

## Annex 2

# Notification of modifications to the General Conditions

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

#### BACKGROUND

A. The Director General of Telecommunications published on 22 July 2003 a notification setting general conditions under section 45 of the Act which took effect on 25 July 2003 (the “**2003 Notification**”). Since July 2003, the general conditions so set have been modified on several occasions and new general conditions have been set by Ofcom (collectively, the “**General Conditions**”).

B. On 24 February 2011, Ofcom published a notification under section 48(2) of the Act setting out proposals to modify the General Conditions (the “**First Notification**”).

C. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6)(a) of the Act.

D. In the First Notification (and accompanying explanatory statement), Ofcom invited representations on the proposals by 7 April 2011.

E. On 4 May 2011, the Secretary of State made The Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/2010), together with The Electronic Communications (Universal Service) (Amendment) Order 2011 (SI 2011/1209 (collectively, the “**Regulations**”). The Regulations were laid before Parliament on 5 May 2011 and come into force on 26 May 2011.

F. The Regulations have provided for changes to Ofcom's enabling powers under the Act in order to take forward the proposals Ofcom set out in the First Notification. Whilst the Regulations come into force on 26 May, Ofcom is able to proceed to make decisions in the anticipatory exercise of its new or amended powers, pursuant to section 13 of the Interpretation Act 1978, in order to meet the Community law transposition deadline of 25 May 2011.

G. By virtue of section 48A(6) and (7) of the Act, Ofcom may give effect to the proposals with respect to which it has published a notification, with any modifications that appear to Ofcom to be appropriate, where Ofcom has:

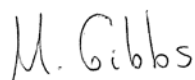
- (i) considered every representation about the proposals made to Ofcom within the period specified in the notification; and
- (ii) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

H. Ofcom received responses to the First Notification and has considered every such representation made in respect of the proposals set out in the First Notification (and the accompanying explanatory statement); and the Secretary of State has not notified Ofcom of any obligation of the United Kingdom for this purpose.

## DECISION

1. In accordance with section 48(1) of the Act and pursuant to powers in the Act as amended by the Regulations in reliance on section 13 of the Interpretation Act 1978, Ofcom sets out the modifications to the General Conditions made in the Schedule to this Notification.
2. The effect of, and Ofcom's reasons for making, these modifications are set out in the accompanying explanatory statement.
3. Ofcom is satisfied that these modifications satisfy the test in section 47 of the Act.
4. In making these modifications, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
5. In this Notification:
  - (i) "**2003 Notification**" has the meaning ascribed in recital A above;
  - (ii) "**Act**" means the Communications Act 2003;
  - (iii) "**First Notification**" has the meaning ascribed in recital B above;
  - (iv) "**General Conditions**" have the meaning ascribed in recital A above;
  - (v) "**Ofcom**" means the Office of Communications; and
  - (vi) "**Regulations**" have the meaning ascribed in recital E above.
6. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
7. For the purpose of interpreting this Notification:
  - (i) headings and titles shall be disregarded; and
  - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
8. The Schedule to this Notification shall form part of this Notification.

Signed by Marina Gibbs



Competition Policy Director

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

**23 May 2011**

## SCHEDULE

### **Part 1 of the Schedule to the 2003 Notification—Definitions**

1 In Part 1 of the Schedule to the 2003 Notification, the following definitions are deleted:

- a) Apparatus;
- b) Associated Facility;
- c) Consumer Panel;
- d) Content Service;
- e) Director;
- f) Electronic Communications Network;
- g) Electronic Communications Service;
- h) End-User;
- i) Framework Directive;
- j) Interconnection;
- k) National Telephone Numbering Plan;
- l) Public Electronic Communications Network;
- m) Public Electronic Communications Service;
- n) Public Telephone Network
- o) Signal; and
- p) Wireless Telegraphy.

