to publish Reference Offers which set out the terms and conditions for each of their regulated wholesale services. The Reference Offers must include, among other things, service level commitments (SLAs) and the amount of compensation for a failure to meet SLA requirements (SLGs). See for example, [Hull WLA and WBA Market Review: Statement](#), Condition 4.2A(i), page 135 and [Automatic Compensation statement](#), paragraph 5.97, page 49.

9.167 BT argued that providers that lack the system to pay claims automatically may wish to determine an appropriate daily rate based on the individual circumstances of each claim rather than automatically paying a set amount. BT additionally suggested our guidance on compensation levels for pre-paid mobile customers should reflect monthly, rather than daily, average provider ‘pay as you go’ revenue.

Our assessment of responses

9.168 Our new guidance on compensation sets out that compensation levels should reflect:

- a) costs incurred by customers; and
- b) the length and amount of disruption and inconvenience caused to the customer.

9.169 In response to Vodafone, while our guidance does not form part of GC C7.60-62, its purpose is to assist providers to comply with the minimum requirements of the conditions by outlining our likely approach to compliance. Our guidance is consistent with the established criteria in our recent enforcement decisions and existing guidance on mobile porting compensation.⁴²⁷

9.170 We note Uswitch’s suggestion that compensation amounts should be a minimum and consider that our guidance gives a clear indication that the compensation levels we expect are indeed a minimum and that providers can always choose to pay higher levels of compensation where it is appropriate to do so.

9.171 Given this, we do not agree with BT that providers would not be able to consider the specifics of individual cases when deciding on compensation levels. Our guidance makes clear that compensation payments should be proportionate to the length and amount of disruption and inconvenience caused to the customer. In practice, we expect this to vary between cases, although we consider it good practice for providers to consider the minimum compensation payments set out in the Code of Practice for the Automatic Compensation Scheme.⁴²⁸

9.172 In terms of compensation levels for pre-paid customers, our compensation guidance builds on our existing guidance on mobile porting compensation.⁴²⁹ The guidance in our 2011 statement on Universal Service Conditions sets out that mobile porting compensation should be based on daily rental or contract charges and that a daily proxy can be used for

⁴²⁷ Ofcom, December 2019. [Confirmation Decision served on Onestream Limited \(Onestream\)](#), page 39, paragraph 4.78; Ofcom, November 2017. [Notice served on True Telecom Limited \(True Telecom\) True Telecom](#), November 2017, pages 4-5, paragraph 1.12; Ofcom, May 2011. [Changes to General Conditions and Universal Service Conditions](#), page 78, paragraphs 10.112-10.115.

⁴²⁸ We noted in our recent [review of the Automatic Compensation Scheme](#) that we are increasing the amounts paid under the scheme to ensure that customers continue to receive appropriate redress. Signatories to the scheme have committed to annual increases in line with the Consumer Price Index (CPI) from April 2021. The new levels will be based on CPI on 31 October in the preceding year.

⁴²⁹ Ofcom, May 2011. [Changes to General Conditions and Universal Service Conditions](#), page 78, paragraphs 10.112-10.114. See also Annex 8, New guidance on compensation related to switching and porting, paragraph A8.14.

pre-paid customers.⁴³⁰ We have incorporated this into our guidance on the compensation GCs.⁴³¹

Our decision

- 9.173 We have decided to proceed with our December proposals to implement the EECC requirements by introducing:
- a) general rules on compensation for all customers for failure to comply with switching and porting obligations, missed installations or service appointments (GCs C7.60 and C7.62);
 - b) a specific rule for residential customers requiring that compensation payments should be paid no later than 30 calendar days from a missed appointment and/or, in the case of delays, the date of the completion of the switch or when the customer or gaining provider terminates the new contract (GC C7.61); and
 - c) guidance on delays, compensation levels, the method of payment and responsibility for payment (Annex 8).

Consent

EECC requirement

- 9.174 Article 106(6) prohibits providers from switching or porting end-users without their explicit consent. It also places an obligation on Ofcom to take steps to ensure that end-users are adequately informed and protected throughout the switching and porting process and are not switched to another provider without their consent.

Our December proposals

- 9.175 To reflect the EECC explicit consent requirement, we proposed general obligations on gaining providers to take all reasonable steps to ensure they do not switch customers without their express consent and that the customer:
- a) is authorised to request a switch; and
 - b) intends to enter into the contract.
- 9.176 We proposed to define “express consent” as “the express agreement of a Customer to contract with a Communications Provider, or to transfer their Public Electronic Communications Service(s) or port their Telephone Number(s), where the Communications Provider has obtained such consent in a manner which has enabled the Customer to make an informed choice.”

⁴³⁰ Ofcom, May 2011. [Changes to General Conditions and Universal Service Conditions](#), page 78, paragraphs 10.112.

⁴³¹ See Annex 8, New guidance on compensation related to switching and porting, paragraph A8.14.

- 9.177 For residential customers we proposed gaining providers should retain for at least 12 months:
- a) available records regarding the sale of services to residential customers; and
 - b) a record of the residential customer’s consent to switch.⁴³²
- 9.178 We noted that the benefits of applying a record retention requirement to all switching processes would include:
- a) acting as a deterrent against sales agents initiating a switch without consent as they would be aware that a clear record of consent was being recorded for each sale;
 - b) enhancing our enforcement capability by improving the ease with which we could identify cases where the key issue was an absence of consent and access past records for a reasonable duration; and
 - c) assisting providers to establish whether consent was given for a sale when a complaint is raised by a customer as part of a dispute resolution process.
- 9.179 We acknowledged that there would be a cost in meeting the requirement. However, we anticipated the incremental cost to providers would be low as providers already store personalised information on their customers and have relevant systems and processes in place for keeping certain records for 12 months.

Consultation responses

- 9.180 BT agreed with the overall proposals on consent as we set them out in the December Consultation, including the requirement to retain records of sale and consent.

Our assessment

- 9.181 Although most stakeholders did not comment on our proposals on consent as set out in the December Consultation, as part of our detailed review of industry’s proposed fixed switching processes we have given further consideration to the implications of the EECC requirements for customers to be adequately informed throughout the switching process and not switched without their express consent and our proposed rules.⁴³³
- 9.182 In this regard, we note that the decision to switch services involves both:
- a) a decision to accept a contract for new services with the gaining provider; and
 - b) a decision to cancel a contract for services with the losing provider.

⁴³² [December Consultation](#), paragraphs 7.137-7.145, pages 94-95.

⁴³³ See the general rule on consent in [December Consultation](#), paragraphs 7.137-7.140, page 94; general rule on information paragraphs 7.99-102, pages 87-88; specific rule for residential customers losing provider obligations, paragraph 7.108, page 89.

- 9.183 It follows from these two decisions that in order for a customer to make an informed choice about whether to switch their services, and therefore to be in a position to give express consent, they need to have been given information about both:
- a) the new services they are taking with the gaining provider;⁴³⁴ and
 - b) the consequences of their decision to cancel their services with the losing provider. For example, this could include any additional services that could be terminated, changes in prices, or changes to other contractual terms because of the switch.⁴³⁵
- 9.184 We had initial discussions with stakeholders over the summer of 2020 about the implications of the express consent requirement for the switching processes. We are implementing the EECC requirements in this Statement and will consider further how these should operate and any required changes to relevant GCs relating to fixed and mobile switching processes in our forthcoming process consultation.

Our decision

- 9.185 We have decided to proceed with our December proposals to implement the EECC requirements by introducing:
- a) general obligations on gaining providers to take all reasonable steps to ensure they do not switch customers without their express consent, and that the customer:
 - i) is authorised to request a switch; and
 - ii) intends to enter into the contract (GC C7.9); and
 - b) specific additional rules in relation to residential customer that gaining providers retain records of sale and the customer's consent to switch for at least 12 months (GC C7.15-16).⁴³⁶

Notification of Transfer and Auto-Switch

- 9.186 The December Consultation set out a number of proposed changes to our existing GCs relating to the Notification of Transfer and Auto-Switch processes to consolidate them with our new proposals. This included changes to the layout and drafting of the rules. We do not intend to proceed with these changes at this time. Instead, we will address these issues and the consultation responses we have received in these areas to date, and set out any proposed changes to the existing GCs, in our switching process consultation.
- 9.187 This means that the GC table for C7 published alongside this statement (and the consolidated version of the final revised GCs that we will be publishing in December) will reflect the new rules we are introducing to implement the EECC requirements alongside the existing rules relating to the Notification of Transfer and Auto-Switch processes. We

⁴³⁴ See Annex A9, paragraphs A9.2-A9.4 and section 5, paragraphs 5.18, 5.113-5.114.

⁴³⁵ This includes the impacts on additional support services for disabled customers. We set out a list of the information losing providers must inform residential customer of in our [December Consultation](#), pages 88-93, paragraphs 7.107-7.129.

⁴³⁶ [December Consultation](#), paragraphs 7.137-7.145, pages 94-95.

recognise that this will cause some inconsistencies in how GC C7 is presented in the short term.

- 9.188 However, we plan to address these inconsistencies through our forthcoming switching process consultation and statement. They will therefore be addressed before the new rules come into force in December 2022.

Implementation

Our December proposals

- 9.189 We proposed that our requirements will apply to any switch or port a customer requests from 21 December 2020.

Consultation responses

- 9.190 The general view was that implementation of our switching and porting proposals could not be achieved by December 2020 and therefore should be delayed, or that we should take a phased approach. For example, Post Office thought we should provide additional time to allow providers to develop a new fixed switching process and to implement our information, consent, compensation and notice period requirements, given they would otherwise need to be revised after implementation of the new process. Sky and UKCTA argued that, if a delay was not possible, Ofcom should make clear that enforcement of our new switching and porting GCs would not be an administrative priority. Similarly, ISPA and [redacted] argued that we should ensure a reasonable amount of time had passed after implementation before embarking on any monitoring or enforcement work. O2 stated that Ofcom should be prepared to reconsult on its proposed timelines to understand the challenges faced by providers to make the required systems changes.
- 9.191 There was particular concern regarding the feasibility of developing and implementing a new fixed switching process by December 2020 and a number of respondents argued that a period of 12 to 18 months after our final statement on the process was a more realistic timeframe. Vodafone and UKCTA were concerned that if additional time was not provided the development and implementation would be rushed and could lead to poor customer outcomes. O2 also noted the difficulties that providers would face in implementing a new switching process for business customers within the proposed timeframe. While Hyperoptic noted the work industry was carrying out to develop a new fixed switching process, it was concerned that a process would not be in place for December 2020 and providers that did not rely on the Openreach network would be at greater risk of non-compliance.
- 9.192 In relation to the implementation of our porting requirements, TalkTalk had concerns that the suggested timeframe would be challenging. In light of the other changes required by the EECC, the OSG and BT estimated that it would take 18 and 24 months to implement respectively. One respondent, [redacted], said it would require 12 months to deliver as a standalone project and, if automated, would take a minimum of 18 months. The OSG and

Three also thought that enforcement in relation to the right to port for one month should not be an enforcement priority.

- 9.193 In relation to our compensation proposals, ISPA said delays to the creation of a new fixed switching process would have a knock-on effect on the compensation process and was concerned we hadn't factored this into our implementation timelines. Hyperoptic thought we should delay our compensation proposals until a fully automated switching process had been implemented.

Our assessment of responses and decision

- 9.194 Having carefully considered the responses received, our new switching and porting requirements will come into force 24 months after the publication of the notification of the revised GCs. This means that providers will need to comply with our new general and specific switching rules, and any further changes we confirm following our forthcoming fixed switching process consultation by December 2022.
- 9.195 In taking this decision, we have considered respondents' concerns regarding the changes required to implement the requirements, particularly in relation to the development of a new fixed switching process for residential customers, and the significant systems and process changes needed to support the new porting rules. The 24 month period seeks to reflect the lead-times involved in developing and implementing switching systems and process changes as well as additional time to consult and issue a decision on the fixed switching process for residential customers. We have also noted the scale of the package of reforms as a whole and the interdependencies between several of the requirements.

10. Disincentives to switch: mobile device locking

- 10.1 As set out in section 7, the EECC requires that the conditions and procedures for contract termination should not act as a disincentive to switching provider.⁴³⁷ It also makes it explicit that this requirement applies to all elements of bundles that include at least one internet access service (IAS) or number-based interpersonal communications service (NBICS).
- 10.2 In the December Consultation, we set out our concerns about device locking. Specifically, we were concerned that the practice of device locking could act as a disincentive to switch and undermine the effectiveness of measures that we have already put in place to make switching easier for customers. In light of this, we proposed two potential options to address the concerns that we identified, including our preferred option of a ban on the sale of locked handsets to residential customers.
- 10.3 Following our review of responses to the December Consultation, we have concluded that, with effect from December 2021, providers will be prohibited from selling locked devices to residential customers.
- 10.4 This section sets out further detail on:
- a) the practice of device locking;
 - b) our concerns with device locking, as set out in the December Consultation;
 - c) our December proposals to address the issue;
 - d) consultation responses and our assessment; and
 - e) our final decision.

The practice of mobile device locking

- 10.5 At present, BT Mobile/EE, Tesco Mobile and Vodafone choose to sell “locked” devices, which means that their customers cannot easily use those devices to connect to another provider’s network. These providers have said that they lock devices to protect the subsidy they have invested in them.⁴³⁸ In particular, Tesco Mobile argued that these were important for pay as you go (PAYG) devices because the customer has not signed up to a contract. BT Mobile/EE and Vodafone also said that device locking helps protect them from fraud.
- 10.6 However, other large providers, in particular O2, Sky, Three and Virgin Mobile, sell devices that are unlocked. Three of these providers used to sell locked devices, but then changed

⁴³⁷ Article 105(1), EECC.

⁴³⁸ The cost of the device may be subsidised by the mobile provider based on expected future airtime revenues, particularly where the operator can lock the device making it harder for the customer to move to another provider.

their approach: O2 started selling unlocked devices in April 2018, Virgin Mobile in 2015 and Three in 2014. Three said that it changed its approach in part to improve customer experience, in light of the frustration that device locking can cause customers. We note that many smaller providers do not sell locked devices.⁴³⁹

10.7 The providers that still sell locked devices vary in the extent to which they do so. As set out in Figure 10.1, they also have different policies for when customers can get their device unlocked and whether a charge applies. These can vary depending on the length of time a customer has had a device, the device taken and whether a customer is a pay monthly or PAYG customer.

Figure 10.1: Providers' unlocking policies

Provider	When can customers unlock their mobile device?	Unlocking charges?
BT Mobile	<ul style="list-style-type: none"> Pay monthly customers can unlock their device from 6 months after purchase, but not before. PAYG customers: N/A. In addition, Apple devices are automatically unlocked at 18 months; Google devices are automatically unlocked after 721 days. 	<p>There is an £8.99 charge for unlocking devices between 6 and 24 months after purchase (except where they are unlocked automatically).</p> <p>Thereafter it is free for customers to unlock their device.</p>
EE	<ul style="list-style-type: none"> Pay monthly customers can unlock their device from 6 months after purchase, but not before. PAYG customers can unlock their device at anytime. In addition, Apple devices are automatically unlocked at 18 months; Google devices are automatically unlocked after 721 days. 	<p>Pay monthly customers must pay a charge of £8.99 to unlock their device from 6 months after they purchase it until the end of the commitment period. Thereafter it is free.</p> <p>PAYG customers can unlock their devices free of charge from the date of purchase.</p>
Tesco	<ul style="list-style-type: none"> At any time on request. 	<p>PAYG customers must pay a £10 charge to unlock within first 12 months.</p> <p>Free otherwise.</p>
Vodafone	<ul style="list-style-type: none"> Pay monthly customers can unlock devices from 3 months after purchase. PAYG customer can unlock their device from 30 days after purchase. 	Free

Source: Provider response to formal information request

10.8 In addition, the steps customers need to take to unlock a device vary depending on the make of the device. Providers can unlock Apple and Google devices remotely, without the customer needing to take any further action. But customers with devices from other manufacturers need to obtain an unlocking code from their provider and enter it manually into their device to unlock it. This process can involve the following steps:

⁴³⁹ However, in some limited circumstances smaller providers may sell locked handsets, for example [iD Mobile](#) locks iPhones made before 2018.

- a) the customer making a request to their provider to unlock their device. As part of this they may need to find out their IMEI;⁴⁴⁰
- b) the provider running a validation process;
- c) the provider finding the relevant unlocking code and sending it to the customer; and
- d) the customer entering the code into their device to unlock it.⁴⁴¹

Our concerns with device locking

10.9 In the December Consultation, we set out our potential concerns regarding the impact of device locking on customers and switching. Our starting point was that, by its very nature, device locking introduced an additional step that customers have to take to switch provider and keep using their device.

10.10 Below, we set out our reasoning why we considered that device locking can lead to:

- a) customers spending unnecessary time, experiencing difficulties and incurring charges when unlocking devices;
- b) some customers being deterred from switching, resulting in harm for these customers; and
- c) a reduction in competition.

10.11 We then discuss the reasons providers gave for device locking.

Unnecessary time, difficulties and charges for customers who switch

10.12 When we looked at how device locking operates in practice, we found that customers who went through the process of unlocking their device when trying to switch might:

- a) spend unnecessary time and effort;
- b) experience delays in the switching process because of the time taken to obtain the unlocking code;
- c) experience loss of service; and
- d) need to pay additional charges.

Unnecessary time and effort

10.13 We set out that device locking creates a switching cost for those customers who need to unlock their phone to switch provider because it causes them to expend time and effort unlocking their device:

- a) **Some customers need to spend time and effort to find out whether their device is locked and, if so, how to unlock it.** We noted that providers that sell locked devices do

⁴⁴⁰ An IMEI is a 15-digit number that is used as a unique identifier for mobile devices.

⁴⁴¹ This process is set out in more detail at paragraph 8.17 of the December Consultation.

not typically tell customers at the point of sale that the device they are purchasing is locked.⁴⁴² Customer awareness and understanding of whether their device is locked is also likely to be reduced by the variation in practices across providers and over time.⁴⁴³ This lack of transparency and the variations in practice mean that customers may need to take steps to find out whether their device is locked and this will affect both customers who do, and customers who do not, have locked devices. In addition, customers may need to find out when and how they can unlock their device and whether there is a charge to do so. This may not be clear, given the differences in unlocking policies by provider and by contract type.

- b) Customers have to spend time and effort taking steps to unlock their device.** Our evidence suggested that, over a full year, around one million customers contact providers that still sell locked devices to request device unlocking.⁴⁴⁴ Although we found that the interactions with providers to request an unlocking code could be relatively short, especially if online, we considered that this would not represent all the time that customers spend on unlocking their devices, nor the effort involved.⁴⁴⁵ As part of the process of obtaining the unlocking code, customers may also need to: locate and provide their IMEI number; make further contact with their provider if there is a delay in receiving the code (see below); and once the code arrives, enter the code into their device to unlock it.
- c) In some cases, the unlocking code does not work, resulting in additional time and effort for customers.** For a small minority of customers, the unlocking code they are given by their provider does not work and they need to obtain another code. Not all providers that still sell locked devices were able to provide information on how many customers are sent more than one code. For those that were able to do so, we estimated that on average around 300 customers a month are sent a further unlocking

⁴⁴² Vodafone does not tell customers buying a locked device that it is locked. Tesco Mobile and BT Mobile refer to device unlocking in their terms and conditions, however in our view this does not sufficiently draw this to the customer's attention. EE told us that their sales agents tell customers that they cannot unlock their device in the first 6 months when they purchase their device. Source: provider responses to formal information request dated 21 August 2019.

⁴⁴³ In particular, some providers sell locked devices while others do not, some have changed from selling locked to selling unlocked devices and vice versa; some devices are unlocked automatically while others are not (for example, Apple devices on BT Mobile/EE are automatically unlocked 18 months after purchase, but BT Mobile/EE has told us that customers are not proactively informed when their device has been automatically unlocked).

⁴⁴⁴ This was based on our finding that, over a six-month period from July to December 2018, the providers that still sell locked mobile devices received over 590,000 requests from customers for their device to be unlocked. BT Mobile, EE, Tesco Mobile and Vodafone response to formal information request dated 12 April 2019. Total includes customers who may have submitted multiple requests. Data from Vodafone only includes the number of customers that were provided with an unlocking code and not where the customer's device was unlocked over-the-air by Vodafone.

⁴⁴⁵ Customers can request an unlocking code online or over the phone. Evidence suggests it can take anywhere between one and four minutes for the customer to complete an online form, depending on the provider and the online method used. [§] responses to formal information request dated 12 April 2019. This range includes provider estimates based on trials and calculated average time spent on the relevant part of the website from when the IMEI is entered to when a request is submitted. Data from the three providers that still lock mobile devices found that calls involving an unlocking request can take, on average, between seven and seventeen minutes.

code.^{446, 447} Where it does happen, customers are likely to have to spend significantly more time and effort trying to resolve the situation.

Delays in the switching process because of the time taken to obtain the unlocking code

10.14 We found that where the provider already holds the relevant unlocking code for the customer’s device, they can provide it very quickly. However, where this is not the case, the provider needs to contact the manufacturer to obtain it, which can take much longer.

10.15 As set out in Figure 10.2, evidence from providers that still lock devices indicates that:

- between one quarter and one third of customers are given the unlocking code or have their device unlocked on the day they request it; but
- the majority receive their unlocking code between 2 to 5 days after making their request.⁴⁴⁸

10.16 Some customers however wait longer than this, including a small minority that have to wait more than 10 days.

Figure 10.2: Time taken to unlock the device or send unlocking code to customers from January – June 2019

	Within 1 day (on the day of the request)	2-5 days	6-10 days	10+ days
BT Mobile/EE	32%	67%*	1%	0%
Tesco	23%	62%	12%	2.8%
Vodafone**	34%**	59%**	For 7% of requests, Vodafone had to contact the device manufacturer to obtain the code. Vodafone does not know how long it took to provide the code in these instances.	

* BT Mobile / EE stated that approximately 95% of these are Google/Apple devices, and are typically unlocked within 24 hours. ** Vodafone was only able to provide data for the period 1 May 2019 – 31 July 2019
Source: Provider response to formal information request dated 21 August 2019.

10.17 We set out that the minority of customers for whom the first unlocking code does not work, would need to wait for the correct code, which could lead to long delays. For example, Tesco Mobile told us that where this happens, it can take up to twenty days from the original request to provide the customer with the correct code.⁴⁴⁹ We considered that these delays could have quite a significant impact if they occurred during a customer’s switching journey, as they would delay these customers from switching to a better deal, which could save them money or offer them better services. They might miss out on a time

⁴⁴⁶ Based on provider responses to a formal information request dated 21 August 2019.

⁴⁴⁷ This is less than 1% of customers that unlock their device through their provider. This estimate is based on the providers that were able to send information.

⁴⁴⁸ However, we note that BT Mobile/EE stated that for the vast majority of these cases the device is an Apple or Google device that is unlocked within 24 hours of the request, i.e. on day 2.

