

Implementing the new European Electronic Communications Code

Revised proposals for annual best tariff information and business customer definitions

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[Implementing the new European Electronic Communications Code: revised proposals for annual best tariff information and business customer definitions – Welsh overview](#)

CONSULTATION:

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1. Overview

Fairness for customers is a priority for Ofcom and we have a significant work plan to help achieve this. This includes bringing in new protections for customers following changes to the European regulatory framework.

As part of this work, in May 2019 we confirmed new rules that mean broadband, phone and pay TV customers who are out-of-contract must be sent reminders every year showing them the best deals available. And in December 2019, we proposed a further package of measures to protect customers and help ensure they get a fair deal. These measures and proposals responded to changes to the European regulatory framework, which the Government has confirmed will be implemented by 21 December 2020. We are now consulting on two revised proposals before we publish our final decisions in Autumn 2020.

What we are proposing – in brief

Revising the scope of our annual best tariff information rules. The rules we confirmed in May 2019 require providers to send annual best tariff information to customers on any type of contract, including pre-pay mobile contracts. In response to our December 2019 consultation, providers raised a number of concerns about this approach, including that pre-pay mobile customers know they are not tied-in to a contract and often switch between different packages. We have since reviewed our approach, and are now proposing that annual best tariff information only needs to be sent where the customer was initially tied into a minimum contract period, which has since expired. This will exclude most, if not all, pre-pay mobile customers. All other phone, broadband and pay TV customers who have been, or remain, ‘out-of-contract’ for a year will receive annual reminders and best tariff information as set out in our current rules.

Revising our proposed definitions for ‘microenterprise’ and ‘small enterprise’ customers, and not for profit organisations. The new European regulatory framework includes measures to protect microenterprise and small enterprise customers and not for profit organisations. It considers that these customers are in a similar position to residential customers, and therefore in need of similar protections. In our December 2019 consultation, we proposed definitions for these groups of customers, taking into account relevant EU guidance. A number of respondents argued that the definitions were too broad and risked including businesses and organisations that do not require the same level of protection as residential customers. Some respondents also highlighted practical difficulties in applying the definitions. We are now consulting on a revised definition for microenterprise and small enterprise customers, as well as not for profit organisations.

Next steps

We invite responses to this consultation by 11 September 2020. We intend to publish a statement setting out our decision on the revised proposals contained in this document, as well as those set out in our December 2019 consultation, in Autumn 2020.

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 EECC is an EU Directive that includes a number of new protections for customers (the end-user rights provisions), which need to be reflected in our regulatory rules. In May 2019, we published a statement confirming early implementation of the EECC requirements in relation to end-of-contract notifications and annual best tariff information (the May Statement).¹ We then consulted on our proposed approach to implementing the remainder of the new end-user protections in December 2019 (the December Consultation).²
- 2.3 Although the UK left the European Union on 31 January 2020, under the terms of the Withdrawal Agreement, the UK is still under an obligation to implement EU law by the EECC deadline of 21 December 2020. In addition, in its recent statement on the EECC, the Government was clear that Ofcom should proceed to implement the end-user rights in full.³ Therefore, we need to proceed to revise our regulatory rules by 21 December 2020.
- 2.4 In light of responses to our December Consultation and ongoing engagement with industry following our May Statement, we are now consulting on revised proposals in two areas: reducing the scope of annual best tariff requirements; and the definitions for microenterprise and small enterprise customers and not for profit organisations. We then intend to issue a decision statement in Autumn 2020 that covers the end-user rights matters that we consulted on in December 2019 and in this document.
- 2.5 Our implementation of the end-user rights of the EECC is part of our ongoing work to ensure fairness for customers. This remains a priority for us, as highlighted in our plan of work for 2020/21⁴ and annual plan for 2019/20.⁵
- 2.6 The remainder of this section sets out the background to this document and the relevant legal framework.

¹ Ofcom, May 2019, [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#) ('May Statement')

² Ofcom, December 2019, [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code](#).

³ DCMS, July 2020, [Government response to the public consultation on implementing the European Electronic Communications Code](#)

⁴ Ofcom, 30 April 2020, [Ofcom's Plan of Work 2020/21](#)

⁵ Ofcom, 25 March 2019, [Ofcom's Annual Plan: Our programme of work for 2019/20](#)

The European Electronic Communications Code includes a number of protections for customers

- 2.7 The EECC is an EU Directive that updates and replaces the four Directives that made up the EU regulatory framework for electronic communications.^{6,7} 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 period on 31 December 2020.
- 2.8 The EECC contains a chapter on end-user rights⁸ which sets out a package of measures to protect customers, building on the protections currently contained in the Universal Service Directive. It specifies a range of requirements, including in relation to:
- 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
 - f) bundled offers – some of the end-user rights provisions cover services and/or terminal equipment bought in a bundle with a broadband or voice service.
- 2.9 The end-user protections apply to different categories of customer: some only apply to residential customers; some also apply to microenterprises, small enterprises and not for profit organisations; while others apply to all end-users, including large businesses.
- 2.10 The end-user rights provisions are subject to full harmonisation.⁹ This means that, in the areas those provisions cover, Member States may not maintain or introduce end-user provisions in national law that diverge from those provisions of the EECC, including more or less stringent provisions, which would provide a different level of protection for end-users, except for where those provisions allow for such divergence.

Ofcom May 2019 statement

- 2.11 The second part of Article 105(3) of the EECC 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

⁶ 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.

⁷ [Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Recast\)](#)

⁸ Articles 98 – 116, EECC.

⁹ Article 101, EECC.

must give customers best tariff advice relating to their services. Providers are also required to provide customers with best tariff information at least annually.

- 2.12 In May 2019, we published a statement which confirmed the early implementation of these provisions, through requirements on providers to send end-of-contract notifications and to give annual best tariff information to their customers.¹⁰
- 2.13 The new General Conditions in relation to end-of-contract notifications and annual best tariff information came into effect on 15 February 2020. We also published guidance on how we expect providers to comply with these requirements with respect to residential customers.¹¹

Ofcom December 2019 consultation and May update

- 2.14 In December 2019, we published a consultation that set out a proposed package of measures to protect broadband, mobile, pay TV and landline phone customers.¹² These set out our proposals to implement the remainder of the EECC provisions regarding end-user rights and included:
- new rules to make broadband switching easier and more reliable;
 - a new rule banning mobile providers from selling locked devices;
 - better contract information and stronger rights to exit; and
 - new rules to help customers with disabilities have equivalent access to communications services.
- 2.15 We proposed to implement these requirements by modifying the General Conditions (GCs) and setting new GCs, using our existing powers under section 45 of the Act. We also proposed to issue guidance on how providers should comply with the GCs in a number of areas, including in relation to contract information, contract summary, conditions and procedures for contract termination, and switching and porting.
- 2.16 The consultation closed on 3 March 2020, and we received 58 responses from a wide range of stakeholders, including providers, consumer bodies and advocacy groups, industry bodies, other organisations and individual consumers. All non-confidential consultation responses are available on our website.¹³
- 2.17 Our proposals to implement the EECC provisions in relation to independent comparison tools were set out in a separate consultation, [Digital Comparison Tools for telephone, broadband and pay TV: proposed changes to Ofcom’s voluntary accreditation scheme](#).

¹⁰ Ofcom, May 2019, [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#).