2 In Part 1 of the Schedule to the 2003 Notification, the following definition is inserted:

*“Public Communications Network” means an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points.*

3 In Part 1 of the Schedule to the 2003 Notification, the following definition is inserted:

*“Ofcom” means the Office of Communications as established under section 1 of the Office of Communications Act 2002.*

4 In Part 1 of the Schedule to the 2003 Notification, the definition of “Publicly Available Telephone Service” is replaced by the following:

*“Publicly Available Telephone Service” means a service made available to the public for originating and receiving, directly or indirectly, national or international and international calls through a number or numbers in a national or international telephone numbering plan.*

5 In Part 1 of the Schedule to the 2003 Notification, the definition of “Telephone Number” is replaced by the following:

*“Telephone Number” means, subject to any order of the Secretary of State pursuant to section 56(7) of the Act, any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the purposes listed in section 56(5) of the Act.*

- 6 In Part 1 of the Schedule to the 2003 Notification, the term “Public Telephone Network” is replaced by the term “Public Communications Network” in the definition of “Directory Enquiry Facility”.
- 7 In Part 1 of the Schedule to the 2003 Notification, the term “Director” is replaced by the term “Ofcom” in the definitions of “Allocation” and “Emergency Organisation”.

**Part 2 of the Schedule to the 2003 Notification, as subsequently amended—  
General Conditions**

**General Condition 1**

- 8 In General Condition 1, the definition of “Network Access” is deleted.
- 9 In paragraph 1.3 of General Condition 1, the term “Director” is replaced by the term “Ofcom”.

**General Condition 2**

- 10 Paragraph 2.2 of General Condition 2 is replaced with the following:
- 2.2 In the absence of such standards and/or specifications referred to in paragraph 2.1 above, the Communications Provider shall take full account of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) and the International Electrotechnical Committee (IEC).*
- 11 In paragraphs 2.3 and 2.4 of General Condition 2, the term “Director” is replaced by the term “Ofcom”.

**General Condition 3**

- 12 General Condition 3 is replaced in its entirety by the following:
- 3.1 The Communications Provider shall take all necessary measures to maintain, to the greatest extent possible:*
- (a) the proper and effective functioning of the Public Communications Network provided by it at all times, and*
  - (b) in the event of catastrophic network breakdown or in cases of force majeure the fullest possible availability of the Public Communications Network and Publicly Available Telephone Services provided by it, and*
  - (c) uninterrupted access to Emergency Organisations as part of any Publicly Available Telephone Services offered.*
- 3.2 The Communications Provider shall ensure that any restrictions imposed by it on access to and use of a Public Communications Network provided by it on the grounds of ensuring compliance with paragraph 3.1 above*

*are proportionate, non-discriminatory and based on objective criteria identified in advance.*

*3.3 For the purposes of this Condition, “Communications Provider” means a person who provides Publicly Available Telephone Services and/or provides a Public Communications Network over which a Publicly Available Telephone Service is provided.*

#### **General Condition 4**

13 In paragraph 4.4 of General Condition 4, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.

14 Paragraph 4.2 of General Condition 4 is replaced by the following:

*4.2 The Communications Provider shall, to the extent technically feasible, make accurate and reliable Caller Location Information available for all calls to the emergency call numbers “112” and “999”, at no charge to the Emergency Organisations handling those calls, at the time the call is answered by those organisations.*

15 Current paragraph 4.3 of General Condition 4 is renumbered 4.4 and a new paragraph 4.3 is inserted as follows:

*4.3 Where a Communications Provider provides an Electronic Communications Service:*

*(a) at a fixed location, the Caller Location Information must, at least, accurately reflect the fixed location of the End-User’s terminal equipment including the full postal address; and*

*(b) using a Mobile Network, the Caller Location Information must include, at least, the Cell Identification of the cell from which the call is being made, or in exceptional circumstances the Zone Code.*

16 The following definitions are inserted in paragraph 4.4 (formerly 4.3) of General Condition 4 in alphabetical order, with the sub-paragraph numbering amended accordingly:

*“Cell Identification” means the geographic coordinates of the cell which is hosting the call, and where available, an indication of the radius of coverage of the cell.*

*“Mobile Network” means either the GSM (Global System for Mobile communications as defined by the European Telecommunications Standards Institute) or UMTS (Universal Mobile Telecommunications System as defined by the European Telecommunications Standards Institute) networks.*

*“Zone Code” means a code which identifies the geographic region in which the call was originated.*

17 The definition of “Communications Provider” in paragraph 4.4 of General Condition 4 is replaced by the following:

*“Communications Provider” means a person who provides End-Users with an Electronic Communications Service, or provides access to such a service by means of a Pay Telephone, for originating calls to a number or numbers in the National Telephone Numbering Plan but shall exclude any Click to Call Service;*

- 18 The definition of “Service” in paragraph 4.4 of General Condition 4 is deleted.