⁴⁴⁹ Tesco Mobile response to formal information request dated 12 April 2019.

limited offer if it expired before they could unlock their phone. They might also experience anxiety, if the delay was long and there was uncertainty about when it was coming to an end.

- 10.18 We considered that the potential for delays in switching was a particular concern because the new Auto-Switch process was intended to make it quicker and easier for mobile customers to switch provider.⁴⁵⁰ Having a locked device could disrupt this process, particularly if the customer was unaware that their device was locked and experienced a delay obtaining the unlocking code.⁴⁵¹
- 10.19 As a result, device locking could frustrate the switching provisions of the EECC, as described in section 9, which seek to ensure that switching takes place in the shortest possible time.

Loss of service

- 10.20 We considered that some customers might suffer a loss of service while waiting to receive the unlocking code, particularly those who were switching providers and had not realised their device was locked.⁴⁵² Such customers would not have taken steps in advance to acquire an unlocking code prior to cancelling their existing service. They would only have discovered this when they inserted the SIM for their new network into their device.
- 10.21 There was evidence from complaints to Ofcom that some customers suffered a loss of service when switching as a result of problems encountered with device locking. In Figure 10.3 we set out a sample of customer complaints as reported to our contact centre that illustrate these problems.

⁴⁵⁰ Since 1 July 2019, mobile customers have been able to switch provider and port up to 24 numbers using the regulated Auto-Switch process. A residential customer can request a code from a losing provider by text, online account or phone, and receive a text immediately, rather than necessarily wait to speak to a provider's customer agent first. There are separate arrangements for business customers. See Consumer Switching: [Decision on reforming the switching of mobile communication services](#) (December 2017) for further details.

⁴⁵¹ Under Auto-Switch, the switch takes place when the SIM of the new provider is activated. This will typically be when a customer inserts their new SIM into their device. However, if that device is locked, it is likely the SIM will not be recognised and the switch to the new service not activated. In this situation, the customer will need to unlock their device before the switch can take place. Therefore, device locking can delay the switching process which is designed to take place in one day (as the majority of customers do not receive their unlocking code on the day they request it).

⁴⁵² While Auto-Switch should reduce the risk of a loss of service, it may continue to be an issue for switchers that do not follow the Auto-Switch process and instead take a 'Cease and Re-provide' approach. This is where a customer contacts their old provider to cancel their service, and separately contacts the gaining provider to take out a new service.

Figure 10.3: Examples of customers that have suffered loss of service as a result of problems encountered with device unlocking

Date	Customer complaints
12 August 2019	The customer advised she had a mobile phone contract with [provider]. The customer advised she has recently switched to a new mobile provider, but she is not able to use her handset as it is locked. The customer advised she filled out a form online to request an unlocking code and she still hasn't received it. The customer advised she has contacted [old provider] when she will receive it as on the form it stated 48 hours, but an advisor has advised 14 days which the customer is not happy about.
29 August 2019	I have changed provider away from [provider]. On the day I left I discovered my phone was locked by [provider] They said it would be 7-10 working days to unlock. I am now on day 14 which is 10 th working day [...]. This is a ridiculous timescale. I have had to purchase another phone to receive calls and texts as I am a GP doing call duties. Can this timescale be addressed? I am just hoping that today the phone will be unlocked.
29 August 2019	When I gave notice to my provider that I was switching and requested a PAC, they did not advise that I would also need a network unlock code. This only became apparent when I put the new SIM in my phone. Now I will be without a phone for 7-10 days, waiting for the unlock code, as my new provider has switched my number from tomorrow. I think it's ridiculous that when you cancel, you are not advised of all the steps you need to go through before you switch. I was advised by [provider] that a phone shop would be able to help, but I called two shops who won't or can't do it.

10.22 We considered that loss of service was a particular concern given the central importance of mobile services for customers today. While we did not have evidence of the frequency of loss of service in relation to locked handsets, we noted that Article 106 of the EECC (discussed in section 9), was clear that providers should ensure continuity of service, unless this is not technically feasible, and that any loss of service should not exceed one working day.⁴⁵³

Unlocking charges

10.23 As summarised at Figure 10.1, providers typically charge customers for unlocking their device within an initial period. We considered that such charges create a switching cost for customers that could disincentivise switching.

⁴⁵³ See section 9 for further detail.

Proportion who suffer difficulties when unlocking devices

- 10.24 We reported that where customers unlocked their device when switching provider, just under half experienced some sort of difficulty doing so.⁴⁵⁴ Based on this data, we estimated that around 700,000 pay-monthly customers experienced a problem of some sort related to handset unlocking and that, in addition, there would also be PAYG customers who experienced problems when unlocking their device.
- 10.25 We have since identified an error in the above estimate of the number of switching customers that experienced a problem related to handset unlocking. We now estimate that 350,000 switching customers a year experience a problem of some sort related to handset unlocking when switching provider, and this estimate includes both pay-monthly and some PAYG customers. We discuss this further at paragraphs 10.95-10.98.
- 10.26 We also noted that as customers are retaining devices for longer, the proportion who want to unlock a device in the future and may experience a problem may increase.⁴⁵⁵

Device locking can deter switching

- 10.27 We considered that device locking acted as a disincentive to switch because it created an additional obstacle that customers need to overcome before switching provider. Furthermore, the evidence demonstrated that customers can experience delays and difficulties when going through the process of unlocking their devices. Given the lack of transparency of device locking, and variations in providers' practices, some customers may also be deterred from switching because they think their devices are locked even though they are not actually locked.⁴⁵⁶
- 10.28 Our survey evidence supported the view that device locking can act as a disincentive to switch. Just over one third (35%) of mobile customers who actively considered changing provider but decided not to, said that device locking was one of the factors that put them off. About half of those customers (17% of those who decided not to switch) said that device locking was a major factor in their decision not to switch.⁴⁵⁷
- 10.29 Based on this data, we estimated that around 3 million pay-monthly customers each year are deterred from switching in part by the need (or perceived need) to unlock their device (in addition we thought there would be PAYG customers who experience problems with

⁴⁵⁴ Ofcom, 2018, [Switching Experience Tracker](#) asked customers about their experience of switching in the last six months. It found that 15% of mobile switchers unlocked their phone when they switched (Question 14A/B/C, Table 34, page 154). When these switchers were asked about whether they experienced a difficulty with unlocking, just under half (7%) said that they had reported a difficulty when switching (2% reported having a major difficulty when unlocking and 5% a minor difficulty) See Question 19A/B/C, Tables 42, 43, and 44, pages 200, 216, and 232.

⁴⁵⁵ See Deloitte's 2018 [Global Mobile Consumer Survey](#) which found smartphone owners in the UK are holding onto their phones for longer. For example, in 2018 it found that 59 per cent of smartphone owners had acquired their device in the prior 18 months. In 2017, the proportion was 62 per cent. In 2016 it was 66 per cent.

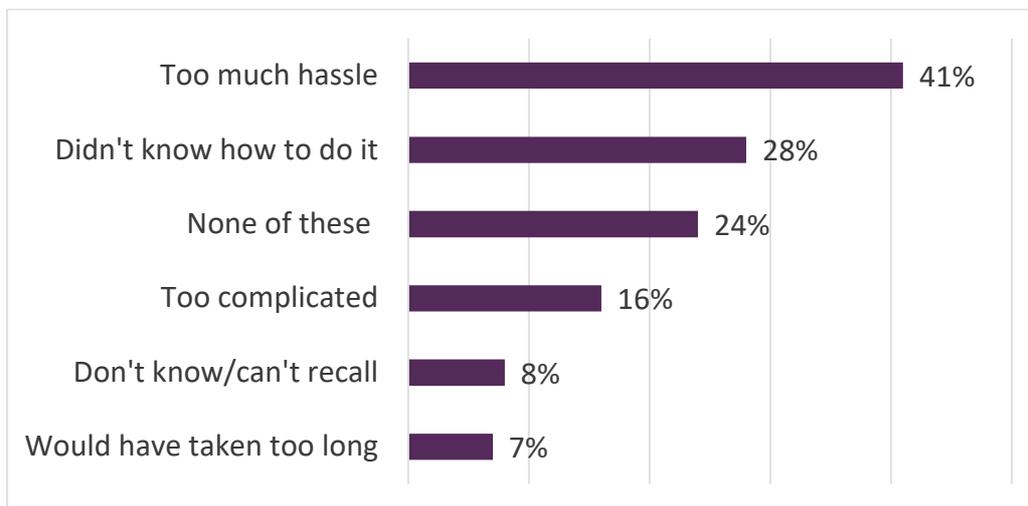
⁴⁵⁶ While our focus was on the harm of device locking in the context of switching, we noted that customers may wish to unlock their device in other circumstances, and they may face unnecessary difficulties when doing so.

⁴⁵⁷ Ofcom, 2018, [Switching Experience Tracker](#). 17% of mobile customers who decided not to switch stated '*needing to unlock their handset to take it with them*' as a major factor and 18% said it was a minor factor. See Question 44A/B/C, Tables 116, 117 and 118 (page 816, 843, and 870).

device unlocking). We have since identified an error in our estimate of around 3 million customers. We now estimate that 2.5 million customers per year are deterred from switching in part by the need (or perceived need) to unlock their device, and that this estimate includes both pay-monthly and some PAYG customers. This figure is based on those who started to engage with the switching process, but more customers may be deterred from even engaging with the process because of concerns about their device being locked (or the risk of it being locked).

- 10.30 A YouGov survey carried out on behalf of Three suggested that the time, effort and difficulties encountered are factors deterring customers from unlocking their device and being able to use their handset with a new provider. This survey asked people who said they had considered unlocking a handset, but had not actually done so, why they did not unlock. As set out in Figure 10.4, the most common reason (41%) was that it was too much hassle, with the next most common reason being ‘didn’t know how to do it’ (28%).

Figure 10.4 For those who had considered unlocking but decided not to, reason for deciding not to



Source: YouGov market research 2019⁴⁵⁸ IEH_Q7a. If you have considered unlocking more than one handset, please think about the LAST time you considered it. You previously said you have considered unlocking a handset but have never unlocked any. Which, if any, of the following are your reasons for this? (Please select all that apply). As respondents selected all the apply, the numbers sum to more than 100%. Base: those who had considered unlocking a handset but had not done so (459).

Reduction in competition

- 10.31 We considered that customers put off from switching could be directly harmed because they are less likely to take advantage of cheaper deals or deals that more closely meet their needs. This could, in turn, reduce firms’ incentives to compete on price and service

⁴⁵⁸ Online panel survey of 4,184 adults (aged 18+) conducted by YouGov on behalf of Headland Consultancy and Three between 30 August and 2 September 2019. Data were weighted to be representative of the total GB adult (18+) population.

quality and lead to a reduction in competitive intensity from which all customers would otherwise benefit.

10.32 We noted that it was difficult to judge the extent to which device locking may restrict the overall competitive process. However, we considered that the impact of such a restriction would be felt across the entire market including both engaged customers and relatively disengaged customers.⁴⁵⁹

Reasons given by providers for locking devices

10.33 We considered the two arguments put forward by providers to support device locking.

Device locking to tackle fraud and bad debt

10.34 BT Mobile/EE and Vodafone told us that device locking was an important tool in reducing fraud, bad debt and device theft:

- a) They said that device locking helps to reduce the risk that a pay monthly customer obtains a phone as part of a long-term contract, but then defaults on the monthly payment to that provider and uses the phone on another network. By making this more difficult, they considered that device locking could help deter fraud and keep providers' costs down,⁴⁶⁰ which in turn would feed through to a benefit to customers in terms of lower prices. Without device locking, their costs and potentially prices could rise.
- b) BT Mobile/EE also suggested that device locking reduced the need for fraud checks when making sales and that, if it were not able to lock devices, some customers who were currently able to obtain a locked phone from BT Mobile /EE might not be able to do so if it increased fraud checks. BT Mobile / EE also said that there could be a "potential increase in up front contribution costs for customers."

10.35 However, we found that mobile operators other than BT Mobile/EE and Vodafone manage fraud and bad debt without locking devices. This includes large operators such as O2 and Three, which had previously sold locked devices and moved to selling unlocked devices, as well as the major mobile virtual network operators (MVNOs).⁴⁶¹ Three told us that, in its view, in light of the blacklisting process, by which mobile providers in the UK keep a shared database of devices that are registered as lost or stolen, locking devices to networks would not have any discernible impact in preventing fraud.⁴⁶² O2 also said that locking was of limited use in terms of preventing fraud, because fraudsters and thieves can find alternative ways to unlock devices without going through a provider's official process.

⁴⁵⁹ A reduction in switching costs will initially benefit the most active customers who will quickly switch to better offers in the market, but over time even relatively passive customers will move off their outdated tariffs.

⁴⁶⁰ Vodafone noted that this argument also applies to a lesser extent to PAYG devices, where they are subsidised.

⁴⁶¹ Virgin Mobile does not sell locked devices. Tesco Mobile generally does not lock handsets with a value over [£]. As such bad debt and fraud for expensive handsets will be mitigated or managed by other means. Smaller providers such as [Talkmobile](#), [iD mobile](#), [Lycamobile](#) and [Utility Warehouse](#) also sell devices unlocked (Accessed 10 December 2019). Other smaller providers such as Lebara Mobile do not sell devices and Lycamobile only sells devices without a SIM.

⁴⁶² BT Mobile /EE told us that the blacklisting process [£]

10.36 While we accepted that locking mobile devices might help reduce fraud and bad debt, the fact that other providers manage fraud and bad debt without device locking suggested that device locking might not be essential to address this problem.

Device locking to protect subsidies for PAYG devices

10.37 We noted that device locking could also be used as a tool to protect subsidies for devices sold to PAYG customers.⁴⁶³ Tesco Mobile told us this was an important consideration for its PAYG business, which generally only locks devices less than [redacted] in value that are sold to PAYG customers.⁴⁶⁴

10.38 In terms of the scale of the device subsidy:

- Tesco Mobile told us that between January and June 2019 the average price of subsidised devices sold with a PAYG SIM was around [redacted] and that there was an average subsidy per device of £[redacted].
- Vodafone said the average subsidy per mobile device sold [redacted], and the average price of these subsidised mobile devices with a PAYG SIM was [redacted].⁴⁶⁵
- EE said it was only in limited circumstances that it promoted PAYG devices with a headline price below the cost of the handset. It provided examples, where the subsidy was [redacted]. EE noted that these subsidies were calculated excluding mandatory top-up airtime payments.

10.39 While we considered it plausible that device locking could be used as a tool to protect subsidies for devices sold to PAYG customers, we took the view that such subsidies might not be entirely reliant on device locking,⁴⁶⁶ and were in any case small in absolute terms. Furthermore, we considered that a corollary of lower device subsidies might be that there is increased competitive pressure on these providers to lower their airtime prices or make other changes to ensure their offers remain attractive.

Our December proposals

10.40 We set out that our policy objective is to ensure that customers do not experience unnecessary difficulties when switching mobile provider, so they can exercise choice and switch provider to take advantage of the competitive deals on offer.

10.41 Our provisional view was that device locking is a practice that, by its very nature seems to be designed to make switching more difficult. Device locking also risks reducing the effectiveness of recent interventions to make mobile switching quicker and easier for customers, as well as the switching provisions in the EECC, which are intended to ensure a

⁴⁶³ Such customers do not sign a contract for ongoing payments, however the initial price of the device may be subsidised by the mobile provider based on expected future PAYG revenues, particularly if that operator can lock the device, making it harder for the customer to move to another provider.

⁴⁶⁴ It is also consistent with Tesco Mobile charging £10 to unlock a PAYG handset as soon as it is purchased, for all handsets. While £10 can be large in relation to cheap handsets, it would be a small proportion of more expensive handsets.

⁴⁶⁵ Vodafone response to formal information request dated 21 August 2019.

⁴⁶⁶ They might also rely on customer inertia and an assumption that few customers would exploit such subsidies.

quick, seamless process led by the gaining provider, without loss of service (where technically possible).⁴⁶⁷

- 10.42 We considered the different justifications for this practice put forward by providers, however, for the reasons set out above we considered these benefits to be limited. We placed weight on the fact that a large part of the industry now sells unlocked devices.
- 10.43 We also considered the transparency obligations we were proposing in order to give effect to the requirements of the EECC, some of which would apply in relation to handset unlocking.⁴⁶⁸ But we did not consider that these measures would be sufficient on their own to address the harm caused by device locking. This was because there was a risk that, by the time customers came to switch, they might have forgotten what they were told at the point of sale, such as when the device can be unlocked and how to unlock it. Even if they remembered their device is locked, they would still need to incur time and effort to unlock it, and would still be vulnerable to delays in obtaining the code, thereby delaying their switch.
- 10.44 Our provisional view was that it would be appropriate to impose specific regulatory obligations on providers in this case. A clear rule in relation to handset locking would bring clear and immediate benefits to customers by directly tackling a deterrent to switching, as well as increasing regulatory certainty for providers.⁴⁶⁹

Options to address concerns with device locking practices

- 10.45 We set out two options in the December Consultation.

Option 1: Providers would have to sell unlocked devices to residential consumers.

- 10.46 This option would prohibit providers from selling locked devices to residential customers. As a result, all residential customers who bought a device after the implementation date would be able to obtain a SIM from another provider and use it in their existing device straight away, without having to spend time, effort or expense in unlocking it. At the time of the implementation date, Ofcom would publicise this change to raise awareness of the new rule among customers.

⁴⁶⁷ Article 106 of the EECC covers switching (where a customer changes their fixed or mobile provider) and porting (where a customer keeps their telephone number when they switch provider). The EECC requirements include: that the switch happens in the shortest possible time with the gaining provider leading the process; there is continuity of service, where technically feasible; providers adequately inform customers before and during the switch and do not switch customers without their consent; and providers compensate customers if things go wrong. Article 107 of the EECC makes clear these requirements extend to bundles including terminal equipment. See also recital 277 of the EECC.

⁴⁶⁸ We proposed to require providers to tell customers at the point of sale and in their contracts if the device is locked and when they can or will be unlocked. See section 5 for more detail.

⁴⁶⁹ We also noted that our proposed revised GCs would also maintain the prohibition on any conditions and procedures for contract termination acting as disincentives to switch, and that this would also explicitly apply to bundles including terminal equipment.

Option 2: Providers must either unlock devices or send all residential customers that buy a locked device the code to unlock it at specific points in time.

- 10.47 This option would allow providers to continue to sell locked devices if they wish to do so, but would require them to take a number of additional steps.
- 10.48 For devices that can be unlocked remotely by the provider, providers would have to ensure that:
- these are automatically unlocked by the end of the commitment period. BT Mobile/EE already unlock Apple and Google devices automatically at 18 months and 271 days respectively; however, Vodafone does not currently automatically unlock Apple devices;⁴⁷⁰ and
 - they send a text message to customers to notify them that their device has been unlocked. The text message should include a simple explanation of what that means in practice.
- 10.49 For devices that need to be unlocked manually by the customer, this option would require providers to send customers their unlocking code within 24 hours of the customer requesting it.⁴⁷¹ ⁴⁷² This would ensure that providers hold all the unlocking codes they need for their customers, and send them without delay whenever they are requested.
- 10.50 Where devices cannot be unlocked remotely, we said we did not consider that this requirement, by itself, would sufficiently address the concerns we have identified. Therefore, Option 2 included additional requirements that ensure customers are proactively sent appropriate information about their locked device.
- 10.51 Where devices cannot be unlocked remotely, providers would automatically text customers:⁴⁷³
- the code for unlocking their mobile device,
 - the IMEI number and make of the device for which the code is for;⁴⁷⁴
 - a link to guidance on how to use the code (or a number to call for assistance); and
 - advice to retain the code for future reference if they do not wish to make use of it now.
- 10.52 Providers would be required to send the text message at the following points in time:
- for pay-monthly customers – at the end of the commitment period; and
 - for PAYG customers – at the point when the customer can unlock the device free of charge.

⁴⁷⁰ Vodafone sells Google devices unlocked.

⁴⁷¹ The provider would not be required to send the unlocking code if the device has been blacklisted, the person requesting the code failed to pass security checks, or if any other exceptions included in the customer's contract are in effect (for example if their account is in arrears).

⁴⁷² One provider suggested this requirement as an appropriate response to our device locking concerns.

⁴⁷³ Again providers would not be required to do this if the device has been blacklisted, the person requesting the code has failed to pass security checks, or if any other exceptions included in the customer's contract are in effect (for example if their account is in arrears).

⁴⁷⁴ This would enable customers to check whether the code is for the phone they are currently using.

- 10.53 This text message would ensure that customers are proactively given the information they need to unlock their device, when it is free for them to do so, saving them time and effort when unlocking their device.
- 10.54 In addition, where a customer with a locked device requests a switching code under the Auto-Switch process, providers would need to let that customer know that they need to unlock their device in the switching information they provide and include a link to a guide that explains how to do so. This would be a timely reminder that their handset is locked and the action they need to take to avoid potential delays to switching and any loss of service.
- 10.55 These rules would only apply to the sale of new locked devices because we recognised that providers would need to gather and retain information at the time they sell devices, to ensure they have the appropriate unlocking information available to send to their customers. Providers would in effect be able to choose to either implement the requirements set out in this option, or to stop selling locked devices altogether.

Impact of our proposals on customers and providers

Benefits of Option 1

- 10.56 We considered that this option would deliver significant benefits in terms of reducing the disincentive to switch from device locking. Specifically, it would:
- a) **Remove the time, difficulties and potential charges for customers who switch.** Option 1 would entirely address the difficulties customers face unlocking their device when they switch. Customers would no longer need to expend time and effort unlocking their phone and would no longer experience any delay or loss of service caused by device locking. In addition, Option 1 would also remove any unlocking fees that might apply.⁴⁷⁵
 - b) **Bring benefits for customers previously deterred from switching.** We estimated there are around 3 million customers a year (which we have now corrected to 2.5 million customers a year) who actively consider switching but decide not to, for whom unlocking their device was a factor in their decision not to switch. We noted that there might also be other customers who are deterred from even considering switching who would also benefit.
 - c) **Strengthen competition.** By making switching easier for those that are currently discouraged from switching, this option could have a more general effect in terms of strengthening competition amongst providers.

Costs and implications of Option 1

- 10.57 We considered any direct implementation costs involved in changing to selling only unlocked devices in the future would be relatively small. The providers affected (BT

⁴⁷⁵ Charges from either the customer's provider or a third party, such as a shop on the high street.

Mobile/EE, Vodafone and Tesco Mobile) would need to amend their contracts with device manufacturers. They might also need to amend their internal policies along with associated staff training.

10.58 However, these providers said there would be wider effects because of the possible increase in fraud and bad debt, and a reduction in device subsidies for PAYG customers. For the reasons set out above, our preliminary view was that the scale of these effects was likely to be limited:

a) **Device locking to tackle fraud and bad debt:** BT Mobile/EE considered that, without device locking, fraud and bad debt might increase by [X]%, which would amount to £[X] million a year. It also said that this could rise further over time as fraudsters become more aware that its devices were unlocked.