¹¹ The guidance in Annex 2 to the May Statement has now been consolidated with our other guidance in relation to Condition C1. See Ofcom, [Guidance under Condition C1 – contract requirements](#), paragraphs 1.44-1.89.

¹² Ofcom, December 2019, [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code](#).

¹³ See Ofcom, [Fair treatment and easier switching for broadband and mobile customers – Proposals to implement the new European Electronic Communications Code](#).

2.18 On 7 May 2020, we published an update on our website on implementation deadlines. We recognised that, given the very challenging circumstances we faced as a result of the coronavirus crisis, 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 that we may allow longer where very significant changes need to be made by providers. We intend to set out the industry implementation deadlines by provision when we publish our statement in Autumn 2020.

Government's decision on implementing the EECC

2.19 In July 2019, DCMS published a consultation setting out its approach to implementing the EECC.¹⁴ Its consultation included proposals on the key legislative changes that will be required to implement the EECC in the UK, including the end-user rights provisions. This identified a small number of end-user rights provisions that may require legislative or other changes, to ensure that they can be implemented in full.

2.20 The Government published its response to its consultation on 22 July 2020.¹⁵ It 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 articles as planned.

2.21 However, it also stated that it no longer sees the application of consumer 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. We acknowledge the Government's change in approach and will reflect this when setting the scope of the revised GCs in our statement in Autumn 2020. We will also make any necessary changes to reflect the Government's revised approach to bundles.¹⁶

The purpose of this consultation

2.22 This document is further to our December Consultation and stakeholders' responses to that consultation, including comments about implementation of the annual best tariff requirements from our May Statement. It sets out changes we propose to make to Ofcom's approach in two areas:

- a) reducing the scope of the annual best tariff requirements; and
- b) definitions for microenterprise and small enterprise customers and not for profit organisations.

¹⁴ DCMS, July 2019, [Implementing the European Electronic Communications Code: consultation](#).

¹⁵ DCMS, July 2020, [Government response to the public consultation on implementing the European Electronic Communications Code](#).

¹⁶ See pages 51 and 52 of [Government response to the public consultation on implementing the European Electronic Communications Code](#).

- 2.23 We invite stakeholder comments on any of the proposals set out in this document. The deadline for responding is **11 September 2020**.
- 2.24 We intend to issue our decision on the proposals in this document, alongside the proposals outlined in our December Consultation, in Autumn 2020, when we will also confirm implementation deadlines by provision. As noted above, when publishing our statement, we will reflect the Government’s revised position in relation to NIICS and bundles in our revised GCs. We will also consult on any minor consequential changes needed to ensure clarity and consistency throughout” the GCs before publishing the final revised GCs by 21 December 2020.

Impact Assessments

- 2.25 Where appropriate, we have included analysis in this document which constitutes an impact assessment for the purposes of section 7 of the Communications Act 2003 (“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.¹⁷
- 2.26 We have given careful consideration to whether or not the proposals contained in this document will have a particular impact on persons sharing protected characteristics (namely, race, age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex or sexual orientation), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. We do not envisage that our proposals would have a detrimental impact on any such group of people sharing protected characteristics.

UK Legal Framework

- 2.27 In this section, we outline our domestic powers and duties that are relevant to the proposals set out in this consultation document.

Our general duties

- 2.28 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

¹⁷ For further information about Ofcom’s approach to impact assessments, see the guidelines [Better policy making: Ofcom’s approach to impact assessment](#).

- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.¹⁸
- 2.29 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).¹⁹
- 2.30 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.
- 2.31 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.

Duties for the purpose of fulfilling EU obligations

- 2.32 As set out in section 4(2) of the Act, when exercising certain functions,²⁰ 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.²¹

Powers and duties in relation to general conditions

- 2.33 The Act gives us powers which we can exercise in implementing the requirements in EU legislation.
- 2.34 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

¹⁸ 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.

¹⁹ Our regulatory principles can be found at: www.ofcom.org.uk/about-ofcom/what-is-ofcom.

²⁰ Including those we propose to exercise in this document.

²¹ We have also had regard to the objectives in Article 3(2) of the EECC.

for the purpose of protecting the interests of end-users of public electronic communications services.

- 2.35 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 Section 51(2)(a) which gives Ofcom power to set conditions for protecting the interests of end-users of public electronic communications services relating to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services and 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.
- 2.36 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,²² not such as to discriminate unduly against particular persons or against a particular description of persons, proportionate to what the condition or modification is intended to achieve, and transparent in relation to what it is intended to achieve.

This document

- 2.37 The rest of this document is set out as follows:
- Section 3 outlines our revised proposals in relation to annual best tariff information.
 - Section 4 sets out our revised proposals for defining microenterprise and small enterprise customers, and not for profit organisations.
- 2.38 The Annexes are set out as follows:
- Annex 1: Responding to this consultation
 - Annex 2: Ofcom's consultation principles
 - Annex 3: Consultation cover sheet
 - Annex 4: Consultation questions
 - Annex 5: Draft notification of modification to the General Conditions
 - Annex 6: Provisions that apply to microenterprise, small enterprise, and not for profit customers

²² 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.

3. Annual best tariff notifications

- 3.1 The EECC includes measures (in Article 105(3)) to ensure customers are given ‘best tariff’ information at least annually. In May 2019 we published a statement confirming early implementation of these requirements through a set of new rules, and associated guidance, requiring providers to give their customers annual best tariff information.²³
- 3.2 Since the publication of that statement, we have received a number of comments and information from stakeholders about the application of annual best tariff requirements to pre-pay mobile contracts and the requirements of Article 105(3) of the EECC. Having considered these comments, we are now consulting on revised proposals on the scope of the annual best tariff requirements.
- 3.3 In this Section we therefore set out the details of these revised proposals. In summary, we are proposing to:
- a) amend the existing GC C1.16²⁴ to specify that annual best tariff information only needs to be given for contracts which were previously subject to a commitment period, which has now expired; and
 - b) to make a consequential amendment to our Guidance under General Condition C1 to remove now redundant text in relation to the timing of annual best tariff notifications.

The EECC requires the provision of best tariff advice on an annual basis

- 3.4 The second part of Article 105(3) covers both end-of-contract notifications and annual best tariff information. It 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 give customers best tariff information at least annually.
- 3.5 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.

²³ Ofcom, May 2019, [Helping consumers get better deals: statement on end-of-contract notifications and annual best tariff information](#) (‘May Statement’).

²⁴ This GC would be renumbered to GC C1.30 as a result of the amendments we proposed in the December Consultation.

Our May Statement confirmed the early implementation of the EECC annual best tariff requirements

- 3.6 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.²⁵ In particular our statement confirmed that, from February 2021 onwards, providers would be required to send annual best tariff information to customers who are not subject to a minimum contract term.
- 3.7 In that statement we set out (in General Condition C1.16) that annual best tariff information must be given:
- a) to all subscribers with a contract for a public electronic communications service (other than machine-to-machine transmission services); and
 - b) where that contract is not subject to a fixed commitment period.²⁶
- 3.8 For residential customers, we further specified the information that must be included in an annual best tariff notification (in Conditions C1.17-C1.18) and the timing and format of these notifications (in Conditions C1.19-C1.20).
- 3.9 We also published guidance on how we expected providers to comply with these requirements with respect to residential customers.²⁷ That guidance includes further detail on how we would expect providers to comply with the requirements in relation to the timing of annual best tariff notifications (paragraph 1.80).²⁸
- 3.10 The new General Conditions in relation to annual best tariff information came into effect on 15 February 2020. Under the current rules and guidance, providers have until 15 February 2021 to send the first tranche of annual best tariff notifications to their customers.²⁹
- 3.11 In our December Consultation³⁰ we proposed certain amendments to the end-of-contract and annual best tariff requirements, and the associated guidance, in order to implement the bundling provisions of Article 107.³¹ We intend to reach a conclusion in relation to these proposed amendments in the Autumn and do not consider them further in this consultation.