**General Condition 5**

- 19 In paragraph 5.1 of General Condition 5, the term “Director” is replaced by the term “Ofcom”.
- 20 In paragraph 5.4 of General Condition 5, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.

**General Condition 6**

- 21 In paragraph 6.3 of General Condition 6, the term “Director” is replaced by the term “Ofcom”.

**General Condition 7**

- 22 In paragraph 7.1 of General Condition 7, the term “Director” is replaced by the term “Ofcom”.

**General Condition 8**

- 23 In paragraph 8.3 of General Condition 8, the term “Director” is replaced by the term “Ofcom”.

**General Condition 9**

- 24 General Condition 9 is replaced in its entirety by the following:

*9.1 Communications Providers shall, in offering to provide, or providing, connection to a Public Communications Network and/or Public Electronic Communications Services to a Consumer, and other End-Users on request, offer to enter into a contract or vary an existing contract with that Consumer, or other End-User, which complies with the following paragraphs.*

*9.2 Any contract between the Communications Provider and a Consumer, and other End-Users on request, shall specify at least the following minimum requirements in a clear, comprehensive and easily accessible form:*

- (a) the identity and address of the Communications Provider;*
- (b) the services provided, including in particular whether or not access to Emergency Services and Caller Location Information is being provided, and any limitations on the provision of access to Emergency Services;*

- (c) *information on any other conditions limiting access to and/or use of services and applications (where such conditions are permitted under national law);*
- (d) *details of the minimum service quality levels offered, namely the time for initial connection and any other quality of service parameters as directed by Ofcom;*
- (e) *information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on service quality;*
- (f) *the types of maintenance services and customer support services offered, as well as the means of contacting these services;*
- (g) *any restrictions imposed by the provider on the use of terminal equipment supplied;*
- (h) *the Subscribers options as to whether or not to include his or her personal data in a directory, and the data concerned;*
- (i) *details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any difference in costs due to payment method;*
- (j) *the duration of the contract, and the conditions for renewal and termination of services and of the contract, including:*
  - (i) *any minimum usage or duration required to benefit from promotional terms,*
  - (ii) *any charges related to portability of numbers and other identifiers, and*
  - (iii) *any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;*
- (k) *any applicable compensation and/or refund arrangements which will apply if contracted quality service levels are not met;*
- (l) *the means of initiating procedures for the settlement of disputes in respect of the contract; and*
- (m) *the type of action that might be taken by the Communications Provider in reaction to security or integrity incidents or threats and vulnerabilities.*

9.3 *Without prejudice to any initial commitment period, Communications Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for End-Users against changing their Communications Provider.*

9.4 *Communications Providers shall not include a term in any contract with a Consumer for the provision of Electronic Communications Services concluded after 25 May 2011 preventing the Consumer from terminating the contract before the end of the agreed contractual period without compensating the Communications Provider for so doing, unless such compensation relates to no more than the initial commitment period (being the period beginning on the day on which the Communications Provider and Consumer have agreed that the contract shall begin and ending on a day falling no more than 24 months thereafter).*

9.5 *Communications Providers shall ensure that Users are able to subscribe to a contract with a maximum duration of 12 months.*

9.6 *The Communications Provider shall:*

- (a) give its Subscribers adequate notice not shorter than one month of any modifications likely to be of material detriment to that Subscriber;*
- (b) allow its Subscribers to withdraw from their contract without penalty upon such notice; and*
- (c) at the same time as giving the notice in condition 9.6 (a) above, shall inform the Subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the Subscriber.*