While we accepted that locking devices might help reduce fraud and bad debt, the size of the increase in costs estimated by BT Mobile/EE was not large in the context of the number of customers who experience difficulties switching, the number deterred from switching, and the potential seriousness of the harm they can experience. The fact that other providers manage fraud and bad debt without device locking suggested that the impact of device locking may not be large and/or that there are offsetting benefits to providers from ceasing to lock.

b) **Device locking to protect subsidies for PAYG devices:** We noted that the absolute amount of the subsidies was relatively small (for example, on average for Tesco Mobile the subsidy is £[X]) and might not be removed entirely or might be offset by other changes to ensure offers remain attractive (e.g. lower call prices).

10.59 We also anticipated some operational cost savings would result from not having to deal with customer queries and complaints about device locking and the process of unlocking.⁴⁷⁶

Benefits of Option 2

10.60 Option 2 aimed to reduce barriers to switching caused by device locking by helping ensure customers are aware their device is locked, by making the unlocking process quicker and easier, and empowering those who are currently discouraged from switching because of device locking.

Removing the time and difficulties for customers who switch

10.61 **For devices that can be unlocked remotely by the provider** (i.e. Apple and Google devices), Option 2 would ensure they are unlocked automatically by the end of the commitment period. All customers with devices that can be unlocked remotely would receive the notification telling them that their device is no longer locked.

⁴⁷⁶ BT told us that while it envisaged some cost savings due to less operational resource to unlock devices, this would likely be offset against more resource needed to deal with the impacts of an increase in cases of fraud and bad debt.

- 10.62 We noted that customers with devices that can be unlocked remotely could still face difficulties if they sought to switch before the end of the commitment period, but if they used the Auto-Switch process before their device is automatically unlocked, they would be given information when requesting a switching code, reminding them of the need to unlock their device and prompting them to unlock (if they had not already done so). This could be expected to mitigate the risk of device locking delaying the switch.
- 10.63 **For devices that cannot be unlocked remotely**, and so long as the text message is accurate and understood by customers, this option would reduce the difficulties customers can face when unlocking their device:
- a) **Unnecessary time and effort spent:** It would reduce the time and effort in obtaining an unlocking code, as the code would be proactively sent to customers.
 - b) **Delays in switching.** Making sure the customer is aware their device is locked and needs to be unlocked, along with information about how to do so, would help reduce delays in switching (which could otherwise arise if customers only found out their device was locked when switching). The unlocking information provided when a switching code is requested would also be a timely reminder and help avoid delays. Because this option would require providers to ensure they have the relevant unlocking information readily available, and provide this to customers within 24 hours (should it still be requested), this option should reduce the incidence of delays. However, delays will, of course, still occur when the source of the fault is the handset manufacturer or where the customer makes a mistake.
 - c) **Loss of service:** The text message would inform the customer that their device is locked so that they can take steps to unlock it before they switch. Further, the unlocking information provided when a switching code is requested would also remind the customer of the need to unlock their device before they switch. Again, providers would need to ensure that they hold the necessary codes and provide these to customers within 24 hours if still requested, which would help reduce the length of loss of service should it still occur.
- 10.64 However, we identified risks that:
- a) **Some time and effort would still be required:** Customers would still need to enter the unlocking code when prompted and may find this a difficult process.
 - b) **The text message with the unlocking code could be ignored or cause confusion:** We recognised that the initial text message could contain information that was unfamiliar to some customers (IMEI codes, unlocking codes), and could be ignored, or result in confusion for some customers. While we would expect providers to take steps to ensure that the message and guidance provided to customers were clear, we could not rule out that, in some circumstances, these customers might still contact their provider for information and request their unlocking code.⁴⁷⁷ If they did, requiring providers to

⁴⁷⁷ Particularly where a customer was not using the Auto-Switch process and does not receive a reminder to unlock.

send customer their unlocking code within 24 hours would at least ensure customers received the code at that point without delay.

- c) **The information in the text message may be incorrect:** Even though providers would take steps to ensure that they hold the correct unlocking information, the unlocking code held by providers might not be correct, and in these cases this option would not address delays or other problems and the time and effort required to resolve them.

10.65 We further noted a risk under this option that customers with unlocked devices may continue to mistakenly believe they are locked. This option would not help address this or the variation in policies between providers that exacerbate the issue.

10.66 In terms of unlocking charges, this option would only require the provider to take steps either to unlock remotely or provide an unlocking code once the device can be unlocked free of charge. This option would not therefore reduce or avoid the charges that are currently paid (since if the customer wished to unlock within the commitment period, a charge would still be levied).

Benefits for customers previously deterred from switching

10.67 We set out that Option 2 was intended to empower those who might be discouraged from switching because of device locking.⁴⁷⁸ We considered that while the benefits for customers who may be discouraged from switching by device locking could be substantial, it was unclear how effective this option would be in achieving these benefits. We said that it was difficult to be certain as to the magnitude of this impact but overall, we believed Option 2 would reduce the extent to which device locking acts as a disincentive to switch.

Effective competition

10.68 By making switching easier for those customers that are currently discouraged from switching, this option could have a more general effect in terms of strengthening competition amongst providers. But we noted that the limits to the effectiveness of Option 2 would limit those benefits.

Costs and implications of Option 2

Additional costs for some customers

10.69 We set out that there could be additional costs for some customers if they find the unlocking information in the text message confusing and spend extra time and effort contacting their provider or searching the internet to clarify the information, or if they misunderstand the message and take unnecessary steps as a result.

⁴⁷⁸ However, as with Option 1, this option would not benefit those customers who have a device purchased before the implementation date.

Additional costs for providers

- 10.70 We recognised that providers selling locked devices would need to change certain systems and processes to implement Option 2 to:
- a) Ensure they have all the relevant codes and information in place.
 - b) Develop systems so that information can be sent to customers at the relevant time, and for Vodafone, to ensure that it unlocks Apple devices automatically by the end of the commitment period. We said that this may involve setting up new internal processes or an automated feed to a third party which operates their unlocking process. In addition, they may also need to amend their internal policies with some associated staff training.
- 10.71 We asked providers for estimates of the size of costs for an earlier option broadly similar to Option 2.⁴⁷⁹ [redacted] estimated that upfront costs to install these systems processes and changes would range from [redacted].⁴⁸⁰ [redacted] was unable to provide an estimate of the cost involved but told us that implementing Option 2 would require complex systems and process changes.
- 10.72 However, we also noted that there were potential cost savings to providers from implementing Option 2, which would mitigate the initial cost. By making the unlocking process smoother, we would expect a reduction in customer queries, unlocking requests and complaints and the associated costs of dealing with them.⁴⁸¹ In addition to cost savings there would be a benefit to brand reputation from fewer complaints.
- 10.73 [redacted] told us that the net ongoing costs of Option 2 would likely be neutral, given the benefits per annum of a reduction in the volume of calls and support needed to resolve customer queries about locked devices. [redacted] estimated that the ongoing costs would be less than £50,000 a year.
- 10.74 In contrast to Option 1, we did not expect Option 2 to lead to any changes to systems or processes to deal with the risk of an increase in fraud and bad debt.

Our provisional conclusion

- 10.75 Our provisional view was that we should implement Option 1 because it was more effective at addressing the concerns we identified and would not involve adverse effects that were disproportionate to the aims we were seeking to achieve.

⁴⁷⁹ There are some differences between Option 2 and the option on which what we sought cost estimates from providers. Option 2 consulted on proposed an additional requirement that where a customer with a locked device requests a switching code under the Auto-Switch process, providers would need to let that customer know that they need to unlock their device in the switching information they provide, and include a link to a guide that explains how to do so; providers would need to ensure that they give customers the unlocking codes within 24 hours of a request; and Vodafone would need to ensure that Apple devices are unlocked automatically by the end of the commitment period. However, the option that we sought cost estimates on included a proposal to provide existing customers with their unlocking code if they take a new airtime contract.

⁴⁸⁰ [redacted]

⁴⁸¹ [redacted]

10.76 We proposed to limit Option 1 to residential customers. We considered that the needs of some small business may be different from residential customers. In particular, we noted that some businesses value the ability to provide staff with locked devices. Small businesses would nonetheless benefit from our proposals to improve transparency.⁴⁸²

Consultation responses and our assessment

10.77 A number of respondents provided views on device locking, including communications providers, consumer groups, and third-party intermediaries such as price comparison sites. We first consider comments on the concerns we outlined and then comments on the options we proposed.

Comments on our concerns with device locking

10.78 Most respondents who commented agreed with our assessment that device locking can deter switching.⁴⁸³ This included BT Mobile/EE who stated that, while the vast majority of customers are able to unlock their phones without difficulty, in some limited situations customers may face difficulties that may deter them from switching.

10.79 However, Vodafone argued that the December Consultation included little in the way of evidence that device locking acts as a barrier (psychological or practical) to switching. Vodafone said that if device locking was a barrier, it would expect to see evidence of greater switching by customers from providers that do not sell locked handsets, compared to those from providers selling locked handsets.

Our assessment of responses

10.80 We note that most respondents agreed that device locking can deter switching.

10.81 We have considered carefully the points made by Vodafone. However, we consider that we have set out clearly why device locking can deter switching and our evidence (as summarised at paragraphs 10.27 to 10.30 above). One part of this evidence is the number of customers who are deterred each year from switching in part by the need (or perceived need) to unlock their device. We now estimate 2.5 million customers are deterred from switching in part by the need (or perceived need) to unlock their device, and, in addition,

⁴⁸² We have introduced transparency obligations on providers to give effect to the requirements of the EECC, some of which would apply in relation to handset unlocking. Article 102(1) requires providers to give customers information on any conditions that apply to the use of terminal equipment supplied to them, including fees, as well as information on retaining any terminal equipment at the end of the commitment period, including any fees involved. We will require providers to tell customers at the point of sale and in their contracts if the device is locked and when they can or will be unlocked. We are also requiring providers to publish clear and comprehensive information on any restrictions they impose on the use of terminal equipment they supply.

⁴⁸³ CCP, Citizens Advice, FCS, Ombudsman Services, Tesco Mobile, Three, Uswitch, and Which?

more customers may be deterred from even considering switching because of concerns about their device being locked.⁴⁸⁴

- 10.82 We do not consider that exploring relative switching rates between providers would be particularly informative. Many factors could affect differences in switching rates between providers, such as differences in prices, network coverage/performance and quality of service more generally. Furthermore, some customers do not know whether their device is locked or not.⁴⁸⁵ As a result, there may be customers with providers not currently locking devices who nonetheless believe that their device is locked, and who are deterred from switching.

Views on the options put forward

- 10.83 Most respondents who commented on the options were supportive of our proposal to ban mobile device locking for residential customers (Option 1), rather than Option 2.⁴⁸⁶ For example, Uswitch argued that Option 1 would be more effective in meeting Ofcom's policy aims as it offers the simplest process for customers and should be the most straightforward for providers to implement. Ombudsman Services and Which? argued that this option would remove a barrier to switching. BT Mobile/EE agreed with our assessment of the effectiveness of the options in reducing consumer harm.

- 10.84 However, other respondents raised some concerns with our proposed approach:

- a) **The proportionality of Option 1.** Virgin Media disagreed with the introduction of a ban, as it did not consider it was proportionate and instead argued that more time should be allowed for the fairness commitments to become established.⁴⁸⁷ Virgin Media also considered that we should rely on, or tweak, existing remedies by, for example, including information within the proposed contract summaries at point of sale, or as part of ECNs.⁴⁸⁸

⁴⁸⁴ Bespoke analysis. Estimates are based on data from Ofcom's Technology Tracker, Switching Experience Tracker and Core Switching Tracker from 2018. The ranges (95% confidence interval), after correcting an error in the December Consultation in the range, are as follows: 0.8-1.7 million stated handset unlocking was a major factor in their decision not to switch and 0.8-1.8 million said it was a minor issue. This is based on the number of 'active considerers', which consists of those who discussed or looked at deals/offers from another provider. These estimates exclude those who considered switching and only talked to friends and family for recommendations. If these additional 'considerers' were also included the ranges rise to 1.2-2.4 million (major factor) and 1.3-2.6 million (minor factor) and the central estimate would be around 3.7 million being deterred from switching in part by the need (or perceived need) to unlock their device among the wider group of considerers. Fieldwork for the Switching Experience Tracker is conducted online and thus does not fully represent PAYG customers.

⁴⁸⁵ This may be because providers do not tell customers whether the device they are purchasing is locked or not; and the use of device locking varies by provider, in addition to which some providers have changed their position over the last few years.

⁴⁸⁶ BT, the CCP, FCS, Ombudsman Services, Sky, Three, Uswitch and Which? were supportive of Option 1.

⁴⁸⁷ In June 2019, Ofcom published [a number of voluntary commitments](#) that providers signed up to. The aim of these is to help ensure people are always treated fairly by their provider – whether they are signing up to a new deal, trying to fix a problem or switching to a new company. The list of signatories includes BT; EE; Giffgaff; O2; Plusnet; Post Office; Sky; TalkTalk; Tesco Mobile; Three; Virgin Media and Vodafone.

⁴⁸⁸ Providers are required to send notifications to their customers just before their minimum contract period comes to an end. These notifications must include information including the date on which their minimum contractual period ends, current tariff, the new default tariff and best alternative offers.

- b) **Taking other steps in addition to Option 1.** In contrast, Citizens Advice and Uswitch thought we should go further than banning the sale of locked devices. They argued that we should also take steps to help protect customers who already own locked devices, for example, to require that providers remotely unlock all impacted devices sold as part of pay monthly contracts, and proactively confirm that the device has been unlocked. Further, they questioned how customers would become aware that all new devices would be sold unlocked so that they are not deterred from even considering switching.
- c) **Expanding the scope of Option 1 to include business customers and other devices.** In addition to agreeing with Option 1, FCS suggested that the banning of locked devices should apply equally to the business market regardless of business size. FCS also asked that we look at the bigger question of locked communication devices including IP Telephones.
- d) **Limiting a ban on device locking.** [✂] argued against the implementation of a complete ban on device locking for two reasons. First, it argued that device locking can protect against theft in the supply chain and in retail stores and can be lifted at the point-of-sale. Secondly, it argued that device locking enabled the provider to sell subsidised devices and so provide new business opportunities for the retailer and providers and increase consumer choice.

Our assessment of responses

The proportionality of Option 1

- 10.85 We note that most of the respondents that commented were supportive of banning handset locking.
- 10.86 We have considered the proportionality points made by Virgin Media. In this regard we note that:
- a) While the main providers signed up to the Fairness Commitments in June 2019,⁴⁸⁹ EE, Tesco and Vodafone continue to sell devices that are locked. Because more than a year has passed since these commitments were put in place, it is not clear that they will directly address our concerns with handset locking.
 - b) We do not consider that information remedies alone would be sufficient to address our concerns. Any information remedy would also need to ensure that information is provided at the relevant time. This means that the remedy would need to be similar to Option 2. We have already set out why we think Option 1 is more appropriate than Option 2 above. This includes that Option 1 fully addresses our concerns about customers having to incur time and effort to unlock their devices, which can deter switching, whereas Option 2 does not.

Taking other steps in addition to Option 1

⁴⁸⁹ This included a commitment to ensure that ‘Customers can sign up to, change and leave their services quickly and smoothly. Providers ensure that customers who are leaving do not face additional barriers or hassle compared to those who are signing up to a new service’.

- 10.87 We note that two respondents argued that, in addition to the proposed ban on device locking, we should address the problems faced by customers who already own locked devices and want to continue using them. We recognise that, while Option 1 would remove the problem for customers buying new devices, it would not help customers that already have locked devices and wish to use them with another provider.
- 10.88 We have considered the suggestions made by Citizens Advice and Uswitch that such customers could benefit from steps taken by providers to unlock devices remotely (where feasible), or to make it easier for them to unlock their devices by proactively sending them the unlocking code. However:
- a) BT Mobile/EE already automatically unlock Apple devices remotely after 18 months and Google devices after 721 days. It is only Vodafone that currently sells locked Apple devices but does not proactively unlock them remotely (it sells Google devices unlocked).
 - b) For other devices that need to be unlocked manually, providers have told us that they do not know for sure which of their existing customers use locked devices, nor which device model they currently use (and therefore which unlocking code they would need). They also do not hold all the relevant unlocking codes for their customers. They would therefore need to gather further information to ensure they were able to give the right unlocking codes and avoid sending incorrect information that may cause confusion and further hassle for customers.
 - c) Furthermore, a requirement of this sort for existing locked devices would be likely to involve system and process changes over and above those needed to implement the ban on selling locked devices. Those further changes would only provide benefits for a limited period - i.e. while the legacy devices were in use. It is not clear that it would be proportionate to require providers to make such changes for legacy devices, in addition to introducing a ban on the sale of such devices. Therefore, we do not propose to take further steps in this regard.
- 10.89 As proposed in the December Consultation, we would, at the time of implementation, seek to publicise the ban on device locking to raise awareness amongst customers that new handsets will not be sold locked.

Expanding the scope of Option 1 to cover business customers and other devices

- 10.90 We note that FCS would like to see the scope of Option 1 extended to business customers. The requirements in Option 1 are limited to addressing the issues we have identified with residential customers. The needs of some small businesses may be different from residential customers, and we do not have any specific evidence of harm arising in relation to business customers in relation to locked devices. Therefore, we do not propose to extend the scope to businesses at this time.
- 10.91 However, where small businesses purchase residential services, they could indirectly benefit from a requirement on providers to sell unlocked devices to residential consumers

under Option 1. Nearly half (45%) of businesses with less than 10 employees take a residential contract for mobile services.⁴⁹⁰

10.92 We also note that FCS would like to see the scope of Option 1 widened so it would apply to other communication devices such as IP telephones that FCS have said are subject to locking policies. The December Consultation focused specifically on the harm arising in relation to mobile devices. We did not review other devices such as IP telephones, or consider any harm resulting from their use. We do not, therefore, intend to extend the scope of the requirement to other non-mobile devices at this stage. However, we note that the EECC requires that customers are given clear information about their communications services before they enter into a contract so that they can make well-informed choices. This includes information on whether their terminal equipment is locked.⁴⁹¹

Limiting a ban on device locking

10.93 We note [§] first point, that banning locked devices throughout the supply chain may make it harder to protect against theft in the supply chain or in retail stores. However, the new rule would only require providers to ensure that devices are not sold locked to residential customers. It would not prevent the locking of devices further up the supply chain, provided that the devices are unlocked at the retail point of sale.

10.94 We disagree with [§] suggestion that a ban may introduce a risk to business opportunities for retailers and providers and limit consumer choice if device locking can no longer be used as a tool to protect subsidies for devices sold to PAYG customers. We have considered this issue above in paragraphs 10.37-10.39, and whilst we accept that a ban may mean that there is a reduction in device subsidies, the absolute amount of the subsidies is relatively small (for example, on average for Tesco Mobile the subsidy is £[§]). In our view, customers would not necessarily lose out as the loss or reduction in device subsidies could be offset by other price changes to ensure offers remain attractive (e.g. lower call prices). As such, we do not consider that this factor outweighs the beneficial effects of unlocking handsets.

Our overall assessment

10.95 We continue to have concerns about the practice of device locking. We are concerned that, by its very nature, device locking introduces an additional hurdle that customers need to go through if they want to switch provider.

10.96 We are also concerned about how device locking operates in practice, in particular that, for the reasons set out above, customers who unlock their device:

- a) need to spend unnecessary time and effort finding out whether their device is locked or not, and where it is, to then unlock their device;

⁴⁹⁰ Jigsaw SME Research; January 2017 [Data tables \(page 554\)](#).

⁴⁹¹ See section 5.

- b) may face problems when unlocking their device, including delays in switching because of the time taken to obtain an unlocking code or a loss of service; and
- c) may have to pay unlocking charges.

- 10.97 Our research shows that, where customers unlock their device when switching provider, just under half experience some sort of difficulty doing so. We now estimate that this is equivalent to 350,000 customers a year.⁴⁹² Although this number is lower than our estimate at the time of consultation, it remains sufficiently large (and would be an annually recurring problem) that we continue to have concerns about customers experiencing some sort of difficulty with device locking each year and the harms they face. In addition, we note that, because customers are retaining their devices for longer (see paragraph 10.26), the proportion who want to unlock their device in the future and who may experience a problem may increase.
- 10.98 Furthermore, our research shows that just over one third (35%) of customers who actively consider switching but decide not to, say that device locking was one of the factors that put them off. We estimate that this is equivalent to 2.5 million customers a year in total, which remains a large number of affected customers, and, in addition, more customers may be deterred from even considering switching because of concerns about their device being locked. The number of people deterred in part by handset locking can be put into context by comparing it to the number of people who switch each year, which we estimate to be 4.0 to 5.7 million customers a year. The number of switchers could therefore potentially increase significantly if those deterred in part by handset locking were to switch in the future.

Assessment of the options

- 10.99 We set out at paragraphs 10.56 – 10.76 our assessment of the two options put forward in the December Consultation. We have considered our position further in light of the comments made by respondents to the consultation, and the revised estimates of those customers affected by device locking.
- 10.100 While the revisions to our estimates mean that the benefit of Option 1, in terms of removing the unnecessary time, difficulties and charges that customers who unlock their device when switching may face, is lower than we initially considered, we remain of the view that the benefits of Option 1 would be significant. This is particularly because we place weight on the benefits for customers previously deterred from switching, of which we estimate there are 2.5 million a year. We also note that, by making switching easier for customers that are currently discouraged from switching, Option 1 may result in a more

⁴⁹² Bespoke analysis. Estimates are based on data from Ofcom's Technology Tracker, Switching Experience Tracker and Core Switching Tracker in 2018. The range (95% confidence interval) for the figures are as follows, after correcting for an error in the December Consultation: 4.0-5.7 million customers switch each year, 50k-200k found handset unlocking to be a major issue, 120k-350k found it to be a minor issue. Note that these estimates only represent those who make their own purchasing decisions. Fieldwork for the Switching Experience Tracker is conducted online and thus does not fully represent PAYG customers

general benefit in terms of strengthening competition amongst providers. Such an effect would be felt across the market as a whole.