²⁵ [May Statement](#).

²⁶ See the current [consolidated General Conditions](#).

²⁷ The guidance in Annex 2 to the May Statement has now been consolidated with our other guidance in relation to Condition C1. See Ofcom, [Guidance under Condition C1 – contract requirements](#), paragraphs 1.44-1.89.

²⁸ This paragraph was re-numbered to A7.118 as a result of the amendments to the guidance we proposed in the December Consultation (Annex 7).

²⁹ The first tranche of annual best tariff notifications apply to contracts that were in force, but not subject to a commitment period, on 15 February 2020.

³⁰ Ofcom, December 2019, [Fair treatment and easier switching for broadband and mobile customers – proposals to implement the new European Electronic Communications Code](#), (the ‘December Consultation’).

³¹ Article 107(1) of the EECC extends the requirements of Article 105(3) to all elements of a bundle 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 microenterprises, small enterprises, or not for profit organisations, unless they have explicitly agreed to waive the provisions.

Stakeholders raised concerns about the inclusion of pre-pay mobile within scope of the annual best tariff rules

- 3.12 As part of their responses to our December Consultation, mobile providers raised a number of concerns and provided us with information on the application of the annual best tariff requirements to pre-pay mobile customers.
- 3.13 Some mobile providers (including Vodafone, GiffGaff and Three) argued that Article 105(3) does not apply to pre-pay mobile customers, because, in their view annual best tariff information is only required where a fixed duration contract is automatically prolonged and pre-pay contracts do not fall within this definition. Vodafone argued that Ofcom had therefore introduced measures that diverged from Article 105(3) and this was prohibited by the full harmonisation requirements of Article 101(1) of the EECC.
- 3.14 Telefonica recognised that the purchase of a bundled product with pre-paid credit could be interpreted as having a commitment period. It noted that customers could, in some cases, also choose to automatically prolong those bundles subject to sufficient credit being available at the time. It argued, however, that because only a subset of pre-pay customers purchased such bundles, it would be disproportionate to extend the best tariff advice requirement to these customers.
- 3.15 Several mobile providers also noted concern that there was no reference to pre-pay mobile tariffs in our May Statement, or the previous consultation on the requirements. They therefore argued that the consultation process had not been sufficiently transparent, and Ofcom should re-consult on this issue.
- 3.16 Tesco Mobile also raised concerns that we had not provided any guidance on how to implement the annual best tariff requirements to pre-pay contracts, and noted that there would be various practical difficulties in designing and sending notifications for these customers, such as the fact it held very limited, if any, data about these customers.
- 3.17 In a separate letter sent to Ofcom, Mobile UK³² also questioned what value annual best tariff notifications would offer for pre-pay customers given the flexibility available with such tariffs, and the fact that customers could reassess their tariff every month, as well as topping up different amounts of credit.

We gathered further information on current pre-pay offers and customer behaviour

- 3.18 We spoke to several of the mobile providers that had raised concerns with us, in order to gather further information on their current offers and customer behaviour. One in five UK consumers currently use pre-pay mobile services.³³ The types of services available are varied, but broadly break down into:

³² Letter from Hamish Macleod, Mobile UK to Lindsey Fussell, Ofcom dated 15 March 2020.

³³ Ofcom, [2019 Pricing Trends Report](#), p.32.

- a) **'traditional' top-up tariffs:** where a customer tops up their account on an ad-hoc basis and any usage is charged on a per-unit basis using their credit balance; and
 - b) **'Hybrid' tariffs:** which enable the customer to purchase a 'bundle' or 'pack' of inclusive calls/texts/data for a set monthly fee, with any use outside these allowances being taken from a more traditional pre-pay credit balance. These hybrid 'bundles' or 'packs' generally last for a period of 30 days/one month.
- 3.19 Hybrid pre-pay tariffs are now the most common pre-pay tariff, and traditional top-up models are becoming less prevalent.³⁴ These hybrid tariffs enable pre-pay users to benefit from inclusive allowances in a similar way to pay-monthly users, but unlike pay-monthly services, customers do not need to pass a credit-check to purchase them.
- 3.20 Some providers have stopped offering the traditional top-up model to focus exclusively on hybrid offers. Whereas other providers still have a large proportion of pre-pay customers using only the traditional top-up contracts. The relative proportions of customers on traditional pre-pay vs. hybrid tariffs varies significantly by provider.
- 3.21 We understand that customers taking these hybrid tariffs will regularly switch between 'bundles' or 'packs' each month, reflecting the increased flexibility of such offers. However, in many cases, these hybrid tariffs will, either by default or if the customer selects the relevant option, recur automatically at the end of their 30 day validity-period.³⁵ Customers have a variety of options for how they can pay for these automatically renewing tariffs, including:
- a) manually topping up the credit on their account (whether online, via the phone, or by purchasing top-up vouchers in stores). If the customer uses this option, then their tariff selection will only automatically renew if they have sufficient credit available on their account; or
 - b) setting up a recurring payment³⁶ using their credit or debit card details (or another online payment method, such as Paypal).
- 3.22 Whilst some providers told us that they have a high proportion (or all) of their customer base set-up with an auto-recurring payment method, other providers indicated that the majority of their customers on hybrid tariffs still top up their credit manually.

³⁴ For example, Telefonica no longer offers traditional top-up pre-pay services. Pure Pricing's Mobile Pricing Database (which includes advertised tariff information for the UK's largest mobile providers) shows that while four operators offered traditional pre-pay tariffs for purchase in June 2020, hybrid pre-pay propositions were offered by nine operators with a total of 48 different inclusive call, text and data bundles.

³⁵ EE, Vodafone, Telefonica and Tesco Mobile all have hybrid tariff options which automatically renew after 30 days. GiffGaff, Three and ID Mobile offer customers an option to select automatic payment renewal.

³⁶ This represents a 'continuous payment authority'.

We are proposing to revise the scope of our annual best tariff rules

3.23 Having considered stakeholders' comments and reviewed the requirements of the EECC in conjunction with the additional information we have gathered, we are now setting out revised proposals for the annual best tariff requirements.

Proposed amendments to the General Condition on annual best tariff advice

3.24 In our May Statement, and previous consultation, we specified that our annual best tariff rules would apply to all contracts for public electronic communication services.³⁷ In addition, we explained that providers would be required to send annual best tariff notifications for contracts that were not subject to a commitment period and we referenced 30-day rolling contracts as an example.³⁸ We recognise, however, that as part of setting out this scope, we did not include any explicit reference in that statement, or our associated guidance, to pre-pay mobile contracts.