9.7 *For the purposes of this Condition:*

- (a) "Communications Provider" means a person who provides Public Communications Networks and/or Public Electronic Communications Services;*
- (b) "Consumer" means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession; and*
- (c) "User" means a legal entity or natural person using or requesting a Public Electronic Communications Service.*

#### **General Condition 10**

25 In paragraph 10.4 of General Condition 10, the term "Director" is replaced by the term "Ofcom".

#### **General Condition 11**

26 In paragraph 11.7, term "Director" is replaced by the term "Director General of Telecommunications".

#### **General Condition 12**

27 In paragraph 12.1 of General Condition 12, the term "Public Telephone Network" is replaced by the term "Public Communications Network".



- 28 In paragraph 12.2 of General Condition 12, the term “Director” is replaced by the term “Ofcom”.

#### **General Condition 14**

- 29 In paragraph 14.7(d) of General Condition 14, the term “Director” is replaced by the term “Ofcom”.
- 30 Paragraph 14.7(o) of General Condition 14 is deleted.
- 31 In Annex 3 to General Condition 14, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.

#### **General Condition 15**

- 32 Current paragraph 15.9 of General Condition 15 is deleted.
- 33 In General Condition 15, current paragraph 15.7 is renumbered 15.8, current paragraph 15.8 is renumbered paragraph 15.9, and a new paragraph 15.7 is inserted as follows:

*15.7 Communications Providers shall provide End-Users with hearing or speech impairments with Mobile SMS Access to Emergency Organisations by using the emergency call numbers “112” and “999” at no charge.*

- 34 In new paragraph 15.9 of General Condition 15, the cross reference to “15.7” is replaced by “15.8” and the words “Subject to paragraph 15.9,” are deleted.
- 35 In paragraph 15.10 of General Condition 15, the term “Director” is replaced by the term “Ofcom”.
- 36 In General Condition 15, the following definitions are inserted in paragraph 15.10 in alphabetical order, with the sub-paragraph numbering amended accordingly:
- “Mobile SMS Access” means the ability to send and receive Short Messages using an SMS defined by the European Telecommunications Standards Institute in the GSM (Global System for Mobile communications) or UMTS (Universal Mobile Telecommunications System) standards, or any other standard for mobile communications that is, or may be, adopted in the UK.*
- “Short Message” means information that may be conveyed by means of the Short Message Service.*
- “SMS” means Short Message Service, which is a text message delivered to a Subscriber’s handset or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the Subscriber’s handset.*

#### **General Condition 16**

- 37 In paragraph 16.2 of General Condition 16, the term “Director” is replaced by the term “Ofcom”.

- 38 In paragraph 16.3 of General Condition 16, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.

**General Condition 17**

- 39 In current paragraphs 17.4, 17.5, 17.9, 17.10 and 17.11 of General Condition 17, the term “Director” is replaced by the term “Ofcom”. Accordingly, the words “he” and “him” in current paragraphs 17.9 and 17.10 respectively are each replaced by the word “it”.
- 40 In the Annex to General Condition 17, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.
- 41 In General Condition 17, current paragraph 17.9 is renumbered 17.10, current paragraph 17.10 is renumbered 17.11, and a new paragraph 17.9 is inserted as follows (including subheading):

***Requirements in Connection with the transfer of use of Allocated Telephone Numbers***

*17.9 The Communications Provider shall not transfer use of Telephone Numbers from the National Telephone Numbering Plan unless:*

- (a) the Telephone Numbers have been Allocated to the Communications Provider; or the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers;*
- (b) the telephone numbers are used in accordance with the National Telephone Numbering Plan; and*
- (c) the Telephone Numbers are Adopted or otherwise used effectively and efficiently.*

- 42 In General Condition 17, current paragraph 17.11 is renumbered 17.14, current paragraph 17.12 is renumbered 17.15, current paragraph 17.13 is renumbered paragraph 17.16, and new paragraphs 17.12 and 17.13 are inserted as follows (including subheading):