- 10.101 In addition, we continue to consider that any direct implementation costs involved in changing to selling only unlocked devices in the future would be relatively small, and that there may be some operational cost savings to providers from not having to deal with customers' queries about unlocking, requests to unlock and complaints about the process. We also consider that, for the reasons outlined above, any impact on fraud and bad debt would be limited.
- 10.102 Our view of Option 2 is that while it could help customers who have difficulty unlocking their device when switching providers, and benefit those who are currently deterred from switching (as the device unlocking process should be quicker and easier), we conclude that this option would not be sufficiently effective in addressing our concerns (see paragraphs 10.64-68). In addition, implementing Option 2 would require BT Mobile/EE, Tesco Mobile and Vodafone to change certain systems and processes, and incur costs, though there may also be some potential cost savings for these providers.
- 10.103 Overall, we conclude that Option 1 (banning handset locking) is appropriate and proportionate because:
- a) **Option 1 is the most effective means of achieving our objective.** Banning device locking fully removes the need for customers to go through the process of unlocking their handset when changing provider and the difficulties customers who switch currently face with device locking. It also removes the barrier to switching arising from this practice. By making switching easier, it allows customers to take advantage of the offers that are available to them, which in turn would strengthen the competitive process. As such, we consider that banning device locking is the least onerous means to effectively address the harms identified and achieve our objective.
 - b) **Option 1 has no wider adverse effects that are disproportionate to the aims that we are seeking to achieve.** We have considered the impact of our proposal on providers and customers, and conclude they do not produce adverse effects which are disproportionate to our policy objectives. We recognise that Option 2 would avoid the perceived drawback of banning device locking in terms of risk of increased fraud and would be expected to have a smaller effect on up-front PAYG subsidies. However, the fact that many providers manage fraud and bad debt without device locking suggests that device locking is not essential to achieving this. We also consider that PAYG device subsidies may not be entirely reliant on device locking. While there are some costs involved in banning device locking, these are likely to be sufficiently limited that they would not outweigh the expected benefits that would be generated.

Our decision

- 10.104 For the reasons set out above, we have decided to introduce a new rule which will ban the sale of locked mobile devices to residential customers.

- 10.105 The ban on device locking will be without prejudice to the general requirement that conditions or procedures on contract termination do not act as disincentives to switching.
- 10.106 This requirement is set out in revised GC C1.9 in Annex 5. The scope of this provision is set out in revised GC C1.1(b)(ii).

Implementation

- 10.107 In the December Consultation, we proposed to allow providers 12 months from the date of our final statement to implement the changes. BT agreed with the proposal to stop selling locked handsets 12 months from the final statement. However, Three argued that the implementation deadline should be reduced to 6 months and said that this was based on its experience of implementing device unlocking in 2014.
- 10.108 We recognise that providers would need to change their agreements with device manufacturers to make sure the devices they supply are now unlocked. They may also need to amend their internal policies with some associated staff training. We also recognise that providers need to introduce other changes to certain systems and processes in order to implement the other requirements which we are imposing in this Statement. In light of this, we have decided to allow providers 12 months from publication of our final notification containing the revised GCs to implement the new requirement in December 2020. In practice, this gives providers 14 months to implement the necessary changes, which we consider to be sufficient.

11. Disincentives to switch: non-coterminous linked contracts

- 11.1 As set out in section 7, the EECC requires that the conditions for terminating a contract should not act as a disincentive to switching provider, and places particular emphasis on customers being able to switch bundles easily.⁴⁹³
- 11.2 In our December Consultation we proposed new guidance, setting out the types of factors we would take into account when assessing whether linked contracts with commitment periods that do not align (non-coterminous linked contracts), may act as a disincentive to switch under revised GC C1.8.⁴⁹⁴
- 11.3 This section explains our decision to proceed with issuing guidance that outlines the approach Ofcom would expect to take when assessing non-coterminous linked contracts under GC C1.8. This final guidance includes changes made to the draft guidance on which we consulted to reflect comments made about its intended application including scope, and the types of factors we would take into account when assessing the impact of non-coterminous linked contracts. The final guidance is included in our guidance on GC C1 at Annex 6.
- 11.4 This section explains:
- non-coterminous linked contracts;
 - our December proposals;
 - consultation responses, and our assessment of those responses; and
 - our decision.

Non-coterminous linked contracts

- 11.5 In our December Consultation, we considered whether there were any current practices that may act as a disincentive to switch that we should address. In particular, we discussed non-coterminous linked contracts,⁴⁹⁵ which are bundled contracts⁴⁹⁶ where:
- the commitment periods for different elements of a bundle (such as different services or equipment provided) do not align; and
 - the contracts for each element are linked, i.e. there are dependencies between them, such that terminating one element of the bundle would impact on another.

⁴⁹³ See section 4 for the definition of a bundle.

⁴⁹⁴ Condition C1.8 says: "Without prejudice to any Commitment Period, Regulated Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for Relevant Customers against changing their Communications Provider."

⁴⁹⁵ This followed on from our work on helping customers to engage in communications markets, in which we had expressed concern about non-coterminous contracts. Ofcom, July 2017. [Call for inputs on helping customers to engage in communications markets](#), page 16.

⁴⁹⁶ We said we would also apply the same approach to bundles of services and/or equipment that are on the *same* contract but where the commitment periods do not align.

- 11.6 We also set out the main types of dependencies,⁴⁹⁷ which were as follows:
- **A technical dependency** where a customer would lose, or be impaired in using, one element of the bundle if they terminated the contract for another element of the bundle. For example, if a customer has a broadband service which only works if they also take a landline service from the same provider, and the customer cancelled their landline service, they would no longer be able to use the broadband service.
 - **A contractual dependency** where there are links between the rights or obligations for the provision of different elements of the bundle. For example, a customer might purchase both airtime and a mobile device at the same time from the same provider under two different contracts but with contractual terms that link the contracts.⁴⁹⁸
 - **A financial dependency** where any prices, tariffs or charges for the provision of one element of the bundle are contingent on taking another element, e.g. a monthly discount or extra data for mobile customers who also take fixed broadband from the same provider, which is then removed if the broadband contract is cancelled.

11.7 We estimated that there were around 8.4m non-coterminous linked contracts⁴⁹⁹ in the UK, out of around 39m bundled subscriptions.⁵⁰⁰ However, we noted that there were wide variations in the difference in length between the end of the commitment periods for these linked services and/or terminal equipment. For example, while just over one in ten (12%) non-coterminous linked contracts had commitment periods that ended less than one month apart, nearly three quarters (73%) had commitment periods that ended more than six months apart. We also noted that this varied by type of bundle.⁵⁰¹

Our December proposals

11.8 In our December Consultation, we set out our potential concerns with non-coterminous linked contracts, but also noted the potential benefits they could bring, before considering whether we should take any further action.

Our potential concerns with non-coterminous linked contracts

11.9 We were concerned that, in some cases, these contracts may deter switching by increasing the costs of switching and adding complexity for consumers.

⁴⁹⁷ We use 'dependency' and 'link' interchangeably in this document.

⁴⁹⁸ Contractual terms may include a requirement that if the customer ends their airtime contract, they must also pay the remaining balance due under their handset contract in full as a lump-sum. This also constitutes a financial dependency. We refer to these as 'linked split mobile contracts', the contract durations for which are discussed in section 7.

⁴⁹⁹ This is based on provider data for bundles with dependencies where at least one service is in-contract as at April 2019. Plusnet, TalkTalk and Three reported that they had no non-coterminous linked contracts.

⁵⁰⁰ The total number of bundled subscriptions is a combination of (i) data submitted by the largest fixed and mobile providers in response to formal information requests dated 25 March 2019 and 12 April 2019; and (ii) data on "bundled" mobile contracts (under which the customer receives a handset and airtime and pays a single monthly price) taken from our [Statement and consultation on mobile handsets](#), July 2019. The data represents bundles where at least one element is still in contract. For (ii) the "bundled" mobile data represents contracts that are still in-contract as at 1 November 2018.

⁵⁰¹ For example, four-fifths (80%) of non-coterminous linked split mobile contracts have commitment periods that end more than twelve months apart, while around one third (34%) of non-coterminous triple-play contracts have commitment periods that end more than twelve months apart. See paragraph 9.15 in our [December Consultation](#).

Higher switching costs

- 11.10 We considered that the difference in the commitment periods between the different elements of non-coterminous linked contracts may make switching provider at the end of the first commitment period more difficult or costly.
- 11.11 For example, if a customer has non-coterminous linked contracts for two services A and B (which were taken at the same point in time), and service A has a 12-month commitment period while there is an 18-month commitment period for service B, they may face higher switching costs if they wish to switch. In particular:
- If the customer switched provider for service A at the end of its commitment period, but kept service B with their original provider, they could face a switching cost if there are dependencies between services A and B. For example, they could lose a discount if there are financial and/or contractual dependencies, or they could face a loss of service (or partial loss of service) if there are technical dependencies between services A and B.
 - If the customer decided to switch provider for both services A and B at the end of the commitment period for service A, they could face a switching cost in the form of an early termination charge for exiting the contract for service B before the end of its commitment period.⁵⁰²
- 11.12 To avoid incurring these switching costs, the customer may decide to remain with the same provider at the end of the commitment period for service A. In which case, the switching costs would have deterred the customer from switching provider. Under these circumstances the customer could either:
- wait until the end of the commitment period for service B before switching provider for both services. In the meantime, the customer may have to pay a higher out-of-contract price for service A while waiting until the end of the commitment period for service B; or alternatively
 - sign up to a new contract for service A with the same provider to avoid higher out-of-contract prices. The customer may then be “locked-in” to their current provider beyond the commitment period for service B. This situation may persist at the end of the commitment period for service B if the customer signs up to a new contract that does align with the new commitment period for service A.
- 11.13 We noted that qualitative consumer research found that some customers on non-coterminous contracts faced switching costs due to having different contract durations for different services from the same provider.⁵⁰³ For example, they:

⁵⁰² Our definition of ‘Early Termination Charge’ in the GCs refers to a charge that may be payable by customers for terminating a contract before the end of the ‘Commitment Period.’

⁵⁰³ Futuresight, April 2018. [Consumer engagement with communications services: a qualitative research study -final report](#), page 42-43. The research included exploring customers’ understanding and awareness of non-coterminous contracts among dual-play and triple-play customers. Fieldwork was conducted between August and October 2017. Non-coterminous contracts were referred to and described as “staggered” contracts taken with the same provider, and not explicitly described as bundled services with interdependencies.

- experienced a higher than expected bill, due to one or more of the shorter contracts coming to an end, when the customer could not remember being told that this would happen when they took out the contracts; or
- found out they would have to pay a charge or amount (for example an early termination charge) to switch all services in the bundle or wait until the longest contract expires.

Complexity of decision making

- 11.14 We were also concerned that the complexity of non-coterminous linked contracts could make it harder for customers to compare deals, as they needed to take into account the different commitment periods as well as the dependencies to understand whether and when they should switch. This might also deter them from switching.
- 11.15 Using the example above, at the end of the commitment period for service A, the customer would need to work out if they would save more money by switching their whole bundle to another provider for a lower price even if they have to pay a charge or amount for cancelling their contract for service B before the end of its commitment period, or whether it would be better to wait for the commitment period for service B to end even though they may face higher out-of-contract prices for service A. They could also consider entering into a new commitment period for service A while they continue service B.
- 11.16 We stated that the complexity of non-coterminous linked contracts, when compared to coterminous contracts, could also give rise to concerns with procedural fairness under our draft Fairness Framework.⁵⁰⁴

Non-coterminous contracts may have benefits for customers

- 11.17 However, we also recognised that non-coterminous linked contracts varied widely and not all of them would give rise to concerns or warrant intervention. Indeed, we acknowledged the potential benefits that some non-coterminous linked contracts could offer customers. For example:
- Introducing a link between two contracts might enable providers to offer lower prices or better services to customers than they would otherwise be able to, due to bundling efficiencies. Linking contracts may also make it easier for some providers to enter what are, for them, new markets or services where they already have an established market position in respect of one of the linked services.
 - In addition, setting non-coterminous commitment periods could provide benefits if it provided meaningful opportunities for customers to vary the terms of (or altogether discontinue) one service earlier than if the commitment periods were aligned.

⁵⁰⁴ Ofcom, 2019. [Discussion paper: Making communications markets work well for customers – a framework for assessing fairness](#). See Figure 1 on p.12. Procedural fairness refers to the fairness of the way firms treat customers in the market. We have since published a finalised version: [A framework for assessing fairness in broadband, mobile, home phone and pay TV](#)

Our provisional conclusion

- 11.18 We noted that many customers were on non-coterminous linked contracts. We had concerns that, in some cases, such contracts could deter switching by increasing the costs of switching and by increasing complexity for consumers, making it harder for them to assess how to get a good deal (including when to switch). In light of these concerns, we considered whether we should take further action.
- 11.19 We recognised that not all non-coterminous linked contracts would give rise to concerns or warrant intervention, and that there may be countervailing customer benefits from contracts structured in this way, and/or unintended consequences from limiting their availability. We also took into account the improvements to transparency that changes to implement the EECC are expected to bring.⁵⁰⁵
- 11.20 For these reasons, we did not propose introducing a new regulatory rule to deal with non-coterminous linked contracts, and instead proposed guidance on the types of factors we would take into account in assessing such contracts and whether they raise concerns under GC C1.8.
- 11.21 We also proposed to continue monitoring such arrangements and if, after a period of time after introducing the guidance, we remained concerned about their impact on customers, we might consider further regulatory action.

Our proposed guidance

- 11.22 In our proposed guidance on how we would assess whether enforcement action may be warranted, we said we would first consider whether there were likely to be any material switching costs if a customer were to switch provider when they reached the end of their first commitment period.
- 11.23 Specifically, we set out that such switching costs were likely to be higher if there were:
- **strong dependencies between the elements of the bundle.** For example, if a customer is not able to use one element of the bundle without the other because of a technical dependency, or could face a material financial impact, such as losing a discount if they switched to another provider for one of the elements in their bundle before the end of the commitment period; and
 - **significant differences in the end of the commitment periods for different elements of the bundle.** For example, if a customer wanted to switch the whole bundle while one element is still in its commitment period, they would have to pay higher early termination charges the further they are from the end of that commitment period. This

⁵⁰⁵ We considered that end of contract notifications will help customers' awareness of their contractual position when reaching the end of the commitment period for one element of their bundle. However, we did not consider that the provision of this information alone would sufficiently address our concerns (Ofcom, May 2019, Statement on end-of-contract notifications and annual best tariff information). In addition, customers will receive information before they are bound by a contract and we have set out the expectation that providers make it clear that they are entering into a bundle with different commitment periods, and of the dependencies between those contracts. This is set out in section 5.

may raise the likelihood they would be disincentivised from switching the whole bundle to an alternative provider.

11.24 We considered that if non-coterminous linked contracts did not have both strong dependencies and significant differences between the end of their commitment periods, then they were less likely to result in a disincentive to switch.

11.25 However, where these two factors applied, we proposed to consider:

- *the conditions that arise when some elements of the bundle reach the end of their commitment period before others*, for example, whether the customer would be subject to higher out-of-contract prices or be ‘locked in’ to their current provider for a material length of time if they signed up to a new contract; and
- *whether the complexity of the non-coterminous linked contracts makes it harder for customers to compare deals*, adding costs to the process of searching for a deal and increasing the risk that customers select a deal that is not well-suited to their needs.

11.26 As part of our overall assessment, we also proposed to consider any factors which would lessen our concerns. We said that these factors could include:

- The potential for efficiencies and other benefits from non-coterminous linked contracts as well as the risk of unintended consequences from intervening. We said we would need to establish that both the link between the contracts along with the non-coterminous commitment periods produced benefits for customers.
- Additional steps taken by the provider at the point of sale to help customers understand the implications of entering into non-coterminous linked contracts. We said that this would depend upon how complex the non-coterminous linked contracts are and what level of support providers gave customers to help them understand the implications of entering into these agreements, including what would happen at the end of the commitment periods.

11.27 We said that we would be more likely to consider opening an investigation where a number of factors suggested that the circumstances relating to the non-coterminous linked contracts are likely to act as a disincentive to switch.

Consultation responses and Ofcom’s assessment

11.28 A number of respondents to the December Consultation, including providers, consumer bodies and individuals, commented on our proposals in relation to non-coterminous linked contracts.⁵⁰⁶

Our proposal to issue guidance

11.29 A number of respondents agreed with our view that non-coterminous linked contracts may deter switching.⁵⁰⁷ Several welcomed our proposal to introduce guidance in this area. For

⁵⁰⁶ Ofcom, [December Consultation](#)

⁵⁰⁷ BT, CCP, Citizens Advice, Post Office, Three, Uswitch, Which?

example, the Post Office stated that guidance “would still permit some non-coterminous contracts where they offer benefits to the customer.” The CCP supported our plans and noted it had previously raised concerns about non-coterminous contracts because of the risk that consumers are not able to engage with and understand such contracts.

- 11.30 However, O2 argued that we had not provided a robust theory of harm in relation to non-coterminous linked contracts, nor empirical evidence to support issuing such guidance.
- 11.31 A number of other respondents highlighted the potential for unintended consequences from issuing the proposed guidance in relation to non-coterminous linked contracts, such as longer minimum terms for customers (Sky), loss of flexibility in contract offerings ([X], O2) or the withdrawal of bundled offerings that customers may value ([X], ITSPA).
- 11.32 Citizens Advice and Which? highlighted the importance of Ofcom monitoring this area and being prepared to take action where there are concerns. Uswitch suggested that Ofcom should open an enforcement programme to test the application of the guidance.

Our assessment of responses

- 11.33 We note the support for our proposed guidance from several respondents.
- 11.34 We have considered O2’s points carefully. Our December Consultation explained the rationale and evidence for our concerns with non-coterminous linked contracts and why we considered it appropriate to deal with these concerns by issuing guidance. We have summarised the rationale and evidence above.
- 11.35 We remain of the view that our approach to issue guidance under GC C1.8, rather than introduce new regulatory measures, is an appropriate and proportionate response to our concerns that non-coterminous linked contracts can act as a disincentive to switch and increase complexity for customers, while also recognising the potential benefits that these contracts may provide to customers. We also consider that while other interventions might go some way to improving transparency for customers, they stop short of addressing our concerns.
- 11.36 In light of comments regarding unintended consequences and the potential for longer minimum contract terms or less customer choice, we have reviewed and updated the guidance to provide further clarity on how we would approach our assessment of non-coterminous linked contracts. This includes the factors we consider may lead us to have less concern about such contracts (including customer benefits) and how we would take them into account in our assessment.
- 11.37 In relation to the responses from Citizens Advice, Which? and Uswitch, and as noted in the December Consultation, we agree it will be important to monitor customer experience in this area and, should we have significant concerns about the use of these contracts, we would consider opening an enforcement programme.

Our proposed guidance

11.38 We received a number of comments about the draft guidance regarding its clarity, use of examples and scope, as well as about the factors we proposed to take into account.

Clarity, examples and scope

11.39 The CCP said that the guidance would benefit from greater clarity about how it is intended to work in practice, and the inclusion of more example scenarios. O2 suggested Ofcom should have tested the guidance “by reference to the non-coterminous agreements that are currently in the market.”

11.40 Sky said that our December Consultation suggested that we were mainly concerned about mobile airtime and handset arrangements. It considered that we should either limit the scope of the guidance to such arrangements, or we should provide other examples of concerns, to avoid unintended consequences in other sectors.

11.41 A number of respondents were concerned that the guidance would apply to microenterprise and small enterprise customers (in addition to residential customers and not for profit organisations).⁵⁰⁸ They argued that non-coterminous linked contracts can offer particular benefits to small businesses, who may, for example, find it beneficial to spread out payments for certain contractual elements of a bundle.

Our assessment of responses

11.42 We have revised the guidance, which is based on our evidence of the types of non-coterminous linked contracts available, to more clearly explain its intended application. In particular:

- We draw a distinction between (i) the two key factors relevant to assessing whether there might be a disincentive to switch, and (ii) the other factors we would then consider to assess the potential for customer harm and whether enforcement action may be appropriate.
- We also set out more clearly how we would take into account other factors when assessing the potential for harm, such as the conditions that arise when the customer reaches the end of the first commitment period for an element of their bundle.

11.43 To Sky’s point, the guidance applies to all relevant non-coterminous linked contracts, and we have amended the guidance to refer to the fact that some triple play bundles may have dependencies between different elements of the bundle and therefore could be examples of such contracts. Our proposed guidance had already included a bundle with landline and broadband as another example of where dependencies might exist.

11.44 We have noted some respondents’ concerns about the guidance applying to small business customers. As set out in section 4 we have revised these definitions, so that they now only

⁵⁰⁸ FCS, Focus Group, Gamma and ITSPA. FCS repeated similar concerns in its response to our revised proposals on business definitions in our July Consultation

include businesses with up to 10 employees, and thereby align more closely with the intentions of the EECC, which is to extend certain protections to those customers that are in a similar bargaining position as residential customers. We have also revised the guidance on non-coterminous linked contracts to note that the categories of customer the guidance applies to are likely to be on standard (i.e. not-bespoke) terms and conditions. Furthermore, the guidance recognises the potential for customer benefits from non-coterminous linked contracts, and that these would be taken into account when assessing the potential for, and extent of, any customer harm.

Proposed factors - difference in the end of commitment periods

11.45 Two providers disagreed that the length of the difference between the end of commitment periods should be a key factor. O2 argued that there was no evidence of harm where contract end dates differ for mobile tariffs and device loan agreements. It suggested that if, for example, it were to remove its 30 day rolling airtime contract and replace it with a two year minimum term, this would reduce the difference in length with its handset loan agreement, but may be a less favourable outcome for customers. Sky said that it should be possible to offer products with different contract lengths to customers at the same time, as long as customers are made aware of the consequences.

Our assessment of responses

11.46 We consider that the length of the difference between the end of the commitment periods is an important factor in assessing whether non-coterminous linked contracts may result in a disincentive to switch under GC C1.8. We continue to believe that a long difference between the end of the commitment periods could lead to higher switching costs, as set out above.

11.47 However, the difference in the end of commitment periods would not be the only factor that we would take into account. To assess whether there is likely to be a disincentive to switch, we would also consider the strength of dependencies between the elements of the bundle.

11.48 In addition, to then assess whether there is customer harm, we would also take account of factors such as the conditions that arise when the customer reaches the end of the first commitment period for an element of their bundle, as well as factors highlighted in O2 and Sky's responses (including the potential for efficiencies and other customer benefits), transparency and the steps taken by the provider to help ensure informed decision making by the customer. To O2's point, we would take into account the customer benefits offered; such as the flexibility of any 30-day rolling contracts included in the customer's bundle.

Proposed factors - customer benefits

11.49 A number of respondents noted the potential for non-coterminous linked contracts to bring customer benefits and Citizens Advice, O2 and Tesco Mobile welcomed our proposal to include consideration of the potential benefits of non-coterminous linked contracts in our assessment. Tesco Mobile pointed out that benefits can be non-financial in nature,

noting customers may view an ability to spread payments over a longer period of time as a benefit.

- 11.50 However, two providers raised concerns with our approach to benefits:
- a) Virgin Media argued our proposal to disregard customer benefits if there were less restrictive ways to achieve these would be challenging to judge and rarely clear cut.
 - b) Sky argued that Ofcom should clearly explain why the benefits should be regarded as merely 'mitigating factors,' because this meant that providers risk breaching the rule unless and until such factors are assessed.