3.25 As set out above, stakeholders have raised a number of comments about whether such contracts fall within the scope of the requirements in the EECC. Stakeholders argued in particular that the last sentence of Article 105(3)³⁹ should be read in conjunction with the start of the paragraph, such that annual best tariff information is only required when a "fixed duration contract" has been automatically prolonged. This interpretation would be likely to remove the vast majority (if not all) pre-pay mobile contracts from the scope of annual best tariff requirements.

3.26 In deciding how to implement these requirements in our May Statement, we favoured a purposive interpretation of the last sentence of Article 105(3). This took account of the underlying objectives of the EECC, in particular that consumers should benefit from a high level of protection and be given information that helps them to make informed choices and to engage in the market. In light of these objectives, we considered it appropriate for annual best tariff information to be given to all customers who were not subject to a commitment period (i.e. 'out-of-contract'), regardless of whether or not they previously signed up to a fixed duration contract. We considered that all of these customers should receive annual information on their options, as they were all in a position to engage in the market, if they wished to do so.

3.27 However, having considered stakeholder comments and the further information outlined above, we are now proposing to alter our view. In particular, we recognise that customers on 'traditional' pre-pay contracts will be making a conscious purchasing decision each time they top up their credit and are therefore unlikely to need annual information to inform their choices. Although we were more concerned about customers on 'hybrid' tariffs, we are reassured that many of these customers still top up manually (and will therefore also

³⁷ Excluding only machine-to-machine transmission services.

³⁸ Paragraph 11.19(d).

³⁹ "Providers shall provide end-users with best tariff information at least annually."

be making a conscious purchasing decision on a regular basis) and that customers can, and do, choose to switch between ‘bundles’ or ‘packs’.

- 3.28 We also note the existing rules on the provision of contract information at the point of sale,⁴⁰ which mean customers will be told when signing up, whether or not their contract is subject to a commitment period. The flexibility that contracts without a commitment period offer is likely to be a key factor in a customer’s decision to choose this option, instead of a contract with a commitment period (particularly given that the latter can often offer a cheaper option overall).
- 3.29 In light of the reasons outlined above, we have reconsidered our position. We note stakeholders’ comments that the last sentence of Article 105(3) should be read more narrowly in conjunction with the first sentence of the provision. We also consider the objectives of the EECC would 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, which has now expired.
- 3.30 As a result, we are proposing to amend the relevant GCs to this effect. Our proposed amendment to GC C1.16⁴¹ is set out in the Schedule to Annex 5.
- 3.31 This proposed amendment means that any contract that was not previously subject to a commitment period, will no longer be in scope of the requirements to send annual best tariff advice.
- 3.32 Notwithstanding this, we consider that it is good practice to send periodic reminders to customers in contracts that are not subject to a commitment period (particularly those contracts which are rolled over automatically - for example pre-pay ‘packs’ which roll over each month, and where a customer has set up an auto-recurring payment method) about the 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 are aware of some providers that already send such reminders and we welcome such practices as a demonstration of their commitment to treat customers fairly and ensure they are on the best deals.
- 3.33 We expect that our proposed change will reduce costs for providers, particularly for those providers that sell customer contracts without a commitment period who will no longer be required to send annual best tariff information. As noted above, we expect that the objectives of the EECC will still be achieved for customers on these contracts in practice, due to existing features of the market and regulation that already applies. We therefore do not anticipate that our proposal will have a significant negative impact on consumers.

⁴⁰ In particular GC C1.2 sets out a minimum set of information providers must include when a customer is entering into a contract and GCs C7.4 and C8.5 require providers to give customers clear information about whether a contract is subject to a commitment period. In addition the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) require the provision of key contract information in a durable medium at the point of sale for all contracts. Article 102 of the EECC also includes new requirements for the provision of contract information before a customer is bound by a contract. See Section 6 of the December 2019 consultation for our proposed approach to implementation of these rules.

⁴¹ This would be renumbered to GC C1.31 as a result of the amendments we proposed in the December Consultation.

Proposed changes to our guidance on annual best tariff notifications

- 3.34 To reflect our proposed changes to the scope of the GC, we are also proposing to make an amendment to our Guidance under General Condition C1 in relation to the timing of annual best tariff notifications.
- 3.35 Specifically, in the current paragraph 1.80(b) of our guidance,⁴² we set out our expectation that, for contracts entered into after 15 February 2020 (when our revised GCs came into force) annual best tariff notifications should be sent within the first 12 months of a contract, or where the contract is subject to a commitment period, then within 12 months of an end-of-contract notification having been sent. As we are proposing that the GC will only now apply to contracts that were previously subject to a commitment period, the first part of that provision will be redundant. We are therefore proposing to delete it.
- 3.36 This means the amended paragraph in the guidance would read as follows (with the sentence in bold deleted):⁴³

“1.80 ...

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 timing

- 3.37 We propose that the amendment to GC C1.16, and the associated guidance, discussed in this section should apply from 21 December 2020.

Legal tests

- 3.38 We consider that the changes we are proposing to make to GC C1.16 meet the tests for modifying conditions in section 47(2) of the Act. Our proposed change is:
- **objectively justifiable and proportionate**, as we are proposing to reduce the scope of regulation so that it goes no further than necessary to achieve the consumer protection benefits pursued by the relevant EECC requirement; for the reasons explained above, we consider the objectives of the EECC would still be effectively achieved in practice;
 - **not unduly discriminatory**, since the proposed changes to this condition would ensure that the same regulatory measures apply in respect of all providers of public electronic communications services; and

⁴² This paragraph was re-numbered to A7.118 as a result of the amendments we proposed in the December Consultation (Annex 7).

⁴³ The reference to Condition C1.19 in this text would be renumbered to Condition C1.34 as a result of the amendments we proposed in the December Consultation.

- **transparent**, as the reasons for the change that we are proposing to make to this condition are explained in this section and the effect of the proposed change would be clear to providers on the face of the revised condition.

Consultation questions

Question 1: Do you agree with our proposed changes to the GCs and our Guidance on General Condition C1 in relation to annual best tariff information?

4. Definitions for microenterprise, small enterprise and not for profit organisations

- 4.1 The EECC distinguishes between a number of different categories of customers, and it uses these to set out which customers benefit from the different end-user rights provisions.
- 4.2 It includes three categories of customer that we do not currently define in the existing GCs: microenterprise, small enterprise and not for profit organisations. Therefore, to implement the EECC, we proposed definitions for these in the December Consultation.
- 4.3 We received a number of responses raising concerns with our proposed approach. We have revisited these definitions in light of these responses, noting that the EECC is not definitive about how these businesses and organisations should be defined.
- 4.4 This chapter sets out the background and reasoning behind amendments that we are proposing to the definitions that we consulted on in December. Specifically, we are now proposing to:
- 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.

The EECC extends certain rights to microenterprises, small enterprises and not for profit organisations

- 4.5 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 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.
- 4.6 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*".⁴⁴

⁴⁴ EECC, Recital 259.

- 4.7 The same customer protections are extended to microenterprises, small enterprises and not for profit organisations. These protections are set out at Annex 6 and include:
- 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.

In the December Consultation, we proposed definitions for these categories of customer

- 4.8 The EECC does not set out definitions for microenterprises, small enterprises and not for profit organisations. Instead, it refers to an EU Recommendation⁴⁵ that provides guidance on how to define microenterprises and small enterprises, and this guidance formed the basis of our proposal for those two definitions in our December Consultation.