***Allocation of Telephone Numbers for a limited period***

*17.12 Ofcom may Allocate Telephone Numbers to the Communications Provider for a limited period only if the duration is appropriate for the service concerned in view of the objective pursued and taking due account of the need to allow for an appropriate period for investment amortisation.*

*17.13 Where Telephone Numbers are Allocated to the Communications Provider by Ofcom for a limited period of time, Ofcom may withdraw any such Allocated numbers at the end of the set period.*

**General Condition 18**

- 43 Paragraph 18.1 of General Condition 18 is replaced by the following:

*18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.*

44 Paragraph 18.3 of General Condition 18 is replaced by the following:

*18.3 The Communications Provider shall ensure:*

*(a) in the case of Mobile Number Portability, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the Recipient Provider of the Subscriber Request to Port from its new Subscriber.*

*(b) In all other cases, porting of these numbers and their subsequent activation shall be completed within one business day once all necessary validation processes have been completed, the network connection is ready for use by the Subscriber, and the Donor Provider has received a request to activate the porting of these numbers from the Recipient Provider.*

45 In paragraph 18.4 of General Condition 18, the cross reference to “18.2” is replaced by “18.3”.

46 In paragraph 18.5 of General Condition 18, the following will be added as subsection (e):

*(e) any direct charges to Subscribers for providing Number Portability do not act as a disincentive to Subscribers against changing their Communications Provider.*

47 In paragraphs 18.5 and 18.6 of General Condition 18, the words “(other than Paging Portability)” are deleted.

48 In General Condition 18, current paragraph 18.8 is renumbered 18.11, and new paragraphs 18.8, 18.9 and 18.10 are inserted as follows:

*18.8 The Communications Provider shall inform the Subscriber of the date when Number Portability will be provided to that Subscriber.*

*18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.*

*18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers’ can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.*

49 In paragraph 18.11 (previously numbered 18.8) of General Condition 18, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.

- 50 In paragraph 18.11 (previously numbered 18.8) of General Condition 18, the definitions of “Paging Portability” and “Radiopaging Service” are deleted and the subparagraphs renumbered accordingly.

### **General Condition 19**

- 51 In paragraph 19.3 of General Condition 19, the term “Director” is replaced by the term “Ofcom”.

### **General Condition 20**

- 52 General condition 20 is re-titled “ACCESS TO NUMBERS AND SERVICES”.

- 53 Paragraphs 20.1 and 20.2 of General Condition 20 are replaced by the following:

*20.1 The Communications Provider shall ensure, where technically and economically feasible, that End-Users in any part of the European Community are able to:*

- (a) access and use those Non-geographic Numbers which the Communications Provider Adopts;*
- (b) access all Telephone Numbers provided in the European Community, regardless of the technological devices used by the operator, including those in the National Telephone Numbering Plan, those from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN).*

*20.2 The Communications Provider shall limit access for calling End-Users located in specific geographical areas to Telephone Numbers assigned to a Subscriber where that Subscriber has chosen for commercial reasons to limit such access.*

- 54 In General Condition 20, current paragraph 20.3 is renumbered 20.6, and new paragraphs 20.3, 20.4 and 20.5 are inserted as follows:

*20.3 The Communications Provider shall, where requested by or on behalf of Ofcom on the basis of fraud or misuse, block access to Telephone Numbers and/or Public Electronic Communications Services and in such cases withhold revenue associated with such Telephone Numbers and/or Public Electronic Communications Services.*

*20.4 The Communications Provider providing Publicly Available Telephone Services allowing international calls, shall handle all calls to and from the ETNS at rates similar to those applied for calls to and from parts of the European Community other than the United Kingdom.*

*20.5 The Communications Provider shall ensure that any End-User can access a hotline for missing children by using the number “116000”.*

### **General Condition 21**

- 55 In paragraphs 21.1, 21.2 and 21.3 of General Condition 21, the term “Director” is replaced by the term “Ofcom”.

**General Condition 24**

- 56 In paragraph 24.19 of General Condition 24, the term “Public Telephone Network” is replaced by the term “Public Communications Network”.