Our assessment of responses

- 11.51 To Tesco Mobile's point, we consider the guidance is drafted broadly enough to include relevant benefits other than financial discounts.
- 11.52 We agree with Virgin Media that it may not always be straightforward to determine whether customer benefits could still be achieved in less restrictive ways. However, we would want to consider, to the extent possible, whether the provider could deliver the relevant efficiencies or other benefits without strong dependencies between the contracts concerned and significant differences in the end of commitment periods, and we have updated the guidance to make this clear.
- 11.53 We understand Sky's concerns and have updated the guidance to remove the reference to 'mitigating' and clarified that customer benefits would be considered alongside the other factors set out, as part of our overall assessment of whether non-coterminous linked contracts have the potential to cause harm to customers.

Proposed factors - customer awareness

- 11.54 Which? and the CCP agreed that customers would or should be made aware of links between elements of the bundle at the point of sale. Tesco Mobile noted that, for providers who are also regulated by other bodies such as the FCA, those bodies will also require point of sale information to be given to help customers understand the implications of entering into such contracts, and considered that this should be taken into account as part of Ofcom's assessment.
- 11.55 Uswitch said that most consumers cannot reasonably be expected to assess future increased switching costs when entering a contract and that a key factor that could reduce customer harm should be whether the provider offers a way to avoid re-contracting different service elements to different periods to avoid higher charges.

Our assessment of responses

- 11.56 As set out above, we have included steps taken by providers to help customers understand the implications of non-coterminous linked contracts as a factor that we would take into account.

- 11.57 We agree with Uswitch’s concerns; we recognise that some customers are likely to focus on the most salient aspects of the contract they are taking out, such as the price, rather than fully consider the implications for switching in the future. We have therefore revised the guidance to make clear that even if customers were well-informed when taking out the contracts, this alone would be unlikely to allay potential concerns if there were no demonstrable efficiencies or other benefits.
- 11.58 In response to comments asking for greater clarity, we have also added another factor that we would take into account in our assessment, where relevant. This is whether the customer had been given the option to take contracts with aligned commitment periods as an alternative to the non-coterminous linked contracts they ultimately signed up to.⁵⁰⁹ We recognise that providers may choose not to offer customers aligned contracts. However, where they do offer this option, if the customer chooses to have non-coterminous linked contracts, then this may suggest the customer saw a benefit in having non-coterminous linked contracts.

Our decision

- 11.59 We continue to have concerns that, in some cases, non-coterminous linked contracts may deter switching by increasing the costs of switching and adding complexity for customers.
- 11.60 Taking into account consultation responses, we have decided to issue guidance setting out the types of factors we propose to take into account when assessing whether non-coterminous linked contracts may act as a disincentive to switch under GC C1.8 and our approach to potential enforcement action. The final guidance, which has been incorporated into our guidance on GC C1 at Annex 6:
- a) Explains what we mean by non-coterminous linked contracts, the dependencies that might exist and that the guidance applies to residential customers and other groups of customers who are likely to have similar bargaining positions such as microenterprise and small enterprise customers and not for profit organisations which purchase such services on standard terms and conditions (as opposed to bespoke negotiated contracts).
 - b) Describes how we would assess whether such contracts can act as a disincentive to switch, including the assessment of the conditions that arise when the customer reaches the end of the first commitment period, setting out some scenarios where we may have concerns. To improve clarity, we have drawn a stronger distinction in the final guidance between this first step of assessing whether such contracts act as a disincentive to switch, and the subsequent step of assessing whether to take enforcement action.

⁵⁰⁹ The option to have aligned commitment periods might involve one contract being longer than it would be compared to if there were non-coterminous linked contracts, if the end date of the aligned contracts is set to be at the end of the longer contract.

- c) Describes the factors we would consider in assessing the case for taking enforcement action. We have expanded on our explanation of how we would assess the potential for customer harm and other factors which might reduce the potential for harm. This includes making it clearer how we would take into account customer benefits and transparency and adding that we would take into account whether the customer had the option to have aligned commitment periods when they originally entered into non-coterminous linked contracts.
- d) Makes clear that any decision would depend on the specific circumstances of each case and the matters we would generally consider as set out in our enforcement guidelines.

11.61 We will continue to monitor non-coterminous linked contracts after our guidance takes effect. We may consider further regulatory action in future if we remain concerned with the impact of such contracts on customers and switching.

Implementation

11.62 The guidance sets out the approach Ofcom will take when assessing new non-coterminous linked contracts entered into 12 months from the final notification containing the revised GCs in December 2020, (i.e. from December 2021). Therefore, in practice, this gives providers 14 months to ensure they are compliant with our approach, which we consider to be sufficient.

12. Providing communications in accessible formats for disabled customers and emergency video relay

- 12.1 Safeguarding the interests of disabled customers of communications services is particularly important. This is reflected in Ofcom’s duties under the Act and the provisions of the EECC, namely Articles 102, 109 and 111.
- 12.2 This section covers the provision of communications in an accessible format for disabled customers and emergency video relay services:
- We set out our decision on extending the current accessible formats requirements to cover all communications (except marketing) and all customers who need alternative formats because of their disabilities. We have decided to implement the changes as proposed in our December Consultation; and
 - We provide an update on our December Consultation proposal to require providers to make available a video relay service for BSL users to enable effective communication with the emergency services. We are working with industry on implementation issues and hope to publish a final statement in due course.

Provision of communications in accessible formats for disabled customers

- 12.3 Without equivalent access to electronic communications services, including access to information in respect of those services, disabled people may be excluded from vital services.
- 12.4 Currently, if blind or vision impaired customers cannot access standard communication formats (e.g. print or email), they can request the provision, free of charge, of certain correspondence⁵¹⁰ relating to communication services in a format that is accessible (e.g. braille, large print).⁵¹¹ To help ensure equivalence for disabled customers, in our December Consultation we proposed to extend the current requirements to cover:
- all communications (except marketing);⁵¹² and
 - all customers who need alternative formats because of their disabilities.⁵¹³
- 12.5 Below we summarise our December proposals and the consultation responses we received, we then set out our assessment of these responses and our decision. Having

⁵¹⁰ Bills, contracts, end-of-contract notifications and annual best tariff notifications.

⁵¹¹ Current GC C5.13.

⁵¹² For example, welcome letters, payment reminders, order confirmations, mandatory information related to switching, responses to complaints, and debt and disconnection letters.

⁵¹³ When we refer to a ‘customer’, we are referring to a ‘Subscriber’ as defined in the GCs. A Subscriber is defined as any End-User who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services.

carefully considered all the comments we received, we have decided to implement our December proposals and extend the requirements for providing communications in accessible formats to all disabled customers.

- 12.6 The provision of communications in an accessible format is focused on communications once a customer is already in a contractual relationship with a provider. We discuss, and set out our decision on, the provision of pre-contractual information in accessible formats in section 5.

EECC requirements

- 12.7 The existing EU regulatory framework, reflected in the current GCs, provides for equivalent access to electronic communications services for disabled people. The EECC builds on this in several ways, including equivalent access to *information* in respect of electronic communications services.
- 12.8 The EECC contains measures to secure access for disabled people to electronic communications services, including through the provision of information in accessible formats.⁵¹⁴ In particular:
- Article 111 of the EECC sets out that access to electronic communications services for disabled people must be equivalent to access provided for other people including access to contractual information in respect of those services; and
 - Article 102(1) provides in respect of contractual information that: *“The information shall, upon request, be provided in an accessible format for end-users with disabilities in accordance with Union law harmonising accessibility requirements for products and services.”*
- 12.9 As set out in section 2, section 51(2)(c) of the Act gives Ofcom the power to impose GCs specifying requirements in relation to the provision of services to disabled people. The Act also provides that it is Ofcom’s principal duty, in carrying out its functions, to further the interests of citizens in relation to communications matters.⁵¹⁵ In performing this duty, Ofcom must have regard to, amongst other things, the needs of people with disabilities.⁵¹⁶

Our December proposals

- 12.10 Currently our GCs require providers to adopt certain measures for disabled people. The aim of these requirements is to ensure that disabled people can obtain equivalent access to electronic communication services to that of non-disabled people, that their needs are considered by providers and that their access to such services is facilitated when they have a genuine need.

⁵¹⁴ Electronic communication services are defined at Article 2(4) of the EECC.

⁵¹⁵ Section 3(1)(a) of the Act.

⁵¹⁶ Section 3(4)(i) of the Act.

- 12.11 Currently, if blind or vision impaired customers cannot access standard communication formats (e.g. print or email), GC C5.13 requires providers to provide the following in a reasonably acceptable accessible format (i.e. braille, large print):
- a) their contract (or any subsequent variation to that contract);
 - b) bills; and
 - c) any end-of-contract notification and/or annual best tariff notification.⁵¹⁷
- 12.12 The GC specifies that a customer needs to request the accessible format and that this must be provided free of charge to the customer.
- 12.13 In our December Consultation we set out our view that GC C5.13 should be extended as it does not currently cover:
- a) all communications relating to a customer's electronic communication service; and
 - b) customers (other than blind or visually impaired customers) who cannot access communications about their service due to their disability.
- 12.14 We set out that not being able to receive communications without assistance can increase reliance on third parties, leading to loss of independence, privacy, and dignity – a harm which we consider is appropriate to address.
- 12.15 In our December Consultation we therefore proposed to modify the current GC C5.13 to:
- a) broaden the types of communication that should be provided, on request, in an accessible format. So, in addition to bills, contracts (and subsequent variations), end-of-contract notifications or annual best tariff notifications, all customer communications (except marketing) relating to a customer's electronic communication service should also be provided in an accessible format on request;⁵¹⁸ and
 - b) broaden the types of disability in relation to which a customer may make a request for communications to be provided in an accessible format, so that any customer who cannot access a provider's standard communication due to their disability may rely on the protections afforded by this GC.
- 12.16 The requirement relates to the format (i.e. medium) used to convey a message, rather than the content of the message itself. This means that, for example, blind and vision impaired customers can receive and understand important information about their contract and bills without assistance from a third party.
- 12.17 As set out in our December Consultation, our objective is to ensure disabled customers can have equivalent access to information about their electronic communication services (equivalent to that enjoyed by most people). We considered it appropriate and proportionate to intervene by introducing targeted regulatory requirements, which would benefit disabled customers by increasing their independence, privacy, and dignity, as they could more easily manage their communications services in an effective way themselves.

⁵¹⁷ General Condition C5.13.

⁵¹⁸ See GC wording in Annex 5.

We considered that this proposal would produce a fairer outcome for disabled customers, consistent with our strategic priority of ensuring fairness for customers.

- 12.18 In terms of the potential impact of our proposal, our overall view was that it would not produce adverse effects disproportionate to our policy objectives. We recognised there would be costs involved for providers to implement the changes. The costs were more readily identifiable in relation to the extension of requirements to all customer communications (except marketing). The costs involved from broadening the type of disability covered was less certain. We noted that the requirement would be imposed equally on all providers of public electronic communications services and would only be triggered by disabled customers when required. We provide more detail on the likely impacts at paragraphs 12.39 - 59 below.

Consultation responses

- 12.19 We received 23 responses to our proposals on this issue from a range of respondents, including providers, consumer groups and individuals.
- 12.20 Most respondents generally welcomed our approach. However, several providers expressed concern that it was not sufficiently clear what providers were specifically required to do to comply and they sought additional guidance. In particular:
- Vodafone said Ofcom had not been sufficiently specific or precise about what it expected from providers. Vodafone was concerned that we had asked for views in the December Consultation about customers that may benefit from our proposals. It said this call for views created further uncertainty about what providers' obligations would be and asked Ofcom to clarify its expectations.
 - Two providers sought guidance on which communications should be issued automatically in accessible formats and which should be issued on request.
 - Hyperoptic sought guidance from Ofcom as to the disabilities in scope to ensure consistency of application across providers and ensure customers' expectations are met when switching between providers.
 - Three providers sought guidance on what the reference to 'reasonable' and 'accessible' in the proposed GC would mean in practice. In particular, they queried:
 - what coloured paper needs to be provided for dyslexic customers;
 - how to approach a request from a customer to provide information to them in a format that has not been requested by any other customer, and which may be disproportionately expensive or difficult to support;
 - if accessibility features on customers' devices or assistive technology which allow customers to convert and consume information sent to them in a standard format email or SMS would meet the regulatory requirement; and
 - Ofcom should engage with industry to develop 'best practice' guidelines on how to manage requests for accessible formats.
- 12.21 Several providers expressed concern that it would not be practical to provide time critical messages such as outage related service messages, data limit warnings, and spend cap

notifications in an accessible format. One provider suggested these messages be excluded from the GC requirement.

- 12.22 One provider suggested the requirement should continue to apply to ‘contractual’ communications only (i.e. bills & billing correspondence, contracts, and changes to terms and conditions). It stated that the proposed GC places a boundless requirement to provide multiple types of communications in multiple accessible formats and that providing accessible formats to even a small number of extra types of communication would require significant system and process changes, staff training, and contracts with third party alternative format providers to be re-negotiated.
- 12.23 Microsoft said the proposed requirement should be limited to communications services that were provided for direct monetary payment. It argued that communications with respect to those services were more likely to be important for customers.
- 12.24 Citizens Advice said Ofcom needed to ensure that the GCs were flexible enough to adapt to the needs of people with different impairments. ISPA members encouraged a pragmatic and flexible approach to implementing the EECC provisions for disabled customers, noting concern that defining particular solutions in the GCs could risk discouraging innovation. One respondent said services and products should be accessible to BSL users in person or over the phone.

Our assessment of responses

Reasonably acceptable formats

- 12.25 In general, while ensuring the requirement is clear, we have sought to avoid being overly prescriptive about the formats to be provided. This is intended to allow sufficient flexibility in terms of what would meet the needs of people with different disabilities and allowing providers to make an assessment about what is a reasonably acceptable format.
- 12.26 We do not consider that it would be appropriate to specify in the GC every possible existing and future option for what would constitute a reasonably acceptable format. We agree with Citizens Advice and ISPA that the requirements are more likely to be capable of keeping pace with technological and societal developments if they are less prescriptive and specific in this regard.
- 12.27 However, to provide further clarity, we have included some examples of reasonably acceptable formats in the GC. We consider this approach is more appropriate than setting out an exhaustive list.
- 12.28 We believe that, through engagement with their customers, providers should be able to identify a reasonably acceptable format that would meet their customer’s needs.
- 12.29 If the format for a type of communication cannot be mutually agreed, a provider may be able to comply with the requirements of this GC, where they have offered a format which is an objectively reasonable means of addressing the customer’s needs, even if the customer would prefer an alternative format to be provided. Whether a format is reasonably acceptable will depend on the particular circumstances of the case and on a

range of factors including: the needs, as opposed to the preferences, of the individual customer; the costs of provision; the different format options available at the time and their appropriateness.

- 12.30 The GC also allows flexibility for providers to offer reasonably acceptable formats which take account of advances in technology. For example, assistive or conversion technologies (which allow blind or visually-impaired customers to convert and consume information sent to them in a standard format email or SMS including read aloud functions or magnifiers) are readily available and may be a way for some disabled customers to access written information if this meets their needs.⁵¹⁹ We would expect providers to adapt their approach and provide reasonably acceptable formats which are compatible with new technologies as they evolve.
- 12.31 In relation to comments about which communications should be sent automatically and which “on request”, it is clear from the wording of the GC that the requirement only takes effect “on request”. After such request, from that point on, communications must be sent in an accessible format automatically, i.e. if a customer requests relevant information in a reasonably acceptable format then all the communications covered by the GC must automatically be provided in a reasonably acceptable format.⁵²⁰
- 12.32 In relation to responses about time sensitive communications, we recognise that where a reasonably acceptable format takes time to produce, e.g. braille, this could delay the receipt of communications and that for some communications e.g. service-related messages, network outages etc., this could make the purpose of the communication redundant. As set out above, the GC allows for providers and customers to agree a reasonably acceptable format that is supportive of a customer’s needs. The GC does not prevent a provider from agreeing with a customer more than one reasonable acceptable format.⁵²¹ This would allow a provider to agree an alternative format option for time sensitive communications. For example, a customer may want braille for most communications but would be happy to receive SMS messages or automated voice messages for time sensitive messages. We would consider that sending text messages or automated voice messages for these types of messages is likely to be reasonable.
- 12.33 We encourage providers to share best practice, as appropriate, on managing requests for accessible formats and we consider the industry forum facilitated by the Communications Consumer Panel (CCP) could be a useful forum for such discussions.⁵²²

⁵¹⁹ We note that the [UK Association for Accessible](#) Formats and [RNIB](#) provides practical help on accessible technology to customers and businesses.

⁵²⁰ This aspect is in line with the current GC.

⁵²¹ Once this GC takes effect, providers may want to let their existing customers (who are already receiving their bills etc in an accessible format) know about the alternative options for time sensitive messages.

⁵²² [Industry panel](#) facilitated by the CCP for industry representatives to discuss ways they can work more effectively to support customers, particularly those in vulnerable circumstances.

The scope of the requirement

- 12.34 We do not consider it appropriate to limit the requirement to ‘contractual’ communications only (i.e. contracts, and changes to terms and conditions), as this would mean that some customers would not have equivalent access to important information about their communication services. While customers who need reasonably acceptable accessible formats due to their disability may be able to rely on others to help them, being able to access the communications directly should result in greater independence, privacy and dignity for these customers. It is clear on the face of the revised GC requirement which communications are covered.
- 12.35 In relation to the responses which commented on the disabilities covered, providers must meet the requirements for any customer who requires a reasonably acceptable format due to their disability. We have intentionally not listed specific disabilities in the GC to ensure it is flexible enough to meet the needs of people with different disabilities.
- 12.36 Regarding services and products being accessible to BSL users, we note that several providers already offer the option for customers to contact them using BSL. This would allow a deaf customer who uses BSL to contact their provider if they have a question about their written communication. We would expect providers to continue to offer this service, and for providers who do not currently offer this service to consider offering it as reasonable and appropriate.
- 12.37 The current GC applies to providers of public electronic communication services (‘PECS’) and we are keeping this as the scope of the requirement so that it applies to all PECS to ensure consistency with the communications already covered by the requirement.⁵²³ We consider that it is appropriate for this requirement to be relied on by all disabled customers requiring an alternative format due to their disability and therefore do not consider it appropriate to limit it to services provided for monetary payment.

Impacts of extending the current GC

- 12.38 We have reviewed the impacts of extending the reasonable acceptable formats requirements that we set out in the December Consultation. Below we summarise the impacts previously identified and set out any revisions to that assessment.

Benefits of extending the types of communication which must be provided in an accessible format

- 12.39 Ensuring all types of communication (other than marketing) are provided in an accessible format would allow blind or vision impaired customers to directly access important information about their communication services.⁵²⁴ This is likely to be particularly

⁵²³ While the use of the word “service” within PECS often implies some form of remuneration, remuneration can come in many different forms, including monetary but also provision of personal data.

⁵²⁴ Such communications would include change of service or payment method notifications, responses to complaints, mandatory information related to switching and package information.

important for blind and vision impaired customers who are the sole decision maker for their communications services.⁵²⁵

- 12.40 While they may be able to rely on others to help them, being able to access the communications directly should result in greater independence, privacy and dignity for these customers.⁵²⁶
- 12.41 The additional communications may also allow blind or vision impaired customers to become aware of any problems arising with their account at an earlier stage. The additional communications would include those relating to payment reminders, and debt and disconnection letters. This might improve the ability of blind or vision impaired customers to deal with these problems promptly, reducing the likelihood of additional charges or being disconnected. It may also mean reduced levels of anxiety and/or frustration/distress.
- 12.42 Based on the information we gathered from the eleven electronic communications providers with the largest number of customers, asking for details about the accessible formats that they provide, we estimate that up to 77,000 customers could benefit from extending the current GC.⁵²⁷ This is higher than our estimate of around 39,000 in the December Consultation. The estimate in the December Consultation was lower because we assumed that the five providers who told us they already provided all printed material in an accessible format would not be required to take any action and their customers requesting an accessible format would therefore have no benefit. However, these providers may also send communications electronically that is not currently in an accessible format and therefore there are a larger number of customers that may benefit from our revised GC. Hence, we have revised our estimate to potentially cover all 77,000 customers currently requesting accessible formats.
- 12.43 The number of blind or vision impaired customers who may want different formats may change in the future. The RNIB has forecast that the number of people who are blind or vision impaired will increase over time, as visual impairments rise alongside the ageing

⁵²⁵ Ofcom's 2019 Access and Inclusion research reveals that people with a visual impairment are more likely than nondisabled people to be the sole decision maker for choice of service provider for landline (46% vs 35%) and TV services (54% vs 36%). They are also likely to be the sole decision maker for choice of mobile (62% vs 58%) and internet service provider (39% vs 35%). Ofcom, January 2019, [Disabled users access to and use of communications devices and services. Research summary: Vision-impaired people.](#)

⁵²⁶ Campaigns led by RNIB and Sense support the importance of independence and privacy. [RNIB's Lost for Words campaign](#) includes findings from a TNS-RI Omnibus survey, 6-8 August 2010 on how comfortable people would feel relying on a neighbour to read out their bank statements for them. Sense's report on [Equal](#) access to healthcare indicates that 'Relying on somebody else to read your letters was identified as leading to a loss of independence and control over healthcare as well as encroaching on people's privacy' (page 14).

⁵²⁷ This is the number of customers registered for bills and contracts in accessible formats (at end December 2018) at the largest providers. The providers we sought information from were BT, EE, O2, Post Office, Plusnet, Sky, TalkTalk, Tesco Mobile, Three, Virgin Media and Vodafone. Some blind or vision impaired customers may be with providers we didn't seek information from, but this is likely to be a very small number as we sent information requests to providers with the largest numbers of customers. Source: Providers responses to formal information requests dated 12 April 2019 and 30 September 2019.

population.⁵²⁸ However, younger people who are blind or vision impaired are more likely to be familiar with using technological options (e.g. accessing the internet through screen readers or refreshable Braille displays) to help their communications needs, so may have less need for the provision of communications in an accessible format as they age. The balance of these offsetting effects on the number of people who may benefit in the future is unclear.

- 12.44 Finally, as noted above, many blind or vision impaired customers may rely on their friends and relatives to help them deal with communications from their providers. These third parties will also benefit if blind and vision impaired customers are able to manage their electronic communication services independently.