Microenterprises

- 4.9 The EU Recommendation sets out that microenterprises are those enterprises with a staff headcount of fewer than 10 individuals, and whose annual turnover and/or annual balance sheet total does not exceed 2 million Euros.⁴⁶ In light of this, we proposed adding the following definition to our GCs in our December Consultation:

'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 [£1.7m⁴⁷].

Small enterprises

- 4.10 The EU Recommendation sets out that small enterprises are those with a staff headcount of fewer than 50 individuals and whose annual turnover and/or annual balance sheet total does not exceed 10 million Euros.⁴⁸

⁴⁵ [Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises.](#)

⁴⁶ See Article 2(3) of the Annex to [Commission Recommendation 2003/361/EC.](#)

⁴⁷ 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.

⁴⁸ See Article 2(2) of the Annex to [Commission Recommendation 2003/361/EC.](#)

- 4.11 Therefore, in our December Consultation we proposed adding the following definition to our GCs:

‘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 [£8.8m⁴⁹], but who is not himself a Communications Provider.

Not for profit organisations

- 4.12 The EECC explains that: “Not-for-profit organisations are legal entities that do not earn a profit for their owners or members. Typically, not-for-profit organisations are charities or other types of public interest organisations,”⁵⁰ and refers to not for profit organisations as defined in national law.⁵¹

- 4.13 In our December Consultation, we proposed adding the following definition to our GCs:

‘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).*

Stakeholders raised concerns with these definitions

- 4.14 A number of providers and trade associations expressed concerns about the three proposed definitions. When doing so, some⁵² 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. These respondents considered that Ofcom should use this discretion to adopt definitions with more appropriate thresholds.
- 4.15 We consider below specific comments made on microenterprise and small enterprise customer definitions first, and then consider comments made on the not for profit customer definition.

⁴⁹ See approach noted in footnote 4 above.

⁵⁰ Recital 259, EECC.

⁵¹ EECC, recital 259.

⁵² Gamma, the Business Carrier Coalition (representing Verizon, AT&T, Orange business services, CenturyLink and Colt), FCS, ISPA, and UKCTA.

- 4.16 Separately, some respondents also argued that the end-user rights provisions should not apply to businesses at all. Our focus here is on the definitions of microenterprises, small enterprises and not for profit organisations, rather than the scope of our proposed changes to the GCs to implement the EECC provisions themselves. We will address comments about specific provisions in our Autumn EECC statement, however, we note that we do not have discretion over which types of customers the individual provisions apply to.

Microenterprise and small enterprise customer definitions

- 4.17 Respondents raised two main areas of concern with our proposed definitions of microenterprise and small enterprise customers. The first was that the thresholds in the small enterprise customer definition encompassed businesses that, in the respondents' view, did not need the additional protection of the relevant requirements of the EECC. The second area of concern related to practical difficulties that providers said they would face when trying to identify businesses that fell within the definitions.

Small enterprise customer definition captures larger small businesses that do not require the same level of protection as residential customers

- 4.18 A number of respondents argued that we had not justified why we had used the thresholds proposed in the small enterprise definition, and that our approach risked including businesses that did not need the same protection as residential customers. In particular:
- a) The FCS argued that Ofcom's proposed new business definitions would inappropriately increase the scope of regulation in a way that was not intended.
 - b) Gamma argued that the thresholds included in the small enterprise definition were inappropriate and risked encompassing businesses that were larger than those likely to require the same sort of protections as very small businesses or residential customers. While Gamma acknowledged that some businesses below a certain size do have less bargaining power, it argued that Ofcom had not properly established where an appropriate threshold should be in relation to headcount or turnover. It said that "in Gamma's view, and in light of its experience of the UK market, a threshold considerably lower than 50 would be appropriate." It also noted that in similar statutory contexts, the most significant distinction is made between those companies that have less than 10 employees and those that have more than 10 employees.
 - c) ITSPA argued that businesses with up to 50 employees have more sophisticated needs than residential customers and Ofcom's definition would be inappropriate, and not likely to result in positive outcomes.
 - d) UKCTA argued that it was wrong to assume that a business with 50 employees looked like a residential customer and that Ofcom should carry out a proper test of where bargaining power "tips" before setting the threshold.
- 4.19 While some respondents acknowledged that small enterprise customers could waive their rights to these protections if they wish to do so, Gamma and ITSPA were concerned that

the need to obtain a waiver would add complexities to the sales and marketing process.⁵³ We will address the points respondents made in relation to the ability for microenterprises and small enterprises to waive their rights to the end-user protections in our Autumn statement.

Practical difficulties with implementing the proposed definitions

- 4.20 A number of respondents⁵⁴ highlighted that providers would face practical difficulties in seeking to find out financial turnover and headcount information from customers, or potential customers, to identify which businesses met the criteria for the microenterprise and small enterprise customer definitions.
- 4.21 In particular, BT and Telefonica argued against the use of **financial** thresholds because:
- Financial performance data is not currently collected, and is likely to be difficult to collect because it is often not publicly available (especially for the microenterprise end of the market) and not all business customers will be willing to share this information with providers (as they may not understand the relevance or may be suspicious about the underlying motives). It may also vary significantly over time.
 - It was unnecessary to include a financial threshold in addition to a headcount threshold and would only complicate issues and add burdensome costs to providers.
- 4.22 Some concerns were also raised about establishing **headcount** within their customers' organisations. ISPA argued that employee numbers are often difficult to discern and change over time.
- 4.23 Some respondents⁵⁵ suggested that alternative mechanisms should be used instead of financial and headcount thresholds. These could include basing the definition around the contract type or number of connections.
- 4.24 The FCS, [3<] and ISPA also highlighted the potential for confusion that would result from adding new business customer definitions to the existing small business definition in the GCs.⁵⁶ ISPA explained that "by layering the 0-9, 10-49 employee categories on top of the existing 10 employee threshold in UK law, Ofcom will only increase this confusion and unnecessary burden."

⁵³ We understand that the concern is that while the ability of small enterprises to waive certain rights could give providers greater flexibility in how they serve such customers, there is the risk that, in practice, this flexibility is limited.

⁵⁴ BT, Hyperoptic, Tesco Mobile, [3<] and Telefonica.

⁵⁵ Telefonica, Tesco Mobile and UKCTA

⁵⁶ "'Domestic and Small Business Customer' and 'Domestic or Small Business Customers' mean, in relation to a Communications Provider, a Customer of that Provider who is neither:

- (a) himself a Communications Provider; nor
- (b) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise)."

We are proposing to revise the microenterprise and small enterprise customer definitions

- 4.25 We have considered the concerns raised by respondents, as well as available evidence on the position of small businesses. As a result, and for the reasons set out below, we are now proposing to:
- remove the financial' criterion from the proposed microenterprise and small enterprise customer definition, and use staff headcount as the sole threshold; and
 - use a single definition to encompass both microenterprise and small business customers and set a headcount threshold of 10 staff members.

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

- 4.26 We have noted respondents' comments on the particular practical difficulties associated with identifying customers' financial information, especially when they are already required to assess staff headcount.⁵⁷
- 4.27 The EU Recommendation makes it clear that the main criterion for setting the microenterprise and small enterprise customer definitions is staff headcount, rather than any financial criteria.⁵⁸ Therefore, in light of responses outlining the complexities of obtaining financial information and the additional burden this would entail, we consider that setting a staff headcount threshold alone would be an appropriate approach. We are therefore proposing to remove the financial threshold from the microenterprise and small enterprise definition.

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

- 4.28 We note that some respondents put forward alternative approaches to determining which business customers should be included within the definitions, such as by contract type or number of connections. We consider that the more established method of segmenting business customers by staff headcount is more appropriate and consistent with the existing Small Business definition used in the current General Conditions. However, where headcount information is not available, we consider that providers may use reasonable proxies, such as the number of connections. This possible approach was set out in the guidance we proposed on current GC C1 in our December Consultation.⁵⁹ Respondents may

⁵⁷ For example, to identify whether their customers are within the existing Small Business definition used in the current General Conditions, which is determined by whether they employ 10 staff or less.

⁵⁸ Specifically, Article 2 of [Commission Recommendation 2003/361/EC](#) states: "In implementing certain of their policies, [Member States] may also choose to apply only the criterion of number of employees, except in fields governed by the various rules on State aid".

⁵⁹ [Annex 7 of December 2019 Consultation: Proposed amendments to guidance on contract requirements](#) (A.7-A.9)

find this guidance of assistance in seeking to identify whether their business customers fall within the scope of regulation.

- 4.29 As set out above, some respondents raised concerns about the use of the “up to 49” staff headcount threshold for defining small enterprise customers, which was based on the threshold for a small enterprise as set out in the EU Recommendation.⁶⁰
- 4.30 We acknowledge that the EU Recommendation sets ceilings for staff headcount, rather than absolute thresholds that must be applied in all cases.⁶¹ Therefore, we consider there is scope to lower the headcount thresholds below those ceilings, if that would still meet the purpose of the EECC, which is to extend protections to business customers with a similar bargaining position to residential customers.⁶²
- 4.31 In light of respondents’ concerns, we have considered the available evidence on how similar the position of small businesses of different size categories is to that of residential customers. There is some evidence to suggest that businesses with under 10 employees are most likely to be in a similar position to individual residential customers.⁶³ This is for two main reasons.
- 4.32 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.⁶⁴ 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. Table 1 sets out some of the differences in the use of specialised communications services across businesses of different sizes.
- 4.33 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.

⁶⁰ In addition, this threshold would be consistent with the definition of a “small enterprise” or “small business” in other contexts in UK law, such as section 33 of the Small Business, Enterprise and Employment Act 2015, which sets out a statutory definition of “small business”, based on the approach in the EU Recommendation, and which may be used in secondary legislation made by UK Ministers, for example where smaller businesses are exempted from new regulatory obligations. It is also consistent with section 2 of the Enterprise Act 2016, which defines the scope of what is meant by a “small business” falling under the remit of the Small Business Commissioner.

⁶¹ Specifically, Article 2 of [Commission Recommendation 2003/361/EC](#) states: “The ceilings shown in Article 2 of the Annex are to be regarded as maximum values. Member States...may fix lower ceilings.”

⁶² Recital 259.

⁶³ This is based on Ofcom’s research on [SME experience of communications services](#), which was last carried out in 2016 and published in 2017.

⁶⁴ (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.

Table 1: Use of specialised communication services, by business size⁶⁵

Communication service taken	Number of employees		
	1-9	10-49	50 -249
ISDN 2/ 2e ⁶⁶	8%	35%	40%
ISDN 30 ⁶⁷	1%	24%	43%
Leased line / private circuit	2%	9%	22%
Dedicated internet access	4%	19%	44%

- 4.34 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.⁶⁸ 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. Indeed, smaller businesses (0-9) are more likely than larger ones (10-49) to disagree that they can negotiate effectively with their suppliers⁶⁹ and therefore arguably more likely to need additional customer protections.
- 4.35 We note that in the existing GCs there is already a definition of small businesses (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 Communications Act 2003,⁷⁰ 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 should enable providers to benefit from using 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.
- 4.36 On the basis of the research we are aware of, and the benefits that should be gained from using a threshold consistent with one already used in the existing GCs, and therefore

⁶⁵ The SME experience of communications services: research report January 2017 ([figure 27](#))

⁶⁶ ISDN2: A type digital telephone line service that supports telephony and switched data services. ISDN2 allows a business to handle two phone calls simultaneously.

⁶⁷ ISDN30: A type of digital telephone line service that provides up to 30 lines over a common digital bearer circuit. These lines provide digital voice telephony, data services and a wide range of ancillary services.

⁶⁸ The SME experience of communications services: research report January 2017 ([data tables](#))

⁶⁹ The SME experience of communications services: research report January 2017 ([table 265 – data tables](#)) 34% of SMEs (1-9) disagreed that they could negotiate effectively with suppliers, dropping down to 21% for (10-49s).

⁷⁰ 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).”

applied by providers, we consider that there may be a case for lowering the staff headcount threshold in the small enterprise definition down to 10 staff members.

4.37 However, we recognise 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.

4.38 We also recognise 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 have considered whether there is any evidence to indicate that a threshold of somewhere between 10 and 49 staff members may be appropriate. However, we do not currently have 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.

Options on how to define small enterprises

4.39 We are therefore consulting further on options and inviting respondents to share relevant evidence to inform our position before making a decision. The options we invite views on are as follows:

- **Option 1: Retain the headcount threshold proposed in our December Consultation (up to 49 staff members for small enterprises).** This option uses the ceiling headcount threshold set out in the EU Recommendation. However, on the basis of consultation responses and available evidence, it does not appear to align closely with the purpose of the EECC, which is to ensure that business customers who have a bargaining position similar to residential consumers are provided with the same consumer protections.
- **Option 2: 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 option is based on available evidence that businesses with less than 10 employees are most likely to be in a similar position to residential customers. It therefore seeks to align the definition more closely with the purpose of the EECC, to help ensure that customers receive protections that are relevant to them. By setting the threshold at 10 or fewer employees, we 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, under this option we would merge the small enterprise and microenterprise business definitions into a single consolidated definition, for simplicity.
- **Option 3: Adopt a headcount threshold for small enterprises that lies somewhere in between 10 and 49 staff members.** This option recognises that there may be some small businesses with between 10 and 49 staff members that are in a similar bargaining

position to residential customers. If we were to obtain evidence to support this, we could adopt a headcount threshold for small enterprises that lies between 10 and 49 staff members.

- 4.40 At present, and subject to responses to this consultation including any further evidence, we are minded to select option 2. We would do so on the basis of that option reflecting the best evidence we currently have available about those customers which are most likely to need the additional end-user rights protections.
- 4.41 If we did decide to adopt option 2, we would consider whether it might be better to replace the existing ‘small business’ definition, currently used in the GCs, with the consolidated microenterprise and small enterprise definition to ensure consistency and clarity throughout the GCs and to reduce complexity in terms of the number of different customer definitions which providers would have to take account of.

Revised proposed definitions for microenterprise and small enterprise customers

- 4.42 In light of our proposals above, we propose consolidating the definitions of Microenterprise Customer and Small Enterprise Customer used for the GCs such that the revised definition would be the following (we have highlighted changes from the Small Enterprise Customer definition we consulted on in the December Consultation in bold):

“**Microenterprise or 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~~ **no more than 10 individuals** work (whether as employees or volunteers or otherwise) but who is not himself a Communications Provider.”