Costs of extending the types of communication which must be provided in an accessible format

- 12.45 As set out in the December Consultation, we sought information from the eleven largest providers in the UK on the costs of providing current communications in accessible formats, and for estimates of the likely number of communications sent to customers both in standard formats and accessible formats. Based on these responses we estimated that the costs of extending the types of communications provided in a reasonably acceptable format might be under £200,000 per year. We have further reviewed this calculation and consider that this estimate could be too low.
- 12.46 In the December Consultation we used information from providers about only the additional *printed* communications they would need to put into a reasonably acceptable format. From information request responses, five out of the eleven largest providers already provide all printed communications in a reasonably acceptable format.
- 12.47 For the other six providers we estimated the potential increase in costs. Some providers were able to provide an estimate of the number of extra printed communications in an accessible format that was likely to be required. For providers who did not provide an estimate, we assumed an extra seven items of communication a year per blind or vision impaired customer. This was the highest number of extra printed communications from those providers who did provide estimates of the increase. To estimate the total cost increase we multiplied the assumed additional printed communications required by the average cost currently per communication for each provider in an accessible format. This resulted in the cost estimate in the December Consultation of less than £200,000 for the six of the eleven providers who would have had to provide additional printed communications in accessible formats.⁵²⁹
- 12.48 However, this cost estimate did not include the costs of providing additional *electronic* forms of communication (such as some emails and SMS) in accessible formats. These

⁵²⁸ RNIB figures suggest that in 2017 around 350,000 people in the UK were registered blind or partially sighted, half of which were registered blind and half of which were registered partially sighted. Larger numbers report problems with their sight. In 2015, more than 2 million people said that they were living with sight loss severe enough to have a significant effect on their daily lives and this was forecast to double to over 4 million by 2050. [RNIB, April 2018, Eye health and sight loss facts.](#)

⁵²⁹ Source: Providers responses to formal information requests dated 12 April 2019 and 30 September 2019.

communications may also need to be put into a different format (such as large print on paper) to meet the requirements of this condition, which would mean that providers would face some additional costs.

- 12.49 Therefore, we have increased our cost estimate to take account of these additional costs from electronic communications. We have drawn on an information request response from one provider about the average number of communications it sends electronically. This provider accounts for a significant proportion⁵³⁰ of the customers who currently receive accessible formats.⁵³¹ We have calculated a revised estimate of costs, assuming that all these electronic communications have to be put into a different format, that all other providers would have to provide the same number of additional communications per customer and deriving the average total cost per such communication for the eleven largest providers. This results in costs of around £900,000 per year for the eleven largest providers. This includes both the additional printed communications we assumed in the December Consultation and the additional communications we now assume might be needed to replace communications sent electronically.
- 12.50 Even though the revised cost estimate of around £900,000 is much larger than the estimate of £200,000 in the December Consultation, the cost impact is still relatively low. If the costs were ultimately passed through to all end customers in full and spread over the whole population, they would represent a few pence per year per UK household.
- 12.51 When considered on a per provider basis, our cost estimates vary from £3,000 per year to £300,000 per year for the eleven largest providers. We note that some providers supported our proposal, including some for whom the implementation costs are likely to be higher because of their customer base.
- 12.52 We have made various assumptions in deriving these estimates. This could make the above cost estimates too low. For example, some providers may have more communications that need to be put into accessible formats than we have assumed. In addition, the above estimates may not fully reflect the initial cost of changing systems and process for putting additional communications in a reasonably acceptable format. On the other hand, the above estimates may be too high if some providers have fewer communications which need to be put into accessible formats than we have assumed. Also, the above assumes all electronic communications need to be put into printed form. As we have explained, some of these electronic communications may not need to be put into a printed form if those communications are already reasonably accessible, which will depend on the circumstances of the case and the customer's needs.

Benefits of extending the requirement to cover anyone who needs communications in an accessible format due to their disability

- 12.53 For the same reasons that it is important that blind or vision impaired customers can directly access information about their communication services, it is equally important that

⁵³⁰ [🔗]

⁵³¹ Source: Providers responses to formal information requests dated 12 April 2019 and 30 September 2019.

all disabled people are able to directly access this information. We consider that being able to receive and interpret information about their communications services in an accessible way will increase their independence, privacy and dignity. This should enable them to make more informed decisions about their communications services and become aware of any problems arising at an earlier stage e.g. an unpaid bill, avoiding additional charges or being disconnected. It may also mean reduced levels of anxiety and/or frustration/distress.

- 12.54 Some of these customers may currently be able to rely on others (such as friends and relatives) to help them understand communications from their provider. Our approach should enable them to act for themselves, gaining more independence and, as a result, their friends or relatives would also benefit.

Costs of extending the requirement to cover anyone who needs communications in an accessible format due to their disability

- 12.55 In respect of broadening the customers covered to include anyone who cannot access communications due to their disability, our December Consultation recognised the cost impact of this, though we acknowledged that these were more difficult to estimate.
- 12.56 One specific group of customers who might benefit are those with dyslexia. They may benefit from a particular form of printed material (e.g. coloured paper or large print).⁵³² The British Dyslexia Association estimate that around 4% of the UK population are seriously affected by dyslexia but that experience of the condition and so a person's needs, can vary widely, as can the scope for a different format to be of benefit to the individual.⁵³³
- 12.57 If 4% of this population were severely dyslexic this might suggest that around 2.2 million people could benefit from receiving communications in accessible formats (e.g. coloured paper or larger print).⁵³⁴ However, the number of severely dyslexic people requesting communications in an accessible format is likely to be less than this as experience of the condition (and so a person's needs), can vary widely. Not all these people will have communications contracts, some will not need any adjustments to their communications, and not all will request an alternative format.⁵³⁵
- 12.58 Some providers already provide communications in a coloured paper format and we know from one provider that this costs £0.03 per sheet more than white paper. If the additional costs per sheet are this small, the additional costs per customer are likely to be very small, probably less than two pounds per person per year.⁵³⁶ Even if there were a sizeable number of requests for this, the total costs may not be large. If 10% to 20% of those who

⁵³² The British Dyslexia Association suggests there is not a standard design for accessible communication for people with dyslexia as indicated by their style guide. '[Creating a dyslexia friendly workplace](#)'

⁵³³ British Dyslexia Association, 2012, [Adults and Dyslexia](#), GOV.UK, October 2017, [Simone: dyslexic user](#)

⁵³⁴ This assumes a UK population of 54m, consistent with data from the Office for National Statistics for the UK population over 15 years of age in 2018. Office for National Statistics, October 2019, [National population projections: 2018-based](#)

⁵³⁵ We note that while 350,000 people are registered as blind/visually disabled, only around 77,000 people (around 22%) request communications in an accessible format.

⁵³⁶ For example, if there were bills each month and each communication had three pages, this would imply just over £1 per customer per year. If there were a small number of additional printed communications in addition to the monthly bills, the cost would likely be less than £2 per customer per year.

were seriously affected by dyslexia were to request coloured paper for printed communications, then the total additional paper costs might be £400,000 to £800,000. While the costs would be higher the more people make such requests, the benefits would also rise with the number of people receiving such formats. The cost increase is unlikely to be disproportionate given the additional cost per customer is expected to be small.

- 12.59 Where a customer who, due to their disability, requires a reasonably acceptable accessible format which is not currently provided or considered in our cost estimates, the cost of providing the requested format is one factor providers could consider when assessing what reasonably acceptable format to offer the customer.

Our overall assessment

- 12.60 We have considered our approach in light of the comments made by respondents to the consultation, and the revised estimates of the impact of extending the requirements to provide reasonably acceptable formats.
- 12.61 While the revisions to our estimates mean that the impact on providers has increased, we continue to consider it appropriate and proportionate to introduce changes to our regulatory requirements because:
- a) It is the most effective means of achieving our objective. Our objective is to ensure disabled customers can have equivalent access to information about their electronic communication services (equivalent to that enjoyed by the majority of people). There are important benefits that will arise from increasing disabled customers' independence, privacy, and dignity, by allowing them to more easily manage their communications services in an effective way themselves. We consider that extending the GC would produce a fairer outcome for disabled customers, consistent with our strategic priority of ensuring fairness for customers. We also consider this to be the least onerous means to effectively meet our objective.
 - b) Having considered the impact on providers and customers, we consider that they do not produce adverse effects which are disproportionate to our policy objectives. We recognise that the total industry costs are likely to be higher than we estimated in the December Consultation, but we consider these costs are relatively low and not disproportionate to the harms being addressed and the least onerous means to effectively meet our objective. Our indicative cost estimates suggest the combined costs could be of the order of £1m to £2m per year, although there is considerable uncertainty in this estimate. Nevertheless, when expressed on a per household basis the annual cost to industry (and any implication for customer bills) would be negligible – i.e. less than 10 pence per year.⁵³⁷ In addition, we have indicated that the

⁵³⁷ This is calculated by spreading costs of £2m over the number of households with communications services, calculated from the 27.8m UK households in total currently ([from the ONS](#)) multiplied by the proportion of UK population aged over 15 with at least one communications service (which is up to 98% based on the take up of mobile or at least 87% if looking at adults with at least one internet connection at home, see [Ofcom's Communications Market Report 2020, Market in context](#)).

circumstances of the case and a range of factors, such as the needs (as opposed to the preferences) of the individual customer and the costs of provision, could be considered when assessing whether a format is reasonably acceptable.

- c) It is not unduly discriminatory as the requirement will be imposed on all providers of public electronic communications services equally and can be relied on by all disabled customers when required.

Our decision

- 12.62 For the reasons set out above, we have decided to implement our December proposals and extend the current GC to cover all communications (except marketing) relating to an electronic communications service and to any customer who needs an accessible format due to their disability.
- 12.63 Our amendments to the GCs are set out in the revised GC C5.13 (provision of communications in accessible formats) in Annex A5.

Implementation

Our December proposals

- 12.64 We proposed to implement these requirements by 21 December 2020.

Consultation responses

- 12.65 As discussed in section 3, many providers raised concerns with the overall implementation deadlines we proposed in the December Consultation.
- 12.66 In relation to the implementation time for accessible formats, one provider said it did not currently expect any specific issues with implementing the proposals by December 2020, and Three asked that Ofcom take a proportionate approach to implementation and enforcement.
- 12.67 However, some providers said that they would need additional time to implement the proposals:
- Post Office said it would need an additional few months and BT said at least 18 months from the date of Ofcom's final statement would be more reasonable. They said that this additional time was needed because of the demands of implementing the other proposals to implement the EECC at the same time.
 - One provider, [redacted], said the proposed changes represented a significant extension of the current requirements on providers and would require more time to implement, for example, to train staff, make changes to systems and processes and re-negotiate contracts with third party alternative format providers. It said that, taking account of the wider EECC proposals, providers would usually be given at least 12 months to implement changes of the scale and nature proposed.

Our assessment and decision

12.68 In light of the comments we received and the Covid-19 pandemic, we are giving providers 12 months from publication of the final notification containing the revised GCs in December 2020, to implement the requirements discussed in this section, i.e. until December 2021. Therefore, in practice, this gives providers 14 months to implement the necessary changes. We consider this to be sufficient for providers to make any necessary changes, including any system or process changes or re-negotiations of third-party transcription contracts.

Emergency video relay

EECC requirement

12.69 Article 109 of the EECC builds on the principle that disabled people should have access to emergency communications equivalent to other people. Recital 285 of the EECC confirms that emergency communications includes video relay services. We considered that this, together with technological and societal change, made it appropriate to use our discretionary powers to require emergency video relay services.

Our December proposals

12.70 In the December Consultation we proposed to require communications providers to make available a video relay service for BSL users to enable effective communication with the emergency services. The proposed service would allow BSL users to communicate in the way that is clear and effective for them and allows instructions from the emergency services to be more easily understood by the BSL user.

Consultation responses

12.71 Fifteen consultation responses related solely to our emergency video relay proposals, and a further sixteen mentioned it. Nearly all respondents supported the principle that disabled citizens should enjoy equivalence of access to emergency services. Deaf respondents in particular said that this service would improve deaf people's welfare and health.

12.72 However, some implementation issues were raised such as whether data for emergency video relay calls should be zero rated, how the emergency video relay supplier and any wholesaler would recover their costs and what would happen if there was more than one approved emergency video relay supplier. These issues need to be resolved before we can publish a final statement on this measure.

Next steps

12.73 We remain committed to emergency video relay and are working with industry to ensure it can be delivered in the most effective way. We will publish an update in due course.

13. Availability of services and access to emergency services

- 13.1 The EECC includes measures to ensure the fullest possible availability of public electronic communications services at all times, including in the event of a disaster or catastrophic network failure, as well as uninterrupted access to emergency organisations. It also includes measures to ensure that calls can be made to emergency organisations free of charge and to make call location information available to emergency organisations where technically feasible. These measures are set out in Article 108 and Article 109 of the EECC.
- 13.2 This section outlines our decision to implement the requirements in Article 108 and Article 109 to reflect the differences between these EECC provisions and their predecessors in the Universal Service Directive, by making the minimum changes necessary to the relevant GC, GC A3.

Availability of services

EECC requirement

- 13.3 Article 108 concerns the availability of services.⁵³⁸ It requires that:
- a) all necessary measures are taken to ensure the fullest possible availability of voice communications services (VCS) and internet access services (IAS) provided over public electronic communications networks in the event of a catastrophic network breakdown or in cases of force majeure;
 - b) that providers of VCS take all necessary measures to ensure uninterrupted access to emergency services; and
 - c) that providers of VCS ensure uninterrupted transmission of public warnings.

Our December proposals

- 13.4 To implement the requirements of the EECC, we proposed:
- in relation to the obligation to ensure the fullest possible availability of services, to extend the scope of the obligation in GC A3.2(a) by replacing the term ‘Publicly Available Telephone Services’ with ‘Voice Communications Services’ and/or ‘Internet Access Services’ to reflect the amended scope of this obligation in Article 108;⁵³⁹
 - in relation to the obligation to ensure uninterrupted access to emergency services, to replace the term ‘Publicly Available Telephone Services’ with ‘Voice

⁵³⁸ This replaces Article 23 of the Universal Service Directive.

⁵³⁹ The term ‘Voice Communications Services’ used in the EECC is synonymous with the term ‘publicly available telephone services’ used in earlier Directives.

Communication Services' in GC A3.2(b) in line with the terminology used in the EECC but otherwise keep the scope of the obligation unchanged; and

- to make minor additional drafting changes to GC A3.2 so that the text was more closely aligned with the wording in Article 108. This clarified that the availability of services obligation applies to all VCS and IAS that are provided over public electronic communications networks.

13.5 In our December Consultation, we stated that as the suitability of a UK public warning system was still under consideration, we did not propose to apply changes to GC A3 that would require VCS providers to ensure uninterrupted transmission of public warnings with immediate effect. However, we indicated that we may revisit this matter in future and made provision in the annexed GC table for a requirement which would only take effect if and when a UK public warning system is established.

13.6 The sections below set out the responses we received on our proposals in this area and our decision.

Consultation responses and Ofcom's decision

13.7 The comments we received about our overall proposed approach to implementation were generally supportive. BT stated *"We agree with Ofcom's proposed changes for implementing the requirements in Article 108 and 109 to reflect the differences between these provisions and their predecessors in the Universal Service Directive"* while another provider, Virgin Media, stated *"Ofcom is proposing to make the minimum level of changes to GC A3 to reflect the relevant requirements of the EECC. Virgin Media supports this approach in relation to this condition."*

Proposal to extend the availability of services requirement to Internet Access Services

13.8 Respondents had differing views on the impact that extending the requirements in GC A3.2(a) to IAS would have on providers in terms of implementation. This is discussed in detail under the heading "Implementation" below.

13.9 Some respondents also referred to the "Ofcom guidance on security requirements in sections 105A to 105D of the Communications Act 2003" (security guidance)⁵⁴⁰ and suggested it should be revised in light of these changes.⁵⁴¹

Our assessment of responses

13.10 Overall, we consider that the extension in the scope of this requirement from 'Publicly Available Telephone Services' to 'Voice Communications Services' and/or 'Internet Access Services' is both necessary and appropriate because of developments in recent years in the way networks and services operate.

⁵⁴⁰ [Ofcom guidance on security requirements in sections 105A to D of the Communications Act 2003](#)

⁵⁴¹ [X] and Three.

- 13.11 The responses prompted consideration of what the expectations of IAS providers are generally and whether or not it is appropriate for Ofcom or industry to issue formal guidance. We have decided not to issue guidance now. We note, however, that industry may wish to collaborate to set common expectations and issue its own guidance, and we would welcome such steps.
- 13.12 We intend to revise our published security guidance in due course to reflect this change of scope and the changes brought about by Articles 40 (security and networks) and 41 (implementation and enforcement) of the EECC.⁵⁴² These revisions are likely to take place following the adoption of the proposed Telecom Security legislation (the Telecom Security Bill).⁵⁴³

Our decision

- 13.13 We have decided to proceed with implementing the proposals set out in our December Consultation. Our amendments to the GCs are set out in revised GCs A3.1 and A3.2(a) in Annex 5. This amendment extends the availability of services requirement (i.e. the requirement to ensure the ‘fullest possible availability’ of services in the event of a catastrophic network breakdown or force majeure), to internet access services from just VCS.

Proposal to align the terminology used in the uninterrupted access to emergency services obligation by replacing ‘Publicly Available Telephone Services’ with ‘Voice Communication Services’

- 13.14 Two respondents, Three and the Post Office, commented on the proposal to replace the term ‘Publicly Available Telephone Services’ with ‘Voice Communications Services’, while leaving the scope of the obligation in GCA3.2(b) to provide uninterrupted access to emergency services unchanged. Both respondents noted the impact of this on our proposals to introduce Emergency Video Relay and one expressed concerns about whether the requirement would be consistent with the principle of net neutrality.

Our assessment of responses

- 13.15 As respondents have noted, the requirement in GC A3.2(b) to ensure ‘uninterrupted access’ to emergency services only extends to VCS (formerly publicly available telephone services) and not IAS.
- 13.16 We consider that there are compelling reasons as to why the EECC treats voice communications differently to communication of data and our proposal reflects this in its transposition. At present, communications providers cannot provide ‘uninterrupted access’ to the internet and given that emergency video relay services would be delivered over the

⁵⁴² Article 40 and Article 41 of the EECC, replace Articles 13a and 13b of the Framework Directive.

⁵⁴³ <https://www.gov.uk/government/publications/telecoms-supply-chain-review-terms-of-reference> and <https://www.gov.uk/government/speeches/digital-culture-media-and-sport-secretarys-statement-on-telecoms>

internet, it follows that emergency video relay has to be treated differently from other forms of access to emergency services in this respect.

- 13.17 The net neutrality principle of equal treatment of internet data traffic applies to the provision of internet access services. As explained above, the requirement to provide uninterrupted access to emergency services applies only in relation to VCS and not to IAS. As such, the potential conflict identified by Three does not arise in practice in relation to VCS.
- 13.18 While our emergency video relay services proposal has been met with positive responses from industry and potential end-users, we now consider that more work needs to be carried out. As explained in section 12, we are continuing to work with industry on emergency video relay as quickly as possible and we will publish an update in due course.

Our decision

- 13.19 We have decided to proceed with implementing the proposals set out in our December Consultation. Our amendments are set out in revised GC A3.2(b) in Annex 5. These change the terminology used in the uninterrupted access to emergency services obligation from 'Publicly Available Telephone Services' to 'Voice Communications Services'. The scope of this requirement is set out in GC A3.1(a).

Proposal to make minor additional drafting changes to more closely align with the wording in Article 108.

- 13.20 No respondents commented on our proposal to align the text of GC A3.2 more closely with Article 108.

Our decision

- 13.21 We have decided to make the amendments to the GC as set out in revised GC A3.2(a) in Annex 5 so as to clarify that the availability of services obligation applies to all VCS and IAS that are provided over public electronic communications networks.

Proposal not to apply changes requiring voice communications providers to ensure uninterrupted transmission of public warnings.

- 13.22 Respondents, including UKCTA, sought clarification about the position in relation to a public warning system and a related requirement.
- 13.23 Vodafone, in reference to the public warning requirement, commented: "*If Ofcom does indeed have a timescale in mind to introduce this requirement, we ask that Ofcom makes this clear in the statement as significant resource and development of the network will be required.*"
- 13.24 Another respondent, [✂]

Our assessment of responses

- 13.25 At the time of December Consultation, the suitability of a UK public warning system was uncertain and a requirement which was operative, i.e. had effect, was not needed. In the GC table annexed to the consultation, we presented a requirement which would only take effect if and when the Cabinet Office decided to introduce a UK public warning system (a dormant provision).
- 13.26 The suitability of a UK public warning system remains under consideration by the Cabinet Office, and having considered the responses to the December Consultation, we have decided not to make provision for a requirement, dormant or otherwise.
- 13.27 We will reconsider this if and when any decision is taken to introduce a public warning system in the UK.

Our decision

- 13.28 We have decided not to include in the GCs a requirement for voice communications providers to ensure uninterrupted transmission of public warnings.

Access to emergency services

EECC requirement

- 13.29 Article 109 of the EECC concerns access to emergency services⁵⁴⁴ and replaces Article 26 of the Universal Service Directive. While the text in the Directive has been revised and clarified, for the most part, it has not departed significantly from the principles and requirements set out in the provision it replaces.
- 13.30 There are specific textual changes it introduces, these are:
- Article 109(2) includes a reference to both National and International Telephone Numbering Plans;
 - Article 109(6) provides that caller location information (network-based location information and, where available, handset-derived caller location information) is made available to the most appropriate emergency call handling authority without delay; and
 - Article 109(6) further provides that the establishment and transmission of caller location information must be free of charge not only for the emergency organisations handling the calls but also for the end-user of emergency communications to the European emergency number '112'.
- 13.31 Article 109(5) concerns ensuring equivalent access to emergency services for end-users with disabilities (see section 12 of this document) and it further requires the European Commission and national regulatory authorities to take appropriate measures to ensure

⁵⁴⁴ Article 109 of the EECC replaces Article 26 of the Universal Service Directive.

that end-users with disabilities have equivalent access to emergency services as other users when travelling abroad.⁵⁴⁵

Our December proposals

- 13.32 We noted that the current GC already includes requirements relating to access to emergency services, and to implement the requirements of the EECC, we proposed to:
- make a minor addition to the text of GC A3.1(c) to reference ‘international’ telephone numbering plans as well as the ‘national’ telephone numbering plan, as set out in Article 109(2);
 - address the Article 109(5) requirement to ensure that equivalent access for end-users with disabilities to emergency services is available. This is discussed in section 12 of this document);
 - make a minor insertion into GC A3.5 to ensure that the establishment and transmission of caller location information is free of charge to end-users in addition to the emergency organisations’ handling the calls, as provided for by Article 109(6); and
 - add text to the current GC A3.6 in order to implement the requirement in Article 109(6) which requires that in all circumstances where available, regulated providers are required to provide this information.⁵⁴⁶
- 13.33 There are a number of other textual changes in Article 109 of the EECC, which do not require drafting changes to be made to the current GC A3.⁵⁴⁷
- 13.34 We are not making any changes at this stage to the GCs in relation to the requirement to ensure that end-users with disabilities when travelling abroad have equivalent access to emergency services as other users, but may return to this matter if and when any such appropriate measures, standards or specifications are agreed at an international level.