Concerns with not for profit organisation definition

- 4.43 A number of organisations raised concerns about our proposed definition of not for profit organisations. Several of these⁷¹ noted that there was no restriction on the size of organisation included within the definition proposed by Ofcom. As a result, they were concerned that central and local government as well as large, well-resourced charities would be within scope.
- 4.44 They argued that such organisations have sophisticated communications needs and are capable of exercising significant bargaining power, and so do not need the same protections as residential customers. For example, Gamma noted that this would include organisations such as the Crown Commercial Service (CCS)⁷² and that it did not appear to make sense they would enjoy the same level of protection as a sole trader.

⁷¹ Including BT, ISPA, ITSPA, Telefonica, the Business Carrier Coalition (representing Verizon, AT&T, Orange business services, CenturyLink and Colt).

⁷² Gamma stated that the CCS oversees an annual spend of £13bn across more than 1,200 contractual relationships and has 738 full time staff.

- 4.45 UKCTA argued that introducing the proposed definition could amount to a barrier to entry for some communications providers who may no longer wish to offer services to not for profit organisations. They suggested that it might become too complicated to comply with the additional identifying steps and resulting complexity of the additional GCs for a subset of customers. This would ultimately reduce choice and competition for such customers.
- 4.46 Some respondents argued that the ability of customers to waive some of these rights would not reduce the harm from having such a broad definition for not for profit organisations. As noted above, we will address respondents' comments on this waiver in our statement.
- 4.47 Overall, respondents argued that Ofcom should amend the proposed definition in the GCs to explicitly exclude large not for profit organisations.
- 4.48 In addition, [8] also argued that all Government bodies should be excluded on the grounds that they "do not exhibit similar characteristics to consumers and do not, therefore, require the same level of protection".

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

- 4.49 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 a not for profit organisation but instead makes reference to definitions in national law, so Ofcom has some discretion over the definition used.
- 4.50 We have noted stakeholders' concerns about the lack of a size threshold in our proposed definition of not for profit organisations. We acknowledge that larger not for profit organisations are likely to have different communications needs to residential customers and may be in a stronger bargaining position, and therefore less in need of additional protections compared to residential customers or smaller not for profit organisations.
- 4.51 We therefore consider it appropriate to include a staff headcount threshold in the definition of not for profit organisations. We propose to align this with the headcount threshold that we adopt for small enterprises. We consider that 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.⁷³
- 4.52 The precise staff headcount level would therefore (and subject to any specific consultation responses on the appropriate staff headcount threshold for not for profit organisations) depend on the outcome of our consultation on the options for setting the threshold for a small enterprise customer (as set out above). However, given our preferred option for

⁷³ While the Jigsaw Research 2017 cited at Table [1] above also included certain not for profit organisations, the sample sizes for not for profit organisations are too small to enable us to seek to make comparisons by organisation size.

revising the small enterprise definition, we are currently minded to set a threshold of 10 staff members.

- 4.53 Including a headcount threshold should address a number of concerns raised about the nature of the not for profit organisations that would otherwise be included within the scope of certain end user rights provisions. In particular, larger organisations such as central and local government would be excluded from the provisions that apply to not for profit customers.

Revised proposed definition of a not for profit organisation

- 4.54 We propose adding the following to the definition of not for profit customer to the GCs (we have highlighted changes from the proposed definition we consulted on in the December Consultation in bold):

"'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, **which is an organisation for which no more than 10 individuals work (whether as employees or volunteers or otherwise)** 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)."

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

- 4.55 We recognise the challenges that providers can face in seeking to identify which customers would be microenterprise, small business or small enterprise customers and we consulted on proposed new guidance on this on current GC C1 in our December Consultation.⁷⁴ We anticipate that similar challenges may arise if a headcount threshold is also applied to not for profit organisations. In light of this, as well as respondents' comments on the practical challenges of identifying headcount numbers for other business customers, we propose to amend the guidance set out in our December Consultation, as set out below (proposed amendments are highlighted in bold text).

*"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.*

⁷⁴ [Annex 7 of December 2019 Consultation: Proposed amendments to guidance on contract requirements](#) (A.7-A.9).

We will take a pragmatic and flexible approach to compliance monitoring and enforcement. In assessing compliance we will consider whether providers have taken reasonable steps to identify the different categories of customers to which the requirements apply. For example, factors they may use (but not be 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.”

4.56 This guidance may also be relevant for determining whether a customer would be a microenterprise or small enterprise, small business or not for profit customer in relation to other GCs where the same definition is used.

Legal tests

4.57 We consider that the changes we are proposing to make to the definitions outlined in this section meet the test for setting or modifying conditions in section 47(2) of the Act. Our proposed changes are:

- **objectively justifiable** for the reasons set out above, in particular, the proposed changes are required to implement the relevant requirements of the EECC in order to achieve the consumer benefits pursued by it and, having taken account of consultation responses, we are proposing revised new definitions to better align with the rationale behind the relevant provisions in the EECC and to ensure consistency and clarity of approach for stakeholders;
- **not unduly discriminatory** since the proposed changes to these definitions would apply in respect of all providers of relevant electronic communications services, as required by the EECC;
- **proportionate** as our provisional view is that our proposed changes are limited to no more than is necessary to ensure compliance with the requirements in the EECC; and
- **transparent** as the reasons for the changes that we are proposing to make to these definitions are explained in this section and the effects of the proposed changes would be clear to communication providers on the face of the revised definitions themselves.

Consultation questions

Question 2: Do you agree with our proposal to remove financial thresholds from the microenterprise and small enterprise customer definition?

Question 3: Do you agree with our proposal to use a single definition to encompass microenterprise and small business customers and set a headcount threshold of 10 staff members? Please provide evidence to support your view.

Question 4: Do you agree with our revised proposed definition of not for profit customer?

Question 5: Do you agree that the guidance we have proposed to help providers identify employee headcount should also apply to not for profit organisations?

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 11 September 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 ECCenduserights@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:
- 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
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.6 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.
- A1.7 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.
- A1.8 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.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact John O'Keefe by email to john.okeefe@ofcom.org.uk.

Confidentiality

- A1.10 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.

- A1.11 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.
- A1.12 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.
- A1.13 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

- A1.14 Following this consultation period, Ofcom plans to publish a statement in Autumn 2020.
- A1.15 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

- A2.1 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 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.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 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

Please tick below what part of your response you consider is confidential, giving your reasons why

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 3: Annual best tariff notifications

Question 1: Do you agree with our proposed changes to the GCs and our Guidance on General Condition C1 in relation to annual best tariff information?

Section 4: Definitions for microenterprise, small enterprise and not for profit organisations

Question 2: Do you agree with our proposal to remove financial thresholds from microenterprise and small enterprise customer definitions?

Question 3: Do you agree with our proposal to revise the headcount threshold for small enterprises down to 10 staff members and to merge this definition with that for microenterprises? Please provide evidence to support your view.

Question 4: Do you agree with our revised proposed definition of not for profit customer?

Question 5: Do you agree that the guidance we have proposed to help providers identify employee headcount should also apply to not for profit organisations?

A5. Notification proposing to modify existing General Conditions and set new General Conditions

Notification of Ofcom's proposals to revoke and modify existing General Conditions under sections 48(1) and 48A(3) of the Communications Act 2003

1. Ofcom, in accordance with sections 48(1) and 48A(3) of the Act, hereby makes the following proposals for:
 - (a) modifying the current General Condition C1; and
 - (b) adding new definitions to those set out in the Definitions section of the General Conditions⁷⁵.
2. The proposed modifications to General Condition C1 and new definitions referred to in paragraph 1 are set out in the Schedule to this Notification.
3. Ofcom is making the proposals referred to in paragraph 1 above in light of its statutory duties and in order to implement the new European Electronic Communications Code. The effect of, and Ofcom's specific reasons for making, each proposal are set out in the accompanying consultation document.
4. Ofcom considers that these proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.
5. Ofcom considers that these proposals are not of EU significance pursuant to section 150A(2) of the Act.
6. In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act. In particular, the proposals will further the interests of consumers in relevant markets, as they form part of a package of measures to implement relevant requirements of the European Electronic Communications Code in a proportionate manner.
7. Representations may be made to Ofcom about the proposals set out in this Notification by 11 September 2020.

⁷⁵ On 17 December 2019, Ofcom published a notification under sections 48(1) and 48A(3) of the Act, proposing to revoke and modify the General Conditions, and to set new General Conditions (see Annex 15 to Ofcom, *Fair treatment and easier switching for broadband and mobile customers Proposals to implement the new European Electronic Communications Code*, 17 December 2019). Ofcom proposed to insert new definitions of "Microenterprise Customer", "Not for Profit Customer" and "Small Enterprise Customer". Ofcom is now proposing new definitions of these terms, in place of the previous proposed definitions.

8. If implemented, the proposed modifications and new definitions shall enter into force on the date of publication of the final Notification or such later date as specified therein.
9. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with section 48C(1) of the Act.
10. In this Notification:
 - (a) “**the Act**” means the Communications Act 2003;
 - (b) “**the European Electronic Communications Code**” means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;
 - (c) “**General Conditions of Entitlement**” or “**General Conditions**” means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
 - (d) “**Ofcom**” means the Office of Communications.
11. 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.
12. For the purposes 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.
13. The Schedules to this Notification shall form part of this Notification.

Signed by



Selina Chadha

Director of Consumer Policy

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

24 July 2020

SCHEDULE TO ANNEX 5

1. In Condition C1 of the General Conditions, Ofcom is proposing to make the following modifications, highlighted in yellow, to Condition C1.16(b):⁷⁶
 - 4.1 “(b) the contract ~~is not~~ was previously subject to a Fixed Commitment Period which has now expired.”
2. Ofcom is proposing to insert the following definitions into the General Conditions:

“‘Microenterprise or 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 no more than 10 individuals work (whether as employees or volunteers or otherwise), 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, which is an organisation for which no more than 10 individuals work (whether as employees or volunteers or otherwise) 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).”

⁷⁶ On 17 December 2019, Ofcom published a notification under sections 48(1) and 48A(3) of the Act, proposing to revoke and modify the General Conditions, and to set new General Conditions (see Annex 15 to Ofcom, *Fair treatment and easier switching for broadband and mobile customers Proposals to implement the new European Electronic Communications Code*, 17 December 2019). Ofcom has not yet reached a final decision on those proposals. If they are confirmed, Condition C1.16 would be renumbered to Condition C1.30 and the reference to “Fixed Commitment Period” in paragraph (b) would be amended to “Commitment Period”.

A6. Provisions that apply to microenterprise, small enterprise, and not for profit customers

- A6.1 The tables set out in this annex are intended to provide clarity on the end user provisions which will apply to microenterprise customers, small enterprise customers and not for profit organisations.
- A6.2 Certain provisions of the EECC apply only in respect of residential customers, as well as microenterprise customers, small enterprise customers and not for profit organisations, unless they have explicitly agreed to waive their rights. These are summarised at Table A1.

Table A1: Provisions that apply to residential customers as well as microenterprise customers, small enterprise customers and not for profit organisations (unless they waive those rights)

Article	Area	Summary
102(1),(2) & (3) and Annex VIII and 107(1) & (4)	Provision of information to customers	<ul style="list-style-type: none"> • Provision of certain contract information to customers on a durable medium before they sign a contract. • Provision of a contract summary to customers before they are bound by the contract. • The requirement relating a contract summary also applies to bundles containing at least broadband and/or voice services
102(5) & (2)	Managing use of, and spend on, communications services that are billed on the basis of time or volume	<ul style="list-style-type: none"> • Where services are billed by time or volume, customers must be able to monitor and control their usage and be notified when any allowances are fully used up.
105(1) & (2) and 107(1) & (4)	Contract duration and termination	<ul style="list-style-type: none"> • Conditions and procedures for contract termination should not act as a disincentive to switch. • Commitment periods in contracts must not exceed 24 months. • These requirements also apply to bundles containing at least broadband and/or voice services.
105(4) & (6) and 107(1) & (4)	Right to terminate a contract and compensation payable on	<ul style="list-style-type: none"> • Where providers make changes to the contractual conditions, they need to give customers the right to exit, unless the changes are exclusively to the benefit of the end-user, are of a purely

termination in respect of machine to machine transmission services administrative nature and have no negative effect or are directly imposed by law.

107(3) and (4)	Purchase of additional services or terminal equipment	<ul style="list-style-type: none"> Providers must not extend the duration of a contract when a customer subsequently purchases an additional service or terminal equipment, unless the provider obtains express consent for the extension.
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A6.3 In addition, there are a number of provisions that apply to all end-users, (including larger business customers), but which are then extended to all elements of bundles bought by residential customers, as well as microenterprise customers, small enterprise customers and not for profit organisations, unless they explicitly agree to waive their rights. These are set out in Table A2.

Table A2: Provisions that apply to all customers, and are extended to bundles when bought by residential customers as well as microenterprise customers, small enterprise customers and not for profit organisations (unless they waive those rights)

Articles	Area	Summary
103 (1), 107(1) and 107(4)	Publication of information	<ul style="list-style-type: none"> Requires providers to publish certain information on their website, in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities.
105(3), 107(1) and (4)	Automatic prolongations, end of contract information and best tariff advice	<ul style="list-style-type: none"> When customers with contracts that can be automatically prolonged reach the end of their commitment period, they have the right to exit with one month’s notice and without incurring any fees other than those for services used up to the point at which their contract is terminated. Before a contract is automatically prolonged, providers need to send end of contract notifications. Providers also need to give customers best tariff advice at least annually.
105(4) & (6) and 107(1) and (4)	Right to terminate a contract and compensation payable	<ul style="list-style-type: none"> Where providers make changes to the contractual conditions, they need to give customers the right to exit the whole bundle, unless the changes are exclusively to the benefit of the end-user, is of a purely administrative nature and has no negative effect or is directly imposed by law.

		<ul style="list-style-type: none">• Where a customer has the right to exit, they should not have to pay any compensation except for retained subsidised terminal equipment.
106(1), 107(1) and (4)	Switching and porting	<ul style="list-style-type: none">• Customers switching between different broadband services must be given adequate information.• Providers must ensure continuity of service, unless this is not technically feasible.• The gaining provider must ensure that the activation of the Internet Access Service (IAS) occurs within the shortest possible time on the date and within the timeframe agreed with the customer, and the losing provider must continue to provide its IAS on the same terms until the gaining provider activates its IAS.• Loss of service must not exceed one day.• The switching process must be efficient and simple for the customer.