Consultation responses and Ofcom’s decision

13.35 We received relatively few comments from respondents on these proposals.

Proposed minor addition to reference the ‘international’ telephone numbering plan

13.36 No respondents commented directly on the substance of the proposal to add text to GC A3.1(c).

⁵⁴⁵ The proposal to address the Article 109(5) requirement for equivalent access for end-users with disabilities to emergency services will be discussed in a subsequent publication about emergency video relay (see section 12).

⁵⁴⁶ We also proposed to address the Article 109(5) requirement to ensure equivalent access for end-users with disabilities to emergency services. This will be explained in a separate publication about emergency video relay (see further section 12 of this document).

⁵⁴⁷ See example at paragraph 12.14 of the [December Consultation](#).

13.37 A respondent, Microsoft, helpfully drew our attention to a typographical error, relating to the reference to numbering plans in the definition of “Voice Communication Services” set out in Annex 14 of the December Consultation.

Our assessment of responses

13.38 Since the consultation, we have identified some minor drafting changes required to be made in GC A3.1(c) to implement the EECC requirements, such as a change to clarify that the scope of the provision does not require providers to originate numbers both in the national numbering plan and international telephone numbering plan. These are explained in the subsection below entitled “Further drafting changes”.

13.39 We have amended the typographical error identified by Microsoft in the GC Table (previously Annex 14 of the December Consultation).

Our decision

13.40 We have decided to make the minor addition proposed in the December Consultation together with those minor drafting changes identified in the subsection below, in relation to GC A3.1(c). These changes are set out in Annex 5.

Proposal to make a minor insertion to ensure that the establishment and transmission of caller location information is free of charge to the end-user

13.41 Respondents did not raise any concerns about the insertion of ‘End-Users’ into the requirement at GC A3.5.

13.42 One respondent, FCS, did indicate that additionally they would “*like to see changes made to the guidance on location information for VoIP services and the obligation to inform customers that services may cease in the event of a power cut or failure of the internet connection,...*”

Our assessment

13.43 GC A3.5 is the primary obligation relating to the provision of caller location information and it applies to any communications provider who provides end-users with a number based interpersonal communications service or provides access to such a service by a pay phone, for originating calls to a number in the national and/or international numbering plan (excluding click to call services). GC A3.6 then provides further detail on what is required in relation to certain specific services.

13.44 The guidance on maintaining access to emergency services for VoIP, formerly contained in Annex 3 to GC 14, was not retained when the GCs were substantially updated and revised in the 2017/2018 Review of GCs.⁵⁴⁸ We do not have any plans to publish new guidance in this area.

⁵⁴⁸ <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

Our decision

13.45 We have decided to include the insertion into GC A3.5, as set out in Annex 5, to ensure that the transmission and establishment of caller location information is free of charge to end-users.

Proposal to add text to implement the Article 109(6) requirement that in all circumstances where available, regulated providers are required to provide this information.

13.46 We did not receive responses relating specifically to the proposal to add text to the current GC A3.6.

13.47 However, we did receive one response from [redacted], which suggested that location information should be continuously sent to emergency service providers.

Our assessment of responses

13.48 In relation to the continuous provision of location information, we are not minded to introduce a further requirement at this time. We currently do not consider it necessary but may consider taking action in future, if evidence suggests that there are benefits of such an approach, and assessing factors such as the extent to which any additional functionality may require the emergency services to invest in systems and/or processes.

Our decision

13.49 We have decided to add text into GC A3.6 to implement Article 109(6) so a regulated provider must provide handset-derived caller location information in all circumstances where that information is available. The changes to GC A3.6 are set out in Annex 5.

13.50 We have not introduced any further requirements.

Further drafting changes

13.51 Since our December Consultation, a number of additional minor drafting changes have been identified as being necessary to implement the EECC requirements. None of these changes are substantive. These are:

- to make a minor change to the text of the wording proposed for GC A3.1(c) to clarify that the scope of this provision does not require the Communications Provider to originate numbers both in the National Telephone Numbering Plan *and* international telephone numbering plan and ensure the scope is clear;
- to remove capitalisation of 'International Numbering Plan' as this is not a defined term;

- in order to accurately align with the wording in Article 109(2) of the EECC, to revise the reference from “Electronic Communications Service” to “Number-based Interpersonal Communications Service”;⁵⁴⁹
- to make an insertion into GC A3.1(c) of a reference to GC A3.6(d), to ensure that the scope of GC A3.6(d) is clear.

13.52 To assist the reader, we have also inserted a footnote into GC A 3.2(b) with a link to Ofcom’s guidance on “Protecting access to emergency organisations when there is a power cut at the customer’s premises”.⁵⁵⁰

Implementation

Our December proposals

13.53 We proposed that all requirements in relation to the section entitled “Availability of services and access to emergency services” should apply from 21 December 2020. We considered that our changes would have limited impact on providers and were the minimum necessary to implement Article 108 and Article 109 which is designed to benefit all consumers and ensure wider public safety.

Consultation responses

13.54 In relation to the practicalities of implementation, there were a number of comments about the proposal to amend the requirement in A3.1 and A3.2 to extend the fullest possible availability requirement to VCS and IAS. One provider, [redacted], noted *“that Ofcom considers this to be a change that will have minimal impact on CPs. However, we do not believe that this will necessarily be the case, as disaster recovery plans will need to be reviewed and updated to ensure that they cover internet access services, in addition to any (likely significant) system and process changes that are required to be made in order that systems supporting internet access services are appropriately resilient in the event of a disaster.”* It therefore considered that the deadline for compliance would be *“extremely challenging, if not unachievable”* and that it would welcome dialogue with Ofcom on this matter. In contrast, TalkTalk said that based on the discussion in the consultation, it agreed with Ofcom that this change would be unlikely to have any major impact on network providers.

13.55 Comments were also received about implementation of a requirement to ensure uninterrupted transmission of public warnings. Because we have decided not to include such a requirement in the GCs, we have not addressed those comments further.

⁵⁴⁹ As this provision relates in substance only to services which allow end-users to make calls, the change from Electronic Communications Service to Number-based Interpersonal Communications Service does not narrow the scope of the provision in practice, but is more precise and aligns the language of the GC more closely to that used in the Directive.

⁵⁵⁰ Ofcom. [Protecting access to emergency organisations when there is a power cut at the customer’s premises.](#)

Our assessment and decision

- 13.56 Our December Consultation proposed the minimum changes necessary to GC A3 to implement the requirements in Article 108 and Article 109. These changes did not go beyond reflecting the differences between these EECC provisions and their predecessors in the Universal Service Directive.
- 13.57 In light of the comments we received in response to the consultation and the Covid-19 pandemic, we are giving providers 12 months from publication of the final notification containing the revised GCs in December 2020, to implement the requirements discussed in this section, i.e. until December 2021. Therefore, in practice, this gives providers 14 months to implement the necessary changes, which we consider to be sufficient to implement the changes in this section.
- 13.58 We remain of the view that our changes, which implement Articles 108 and 109, and are designed to benefit all consumers and ensure wider public safety, would have limited impact on providers. Although we do accept that some providers may need to review and possibly strengthen existing disaster recovery plans.

14. Legal tests

- 14.1 This section sets out our assessment of how the new requirements and amendments we are making to the GCs meet the necessary legal tests and are in line with Ofcom's duties.

Meeting the test for setting General Conditions

- 14.2 In section 2, we outlined the test in section 47(2) of the Act, which must be met before we can set or modify GCs. We consider that both the new GCs we have decided to set, and the modifications to the existing GCs we have decided to make, to implement the objectives of the end-user rights provisions of the EECC, as explained in sections 4-9 and 13, and as set out in detail in Annex 5, are:
- a) not unduly discriminatory, as they apply equally to all the providers of the relevant categories of public electronic communications services which must be subject to each of the obligations we are imposing in accordance with the EECC;
 - b) proportionate, for the reasons set out below; and
 - c) transparent, as we have explained the changes we are making to the general conditions in full in the relevant sections of document and Annex 5.
- 14.3 As part of our assessment of whether the GCs are proportionate, we also consider that they are objectively justifiable in that, for the reasons set out in this document, they put in place requirements in accordance with the relevant parts of the EECC which we are under an obligation to implement.
- 14.4 We consider that the GCs we are putting in place are proportionate. We consider that they are an appropriate means of achieving the objectives set out in the relevant parts of the EECC, which form part of a full harmonisation suite of provisions. We have explained in sections 4 to 9 and 13 (and in the corresponding sections of the December Consultation) why each of the elements of the GCs are necessary to achieve those objectives, and to give them full effect. Taking our decisions in the round, our view is that we could not achieve the objectives of the relevant parts of the EECC with a less onerous approach than that set out in this Statement.
- 14.5 In several instances, we have revised and clarified our proposals from those set out in the December Consultation in a way that would lessen the impact on providers, where appropriate. For example:
- a) We have considered respondents' comments and as set out in detail in sections 4 to 9 and 13, we have made certain changes to our original proposals as set out in the December Consultation to ensure the changes we are making to implement the requirements of the EECC go no further than necessary to achieve the objectives of the EECC. For example, in relation to our proposals for microenterprise and small customers, we have revised our definition of a small enterprise customer to reduce the employee headcount threshold to ten employees or less. As explained in section 4, we

believe that the definition still meets the objective of the EECC to protect businesses with similar bargaining power as residential customers, while not placing a greater burden on providers by including larger businesses. In addition, as explained in section 5, we have revised the requirements on providers in relation providing a contract summary to make clear that there is no need to obtain express agreement to the contract summary document itself. This aligns more closely with the provisions of the EECC.

- b) We have also considered respondents' comments regarding the process adaptations providers will need to undertake as a result of the changes we are making to the GCs, and have taken into account the significant impact the Covid-19 pandemic has had on providers. As explained in section 3, we have given providers longer than we originally proposed to implement each of the necessary changes, as well as giving them further time to implement certain specific requirements, where appropriate, in order to ensure they have sufficient time to implement properly each of the changes.

- 14.6 We have also considered the case for maintaining some of our existing requirements, specifically the obligation on operators to offer customers the option of a contract with a commitment period of 12 months (GC C1.13 as revised) and the ban on automatically renewable contracts (GC C1.10 as revised). These rules are discussed in sections 7 and 8 and we consider that they remain objectively necessary and proportionate to what they are intended to achieve for the reasons set out in paragraphs 7.81 to 7.92 and 8.108.

Annual best tariff information

- 14.7 In section 7, we explain that we have decided to modify existing GC C1.16, which implements requirements of Article 105(3) of the EECC, to reduce the scope of the annual best tariff requirements. We consider this change also meets the tests for modifying conditions in section 47(2) of the Act. Our change is:
- a) objectively justifiable and proportionate, as we are reducing the scope of regulation so that it goes no further than necessary to achieve the consumer protection benefits pursued by the relevant EECC requirement; we consider the objectives of the EECC would still be effectively achieved in practice notwithstanding this change;
 - b) not unduly discriminatory, since the change to this condition would ensure that the same regulatory measures apply in respect of all providers of public electronic communications services; and
 - c) transparent, as the reasons for the change to this condition are explained in this section and in the July 2020 consultation, and the effect of the change would be clear to providers on the face of the revised condition itself.

Switching and porting

- 14.8 In section 9, we set out our reasons for introducing certain more specific requirements in relation to information, consent, compensation and notice period charges in GC C7. We consider these changes meet the test set out in section 47(2) of the Act in that they are:

- a) **objectively justifiable and proportionate** as they are required to give full effect to the provisions and objectives of the EECC, specifically that customers are adequately informed and compensated, that their services are not switched without their consent and that they are adequately protected and do not face deterrents when switching providers. Moreover, our view is that to the extent that our proposed changes would introduce additional regulatory burden on industry, they go no further than is necessary to give full effect and ensure compliance with the requirements in the EECC;
- b) **not unduly discriminatory** since they ensure that the same regulatory measures apply in respect of providers of relevant electronic communications services;
- c) **transparent** as the reasons for the changes are explained in section 9 and the effects of the proposed changes are clear to communications providers on the face of the revised conditions.

Device locking

14.9 In section 10, we have set out our reasons for deciding to impose a new obligation for banning the sale of locked mobile devices to residential customer. We consider these changes meet the requirements of section 47(2) of the Act in that they are:

- a) objectively justifiable and proportionate for the reasons set out in section 10. In particular, we consider that it is the least onerous means of effectively removing the difficulties residential customers who switch currently face with device locking, and of removing the barrier to switching that can be caused by device locking. In turn this may help customers who would otherwise be deterred from switching being able to get better deals more suited to their needs, and could strengthen competition among providers, in line with the objectives of Articles 105 and 106 of the EECC relating removing barriers to, and facilitating, switching;
- b) not unduly discriminatory as they apply to all providers of mobile communications services;
- c) transparent, in that our reasoning has been explained in section 10 and the effects of the changes would be clear to communications providers from the new GC itself, as set out in Annex 5.

Accessible formats

14.10 In section 12, we have set out our reasons for deciding to make changes to the requirement on providers to provide communications in accessible formats. We consider that these changes meet the criteria set out in section 47(2) of the Act in that they are:

- a) objectively justifiable and proportionate, as they are aimed at providing equivalence of access for disabled people in relation to electronic communications services (to that enjoyed by most people), who due to their disability need their communications to be provided in an accessible format. This is an important objective and the costs are likely

- to be relatively low and not disproportionate (and will only be incurred where a request is made);
- b) not unduly discriminatory as the requirement will be imposed on all providers of public electronic communications services equally and can be relied on by all disabled customers requiring an accessible format due to their disability; and
 - c) transparent as the reasons for the changes to this condition are explained in our December Consultation and in section 12 and the effects of the changes would be clear to communications providers in the revised condition itself (as set out in Annex 5).

Ofcom's general duties

- 14.11 We conclude that the setting and modification of the GCs will fulfil our duty to further the interests of citizens and consumers. In particular, the modifications will further the interests of consumers in relevant markets, as they form part of a package of measures to implement the relevant requirements of the EECC in a proportionate manner.
- 14.12 For example, as discussed in section 5, the new measures we are introducing include requirements to provide customers with greater information before entering into a contract, and about their usage, which will assist them in making informed choices and in managing their usage. The package of measures also includes protections against disincentives to switching provider and mid-contract changes, the benefits of which we outline in sections 7, 8, 10 and 11.
- 14.13 In reaching the decisions set out in this statement, we have also had regard to the matters set out in section 3 of the Act, including in particular to the interests of consumers in respect of choice, price, quality of service and value for money (section 3(5)); the desirability of promoting competition in relevant markets (section 3(4)(b)); the desirability of encouraging investment and innovation in relevant markets (section 3(4)(d)), and the needs of persons with disabilities, of the elderly and of those on low incomes (section 3(4)(i)). We have also had regard to the opinions of customers in relevant markets (section 3(4)(k)), insofar as our changes have been informed by research into customers' experiences in relation to our decision on the definition of a small enterprise customer, and measures for accessible formats and device locking.⁵⁵¹
- 14.14 We also consider that the changes we are making to the GCs are in line with our obligation to ensure that our regulatory activities are proportionate and targeted only at cases in which action is needed (section 3(3) of the Act). In particular, as explained above, we have made changes where relevant to ensure the GCs go no further than necessary to implement the requirements of the EECC and have decided to reduce the scope of regulation in relation to annual best tariff information.

⁵⁵¹ See sections 4, 10 and 12 for further details.

Duties for the purpose of fulfilling EU obligations

14.15 We also consider that, by introducing the GCs, we are acting in accordance with the six European Community requirements in section 4 of the Act. These include duties:

- a) to promote competition in the provision of electronic communications services;
- b) to secure that our activities contribute to the development of the European internal market; and
- c) to promote the interests of all persons who are citizens of the European Union.

14.16 For the reasons set out in this statement, our assessment is that the changes we are making to the GCs will ensure that consumers will benefit from the protections to which they are entitled in accordance with the requirements of the EECC and go no further than necessary to secure this, or to address the harms we have identified in the December Consultation and this statement.

15. Proposed minor changes to the General Conditions, Metering and Billing Direction and the Numbering Plan

- 15.1 In the previous sections, we set out our decisions on the changes we need to make to the GCs to implement the end-user rights provisions of the EECC. Now that these changes have been confirmed, we are proposing to make:
- a) some minor consequential changes to the remaining GCs to ensure clarity and consistency in the terminology and definitions used throughout the GCs (including updates to two references to legal instruments and legislation);
 - b) minor consequential changes to the Metering and Billing Direction⁵⁵² and National Telephone Numbering Plan (the 'Numbering Plan'); and
 - c) a small number of further amendments to the GCs and the Numbering Plan which are intended to ensure that, when transition period under the EU Withdrawal Agreement ends at 11.00 pm on 31 December 2020, in so far as possible, they continue to have the same scope and effect immediately after this date as they did before.
- 15.2 We are consulting on these proposals in advance of publishing the final revised consolidated set of GCs by 21 December 2020. We intend to publish a brief statement setting out our decision on these proposals, alongside the revised GCs.
- 15.3 We are also making some other very minor corrections or refinements to drafting to the GCs (such as changing some cross references between GCs or correcting typographical errors). We have not set these out here, as we do not consider they require consultation. They are, however, set out at Annex 5.

Our proposed minor consequential changes to the GCs, Metering and Billing Direction and the Numbering Plan

- 15.4 We are proposing to update the following terminology/definitions and references:
- a) Replacing references to 'Publicly Available Telephone Service' with 'Voice Communications Service' or 'Number-Based Interpersonal Communications Service' in the GCs. We are also proposing to replace references to 'Publicly Available Telephone Service' with 'Voice Communications Service' in the Metering and Billing Direction and Telephone Numbering Plan.
 - b) Replacing references to 'Publicly Available Internet Access Service' with 'Internet Access Service' in the GCs. We are also proposing to amend references to such in the Metering and Billing Direction in the same way.

⁵⁵² Ofcom, September 2017, [Revised Ofcom Metering and Billing Direction](#)

- c) Amending references to ‘Small Business Customer’ and ‘Domestic or Small Business Customer’ for consistency with the new definitions in the GCs.
 - d) Adding a definition of ‘Porting Process’ to encompass mobile and fixed services in the GCs.
 - e) Updating references to legal instruments and legislation in the GCs.
 - f) Replacing ‘Subscriber’ with ‘End-User’ in the definition of ‘Network Termination Point’ and other relevant definitions that refer to it in the GCs.
 - g) Amending two GCs and the Numbering Plan to include reference to the United Kingdom as well as the European Union, in light of the UK’s departure from the EU.
- 15.5 We are proposing that the changes at paragraph 15.4 (a)-(f) would take effect 12 months from publication of the final notifications containing the revised GCs, Metering and Billing Direction and Numbering Plan, respectively.
- 15.6 We propose the changes at paragraph 15.4 (g) would come into effect at 11pm on 31 December 2020 (the point at which the transition period expires as set out in the Withdrawal Agreement).

Replacing references to ‘Publicly Available Telephone Service’ with ‘Voice Communications Service’ or ‘Number-Based Interpersonal Communications Service’

- 15.7 The EECC introduces a new ‘Voice Communications Service’ definition, which is synonymous with the ‘Publicly Available Telephone Service’ definition used in previous EU Directives.
- 15.8 Consistent with the changes we are making to GC A3.1 and A3.2 (see section 13 of the Statement), we are proposing to replace references to ‘Publicly Available Telephone Service’ with ‘Voice Communications Service’ in a number of places in the GCs, for clarity and consistency. As the definition of ‘Voice Communications Service’ that we are including in the GCs, and which is taken from Article 2(32) of the EECC, is substantively identical to the ‘Publicly Available Telephone Service’ definition, we do not consider that these changes involve any change in the scope of the relevant conditions, Metering and Billing Direction or Numbering Plan.
- 15.9 Specifically, we are proposing to make this change in the following GCs: ⁵⁵³
- GC A4.1 Emergency Planning- Scope (Annex 5, Table 9);
 - GC C3.1(b), (c) and (d) – these set the scope of a number of billing requirements- (Annex 5, Table 5);
 - GC C3.5(a) Total metering and billing systems (Annex 5, Table 5); ⁵⁵⁴
 - GC C3.11 Debt collection and disconnection (Annex 5, Table 5); and

⁵⁵³ We plan to update GC A3 Guidance and GC C6 CLI Guidelines to reflect any relevant changes made, in December 2021.

⁵⁵⁴ We are also proposing consequential changes to the Metering and Billing Direction- see later in this section.

- GC C5.8 Relay service (Annex 5, Table 6);
- 15.10 This would also affect the definitions:
- ‘Carrier Pre- Selection’ or ‘CPS’ (Annex 5, Table 9);
 - ‘Relay Service’ (a) (Annex 5, Table 9); and
 - ‘Relevant Turnover (Annex 5, Table 9).
- 15.11 To ensure consistency with the amendments proposed above to the scope of GC C3.4-C3.6 (as set out in C3.1(b)), as well as to C3.5 itself) and the definition of ‘Relevant Turnover’ which relates to Ofcom’s Metering and Billing Scheme, we are also proposing to update the Metering and Billing Direction⁵⁵⁵ accordingly. This would be to replace references to ‘Publicly Available Telephone Services’ with ‘Voice Communications Services’ and would affect:
- Transfer of Approval, section 3.3.1, second paragraph
 - Annex 1 (Definitions and Interpretations).
- 15.12 To ensure consistency with our new ‘Voice Communications Service’ definition and our proposal to use it in place of ‘Publicly Available Telephone Service’ in the definition of ‘Carrier Pre-Selection’ or ‘CPS’ in the GCs, we are also proposing to update references to ‘Publicly Available Telephone Service’ in the Numbering Plan in the same way. This would affect the following definitions in the Numbering Plan⁵⁵⁶:
- ‘Carrier Pre-Selection’ or ‘CPS’;
 - ‘Indirect Access’; and
 - ‘Pre-selected Provider’.
- 15.13 We also propose a minor amendment to the definition of ‘Consumer’ in the Numbering Plan for consistency with the changes we are making to the definition of ‘Consumer’ in the GCs (proposed changes underlined): “‘Consumer’ means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside of his or her trade, business, craft or profession.”
- 15.14 There are also a number of instances where we propose to replace the term ‘Publicly Available Telephone Service’ with the new ‘Number-Based Interpersonal Communications Service’ definition⁵⁵⁷ in the GCs (see section 4). We consider that this term more closely matches the type of service intended to be in scope of these requirements. This proposed change affects the following GCs:

⁵⁵⁵ The draft Notification in respect of these changes and marked up text of the revised direction showing the changes we are proposing to make is set out in Annex 13.

⁵⁵⁶ The draft Notification in respect of these changes and the proposal for the definition of ‘Consumer’ is set out in Annex 14.

⁵⁵⁷ We are defining ‘Number-Based Interpersonal Communications Service’ as “an **interpersonal communications service** which: (a) connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan; or (b) which enables communication with a number or numbers in a national or international numbering plan”. It will capture, for example, fixed and mobile telephone services, as well as VOIP outbound call services.

- GC B2.1 Directory Information- Scope⁵⁵⁸ (Annex 5, Table 9);
- GC C5.7 Access to directory information⁵⁵⁹ (Annex 5, Table 6); and
- GC C6.1 Calling line identification facilities⁵⁶⁰ (Annex 5, Table 9).

15.15 This would also affect the following two definitions:

- ‘Directory’ (Annex 5, Table 9); and
- ‘Directory Information’ (Annex 5, Table 9).

15.16 Consequent to the changes above, we propose to remove the definition of ‘Publicly Available Telephone Service’ from the GCs (see Annex 5, Table 1).

Replacing references to ‘Publicly Available Internet Access Services’ with ‘Internet Access Service’

15.17 The new ‘Internet Access Service’ definition,⁵⁶¹ is consistent with the scope of the term ‘Publicly Available Internet Access Service’ which is currently used as a defined term in various conditions in the GCs.

15.18 We are proposing to replace ‘Publicly Available Internet Access Service’ with ‘Internet Access Service’ in the GCs, Metering and Billing Direction and Numbering Plan for clarity and consistency. We do not consider that this will alter the scope of the relevant conditions/provisions.

15.19 These proposed changes would affect the following GCs:

- GC C3.1(b), (c), (d) and (e) Billing requirements- Scope (Annex 5, Table 5);
- GC C3.5(a) Total metering and billing systems (Annex 5, Table 5);⁵⁶² and
- GC C3.11 Debt collection and disconnection (Annex 5, Table 5).

15.20 This would also affect the definition:

- ‘Relevant Turnover’ (Annex 5, Table 9).

15.21 We also consequently propose to remove the ‘Publicly Available Internet Access Service’ definition from the GCs. See Annex 5, Table 1.

15.22 To ensure consistency with the amendments proposed above to the scope of GC C3.4-C3.6 (as set out in C3.1(b)), as well as to C3.5 itself) and the definition of ‘Relevant Turnover’ which relate to Ofcom’s Metering and Billing Scheme, we are also proposing to update the

⁵⁵⁸ We note that the use of the ‘Number-based Interpersonal Communications Service’ definition is consistent with the scope of Article 112(1) of the EECC, which GC B2 implements.

⁵⁵⁹ GC C5.7 relates to the provision of Directory Information and Directory Enquiry Facilities to end-users with disabilities. Using the ‘Number-based Interpersonal Communications Services’ definition would therefore be consistent with our proposals in relation to B2, which is also about the provision of Directory Information

⁵⁶⁰ We note that the use of the ‘Number-based Interpersonal Communications Services’ definition is consistent with the scope of Article 115 and Annex VI Part B(a) of the EECC regarding the provision of Calling Line Identification.

⁵⁶¹ See section 4, paragraph 4.14.

⁵⁶² We are also proposing consequential changes to the Metering and Billing Direction- see later in this section.

Metering and Billing Direction⁵⁶³ accordingly. This would be to replace references to 'Publicly Available Internet Access Service' with 'Internet Access Service' and would affect:

- Transfer of Approval, section 3.3.1, footnote in second row of table;
- Transfer of Approval, section 3.3.1, second paragraph; and
- Annex 1 (Definitions and Interpretations).

Amending references to 'Small Business Customer' and 'Domestic or Small Business Customer' for consistency with the new definitions

15.23 As explained in section 4, and following our July Consultation, we have decided to adopt new defined terms of 'Microenterprise or Small Enterprise Customer' and 'Not-For-Profit Customer.' We consider that the 'Microenterprise or Small Enterprise Customer' and 'Not-For-Profit Customer' definitions would cover the same category of customer as the existing 'Small Business Customer' definition (both of these new definitions apply to organisations which have a headcount threshold of up to 10 workers⁵⁶⁴ and exclude customers who are themselves communications providers).

15.24 We also consider that the defined terms of 'Consumer', 'Microenterprise or Small Enterprise Customer' and 'Not-For-Profit Customer', taken together, would cover the same category of customer as the existing 'Domestic and Small Business Customer' definition in the GCs. For the purposes of clarity and consistency, we are proposing to:

- i) replace the references in GC C2.10 Unbundled Tariff Numbers to the term 'Small Business Customer' throughout with the new 'Microenterprise or Small Enterprise Customer' definition (Annex 5, Table 4); and
- ii) replace references to the terms 'Domestic and Small Business Customer' with 'Consumers', 'Microenterprise or Small Enterprise Customers' and 'Not-For-Profit Customers' and make some minor consequential drafting changes as a result.

15.25 These changes would affect the following GCs: ⁵⁶⁵

- A3.1(b) Availability of services scope (Annex 5, Table 8)
- A3.3 Availability of services (Annex 5, Table 8)
- A3.6(c) Availability of services (Annex 5, Table 8)
- C1.1(b)(iii) Scope (Annex 5, Table 2)
- C2.11 Premium rate service (Annex 5, Table 4)
- C4.1 Complaints handling and dispute resolution (Annex 5, Table 9); and
- C8.1 Sales and Marketing (Annex 5, Table 9)

⁵⁶³ The draft Notification in respect of these changes and marked up text of the revised direction showing the changes we are proposing to make is set out in Annex 13.

⁵⁶⁴ Following our July Consultation, we have decided to exclude volunteers or voluntary workers from the definition of a not for profit customer.

⁵⁶⁵ We plan to update GC A3 Guidance and GC C8 Sales and marketing guidelines to reflect any relevant changes made, in December 2021

- 15.26 In addition, we would propose to update existing GC C1.7,⁵⁶⁶ which presently refers to ‘Small Business Customer’, to refer instead to ‘Microenterprise or Small Enterprise Customer’ and ‘Not-For-Profit Customer’ with effect from December 2021 (when other changes to C1 and definitions will come into effect), until it is revoked with effect from June 2022, when the changes to the requirements relating to right to exit would come into effect (as set out in section 8). See further (Annex 5, Table 2).
- 15.27 The changes above would also affect the following definitions:
- ‘Alternative Dispute Resolution (ADR) Scheme’ (Annex 5, Table 9)
 - ‘Complainant’ (Annex 5, Table 9);
 - ‘Complaint’ (Annex 5, Table 9);
 - ‘Customer Complaints Code’ (Annex 5, Table 9); and
 - ‘Mobile Service Retailer’ (Annex 5, Table 9).
- 15.28 We are also proposing to reflect this change in relevant guidance included in this statement, specifically, in relation to guidance on GC C1.⁵⁶⁷

Replacing the definition of ‘Porting Process’ to encompass mobile and fixed services

- 15.29 The current version of the GCs includes the following definition of a ‘Porting Process’:
- “the process set out in Condition C7.21 to C7.44 enabling a Subscriber to switch from one Communications Provider which provides Mobile Communications Services to another such Communications Provider, and to retain their Mobile Number(s). This process includes activation by the Communications Provider to whom the Subscriber has switched, of the Mobile Number(s) that has(have) been ported.”*
- 15.30 This definition relates to the porting of mobile telephone numbers only. In our December Consultation we proposed removing this definition in light of the changes we were proposing to GC C7 to implement the porting provisions set out in Article 106 of the EECC, which apply to both mobile and fixed services.
- 15.31 However, GC C7.7(c) and the definition of ‘Communications Provider Migration’ inadvertently retained references to the ‘Porting Process’ as a defined term. To correct this error and to provide clarity and certainty about what this concept entails, we are proposing a new definition of ‘Porting Process’ as follows:
- “a process by which Number Portability is carried out pursuant to Condition C7, including activation by the Communications Provider to whom the Switching Customer has switched, of the Telephone Number(s) and/or Mobile Number(s) that has(have) been ported.”*
- 15.32 This change would affect the following GCs:
- GC C7.7(c) (Annex 5, Table 7); and

⁵⁶⁶ This will be renumbered as C1.15 with effect from December 2021

⁵⁶⁷ As marked up at Annex 6.

- GC C7.61(c) (Annex 5, Table 7).
- 15.33 This change would also affect the following definitions:
- ‘Communications Provider Migration’ (Annex 5, Table 7).
- 15.34 The proposed definition is also referred to in our new guidance on compensation related to switching and porting, set out at Annex 8.
- 15.35 The proposed definition is set out at Annex 5, Table 7.

Updating references to legal instruments and legislation: GC A2.2

- 15.36 GCs A2.1 and A2.2 require providers to comply with those technical standards that the European Commission has made compulsory and to take full account of other non-compulsory international standards or specifications adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI).
- 15.37 GC A2.3 requires that, in the absence of such standards and/or specifications referred to in A2.1 and A2.2, providers must take full account of international standards or recommendations adopted by other international standards settings agencies. These conditions implement Article 39 of the EECC, which replaces Article 17 of the Framework Directive, but does not introduce any new substantive requirements.
- 15.38 We are proposing to make a minor amendment to the wording of GC A2.2 so that in addition to standards published in the Official Journal of the European Union (OJEU) pursuant to Article 17 of the Framework Directive, the requirements under GC A2.2 would also apply in respect of standards published in the OJEU pursuant to Article 39 of the EECC.⁵⁶⁸ This would clarify that, to the extent that any such relevant standards are published pursuant to Article 39 of the EECC (which we are also proposing to define in the GCs), the obligation under A2.2 would apply in respect of such future published standards. The proposed amendment is set out at Annex 5, Table 9. We are also proposing to add a definition of “EECC Directive” for these purposes.
- 15.39 We do not consider our proposed changes would have any impact on communications providers as they would not result in any substantive change in the obligations which apply currently under GC A2.2, they simply clarify how this obligation would apply in light of the changes being introduced by the EECC.

Updating references to legal instruments and legislation: ‘Relevant Data Protection Legislation’

- 15.40 The definition ‘Relevant Data Protection Legislation’ in the GCs currently refers to the Data Protection Act 1998. While this is not strictly a change relating to EECC implementation, as

⁵⁶⁸ We consider that it remains appropriate to retain the reference to standards published pursuant to Article 17 of the Framework Directive as the intention is that such previously published standards should still remain in scope of the obligation.

part of our review of the GCs for clarity and consistency, we are proposing to update this reference to refer to the current Data Protection Act 2018 and to the General Data Protection Regulation (EU) 2016/697 to ensure it references the current relevant data protection legislation which is applicable in the UK. The proposed amendment is set out at Annex 5, Table 9.

Replacing ‘Subscriber’ with ‘End-User’ in the definition of ‘Network Termination Point’ and other relevant definitions that refer to it

15.41 The definition of ‘Network Termination Point’ currently included in the GCs is:

“the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber. A Network Termination Point provided at a fixed position on Served Premises shall be within an item of Network Termination and Testing Apparatus.”

15.42 We are proposing to replace the references in this definition to ‘Subscribers’ with references to ‘End-Users’. This is to reflect the definition of ‘Network Termination Point’ included in Article 2(9) of the EECC which now refers to ‘End-Users.’ In addition, taking into account the instances where the ‘Network Termination Point’ definition is currently used in the GCs,⁵⁶⁹ we consider ‘end-user’ to be a more appropriate term given it applies more broadly than to just those who have a contractual relationship with the provider.⁵⁷⁰ The proposed amendment is set out at Annex 5, Table 9.

Implementation

15.43 We propose to give providers 12 months from publication of the final notifications of changes to the GCs, Metering and Billing Direction and Numbering Plan in December 2020, to make any necessary amendments as a result of the minor changes detailed in this section, consistent with the timing for implementation of other changes to the GCs that we have set out in this statement.

Legal tests

15.44 We consider that the changes we are proposing to make as outlined in this section meet the test for setting or modifying conditions in section 47(2) of the Act, the test for modifying directions under section 49(2) of the Act and the test for modifying the Numbering Plan set out in section 60(2) of the Communications Act 2003, respectively. Our proposed changes are:

⁵⁶⁹ These are the definitions of ‘Access Network’, ‘Fibre-To-The-Premises’ and ‘Number Portability’ which are relevant to the porting and switching processes.

⁵⁷⁰ We plan to update GC C6 CLI Guidelines to reflect any relevant changes made, in December 2021.

- objectively justifiable and proportionate for the reasons set out above, in particular, the proposed changes are required to ensure consistency and clarity of the terminology/definitions used throughout the GCs, Metering and Billing Direction and Numbering Plan for stakeholders, as a direct consequence of implementing the relevant requirements of the EECC in order to achieve the consumer benefits pursued by it. In addition, our provisional view is that our proposed changes will for the most part not lead to any substantive change in the scope or underlying requirements that already apply to relevant providers, and where they do involve a potential substantive change in scope (e.g. in relation to the changes to GC A2.2) are limited to no more than is necessary to ensure compliance with the requirements in the EECC;
- not unduly discriminatory since the proposed changes to these terminology/definitions would apply in respect of all providers of relevant electronic communications services, to which the relevant conditions, Metering and Billing Direction and Numbering Plan apply; and
- transparent as the reasons for the changes that we are proposing to make to these terminology/definitions are explained in this section (the changes are set out clearly in Annex 5 and the Notifications in Annexes 11, 13 and 14), and the effects of the proposed changes would be clear to communication providers.

15.45 In proposing these changes, we have also considered and acted in accordance with our general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act. Our duties under section 3(3) of the Act say that we need to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. We consider that by ensuring clarity and consistency of terminology throughout the GCs, these changes will further the interests of citizens in relevant markets because they will help ensure the GCs are transparent and consistent, thus reducing unnecessary burdens on stakeholders. They are also proportionate for the reasons set out above.

Consultation questions

Question 1: Do you agree with our proposed amendments to terminology/definitions in the GCs set out in paragraphs 15.7-15.45 above?

Question 2: Do you agree with the consequential changes we are proposing to make to the Metering and Billing Direction?

Question 3: Do you agree with the consequential changes we are proposing to make to the National Telephone Numbering Plan?

Question 4: Do you have any comments on our proposed timing for implementing these changes?

Proposed changes to the GCs and Numbering Plan in light of the end of the transition period

- 15.46 On 12 February 2019 we published a consultation⁵⁷¹ on changes we proposed to make to the GCs and the 'Numbering Plan' in the event of the United Kingdom leaving the European Union on 29 March 2019 without a withdrawal agreement being in place.
- 15.47 Our aim in proposing those modifications was to ensure that, in so far as possible, the GCs and Numbering Plan continued to have the same scope and effect immediately after Exit Day as they did immediately before, by making the minimum changes necessary to the text of the regulations. We explained that, for example, where a regulatory condition applied in relation to the territory of the European Union before the UK left the EU, it would cease to apply in relation to the United Kingdom after the UK left the EU unless the condition were amended to include the United Kingdom as well as the European Union, as the United Kingdom would cease to be an EU member state when it left the EU.
- 15.48 As explained in our February 2019 Consultation, we were not proposing to make any policy changes or unnecessary modifications to the scope of regulatory conditions. Any policy changes or changes to the scope of application of Ofcom regulations which might be appropriate as a result of the United Kingdom's exit from the EU would be considered at a later date, as and when appropriate.
- 15.49 Although the UK left the EU on 31 January 2020, it was not necessary for Ofcom to proceed to make these changes as a result of the Withdrawal Agreement being reached between the UK and EU, and the passing of the European Union (Withdrawal Agreement) Act 2020.⁵⁷² This meant the UK continued to be treated as if it were an EU member state during the transition period. However, the transition period is due to end at 11pm on 31 December 2020 ("IP completion day") and from that point in time, the UK will no longer be treated as if it were an EU member state.
- 15.50 We have therefore revisited whether we need to make any changes to the GCs or Numbering Plan in light of this. Our view is that we should proceed to make the changes that we consulted on in February 2019 so that they apply from the end of the transition period (i.e. from IP completion day). We set out below what our proposals were, and why we continue to consider that it is appropriate to make these changes at the end of the transition period.

Modifications to GC A1 – General network access and interconnection

- 15.51 General Condition A1.2 requires regulated providers to negotiate interconnection with public electronic communications providers located in any part of the European Union.⁵⁷³

⁵⁷¹ Ofcom, February 2019, [Proposed Changes to the General Conditions and Numbering Plan](#)

⁵⁷² This amended the European Union (Withdrawal) Act 2018.

⁵⁷³ This condition implements Article 4(1) of the Access Directive (Directive 2002/19/EC).

We proposed to amend this condition so that it refers to public electronic communications providers located in any part of the United Kingdom or European Union.

- 15.52 We explained in our February 2019 consultation document that if we did not amend this condition, it would no longer apply in relation to communications providers located in the United Kingdom when the United Kingdom leaves the EU. We considered whether to amend this condition so that it would apply only in relation to the United Kingdom. However, we noted that this would amount to a narrowing in the scope of application of the condition, and we considered it would be preferable to maintain the existing scope of the condition at the time.

Modifications to GC B4 – Access to numbers and services

- 15.53 General Condition B4.2 requires regulated providers to ensure that end-users in any part of the European Union can access all telephone numbers provided in the European Union.⁵⁷⁴ We proposed to amend this condition so that it applies in respect of end-users in any part of the United Kingdom or European Union and all telephone numbers in the United Kingdom or European Union.
- 15.54 We explained in our February 2019 consultation that if we did not amend this condition, it would no longer apply in relation to end-users or telephone numbers in the United Kingdom when the United Kingdom leaves the EU. We considered whether to amend this condition so that it would apply only in relation to the United Kingdom. However, we noted that this would amount to a narrowing in the scope of application of the condition, and we considered it would be preferable to maintain the existing scope of the condition at the time.

Modification to the Numbering Plan

- 15.55 Ofcom has a duty under section 56 of the Communications Act 2003 to publish the Numbering Plan, setting out which numbers are available for allocation as telephone numbers and any restrictions on the adoption or use of such numbers. Ofcom must review the Numbering Plan from time to time and make such revisions as it thinks fit.⁵⁷⁵
- 15.56 In the February 2019 consultation, we explained that we proposed to modify the definition in the Numbering Plan of “harmonised numbers for harmonised services of social value (116XXX numbers)”, which refers to the use of numbers “throughout the European Union Member States” by adding the words “and the United Kingdom” to the end of it.

Ofcom’s proposed changes at the end of the transition period

- 15.57 When the transition period ends, the UK will no longer be treated as an EU member state. Therefore, the issues with the GCs and Numbering Plan that we identified in February 2019

⁵⁷⁴ This condition implements Article 28(1) of the Universal Service Directive (Directive 2002/22/EC).

⁵⁷⁵ Ofcom [Telecoms numbering information for industry](#)

and explained above would apply from that point in time, and our regulation would cease to function effectively (for the reasons set out above).

- 15.58 We have considered whether it remains appropriate for Ofcom to proceed to make these changes in light of the end of the transition period. We remain of the view that it is appropriate to proceed and that these are the minimum changes necessary to ensure that, so far as possible, the GCs outlined above and relevant provisions of the Numbering Plan continue to have the same scope and effect immediately after IP completion day as they did immediately before. We therefore intend to implement these changes as proposed with effect from 11pm on 31 December 2020.
- 15.59 In reaching this view, we have taken account of the responses we received to our February 2019 consultation. We received two responses. One from Mr Rex Hora of the Campaign to Retain Payphones (CARP) arguing for a radical overhaul of the existing universal service obligation and the other from Transatel raising the issue of exclusivity clauses being imposed by mobile network operators (MNOs) in their contracts with mobile virtual network operators (MVNOs).
- 15.60 Neither respondent commented on the specific amendments to the GCs or Numbering Plan proposed in the consultation. We consider that the comments made by both respondents go beyond essential changes to Ofcom regulations that would be needed on the day the transition period ends and that they would amount to changes in policy, which we do not consider are appropriate at this point in time, pending further clarity on what arrangements will apply between the EU and UK following the end of the transition period.

Ofcom's assessment

- 15.61 For the reasons set out above, we propose to make the changes set out at paragraphs 15.53, 15.56 and 15.57 above, which are the same as the changes we proposed in the February 2019 consultation document.

Implementation

- 15.62 We propose that these changes come into effect at -co on 31 December 2020 (i.e. IP completion day).

Legal tests

- 15.63 We consider that these proposed changes to GC A1 and GC B4 meet the test for modifying conditions set out in section 47(2) of the Communications Act 2003, in that they are:
- **objectively justifiable and proportionate**, as they ensure that the conditions continue to apply in respect of UK-based providers and end-users and UK telephone numbers post-IP completion day, and are the minimum required to ensure that the conditions continue to apply after IP completion day in the same way as they applied before IP completion day;

- **not unduly discriminatory**, as the proposed conditions apply equally to all operators falling within the relevant definition of regulated providers for each condition; and
- **transparent**, as the scope of each of the amended conditions is clear on its face.

15.64 We consider that the change we are proposing to make to the Numbering Plan meets the test for modifying the Numbering Plan set out in section 60(2) of the Communications Act 2003, in that it is:

- **objectively justifiable**, as it makes clear that harmonised social value (116xxx) numbers continue to operate in the UK post-IP completion day;
- **not unduly discriminatory**, as it applies equally to all operators subject to the Numbering Plan;
- **proportionate**, as this proposed amendment is the minimum necessary to make clear that harmonised social value (116xxx) numbers continue to operate in the UK post-IP completion day in the same way as they did immediately prior to IP completion day; and
- **transparent**, as the scope of the amended definition is clear on its face.

15.65 The Notifications in respect of these proposed changes are at Annexes 11 and 14.

Consultation questions

Question 5: Do you agree with the modifications we are proposing to make to General Conditions A1 (general network access and interconnection obligations) and B4 (access to numbers or services) in light of the end of the transition period?

Question 6: Do you agree with the modification we are proposing to make to the Numbering Plan in light of the end of the transition period?

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 30 November 2020.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/proposals-to-implement-new-eecc>. You can return this by email to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to EECCenduserights@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- A1.5 Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
- A1.6 Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.7 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.8 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.9 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.10 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.11 If you want to discuss the issues and questions raised in this consultation, please contact Emma Chadwick by email to Emma.Chadwick@ofcom.org.uk.

Confidentiality

- A1.12 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that

everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A1.13 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.14 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.16 Following this consultation period, Ofcom plans to publish a brief statement setting out our decision on the proposals contained in this section, alongside the revised GCs in late 2020.
- A1.17 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.1 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.2 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.3 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.4 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.5 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.6 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

Section 15: Proposed minor changes to the General Conditions, Metering and Billing Direction and the Numbering Plan

Question 1: Do you agree with our proposed amendments to terminology/definitions in the GCs set out in paragraphs 15.7-15.45 above?

Question 2: Do you agree with the consequential changes we are proposing to make to the Metering and Billing Direction?

Question 3: Do you agree with the consequential changes we are proposing to make to the National Telephone Numbering Plan?

Question 4: Do you have any comments on our proposed timing for implementing these changes?

Question 5: Do you agree with the modifications we are proposing to make to General Conditions A1 (general network access and interconnection obligations) and B4 (access to numbers or services) in light of the end of the transition period?

Question 6: Do you agree with the modification we are proposing to make to the Numbering Plan in light of the end of the transition period?