

Implementing the European Electronic Communications Code (EECC) – Briefing Paper

Why this impacts Comms Council UK Members

The EECC was an EU Directive which had a transposition deadline before the end of the transition period in the UK’s withdrawal from the EU. The UK was therefore required to procure the outcomes in the EECC as a matter of its international law obligations.

Some elements of the EECC afforded National Regulatory Authorities some discretion on how they were transposed. DCMS consulted in 2019 and subsequently Ofcom have carried out a series of consultations to incorporate these elements into our regulations by way of (largely) amending the General Conditions.

There were some delays to the consultations and statements, in part due to the Coronavirus pandemic, and therefore the implementation lead times vary depending on the complexity and dependency of each aspect. The General Conditions will be updated at each stage to reflect the changes and we have summarised the elements covered at each stage below.

It’s all in the detail

The specific requirements will vary depending on the service you provide and the type of customer you serve, what follows is a generalised summary and you must make yourself aware of the full detail for any GCs that may impact you or your customers. All of the related consultations and a copy of the updated General Conditions are on Ofcom’s website: <https://www.ofcom.org.uk/consultations-and-statements/category-1/proposals-to-implement-new-eecc>

Comms Council UK will be running a series of webinars this year to help dig deeper into the impact these changes will have for various types of members and help members prepare at each stage that these new GCs come into force.

Deadlines for implementation at a glance

17th December 2021

Changes	General Condition
Drafting to incorporate new definitions to replace PATS and new consumer definitions throughout the document.	Various
Availability of services and access to emergency services extended to include Internet Access Services (IAS) and some conditions now include not-for-profits. Caller location conditions specific to Number Based Interpersonal Communications Services (NBICS).	A3
Contracts Changes: Updates are applicable to providers serving Residential, Micro & Small Business and Not-for-profit customers and will apply to any contract entered into prior to December 2021, except for the commitment period, which applies only to contracts agreed after 17 th December 2021. Key points are:	C1

<ul style="list-style-type: none"> - Contracts conditions must not act as a disincentive to switch. - Commitment periods to be no longer than 24 months (unless a waiver is obtained from a business customer). - Restriction on extending contract terms when adding bundled services. - Expanding on existing end-of-contract notifications to take account of bundles. - Expanding on existing annual best tariff notifications to take account of bundles. - Mobile devices may not be locked to a particular network. <p>See Ofcom's guidance to comply with GC C1: https://www.ofcom.org.uk/data/assets/pdf_file/0027/209538/annex-10-gc-contract-requirements.pdf</p>	
<p>Information publication: This condition requires certain information to be published for transparency and to help customers compare providers. The list of information required has been updated and must also be published for all services and equipment sold as part of a bundle that includes IAS or NBICS. Key things to note:</p> <ul style="list-style-type: none"> - Information published on websites must be clear, comprehensive and machine-readable and in a format that is accessible to disabled customers. - Providers will be required to share the information with Ofcom prior to publication, on request. - Providers will be required to make available, at no cost, certain information for comparison tools. <p>Check the updated list of information required: https://www.ofcom.org.uk/data/assets/pdf_file/0016/209500/annex-3-revised-gc-eecc-17-dec-21.pdf</p>	C2
<p>Vulnerable consumers and end-users with disabilities: This general condition is updated to reflect that information only has to be provided in an alternative format 'on request' but the requirement has been extended to include all communications relating to the service except for marketing material and to include all disabilities (this was previously limited to the blind or visually impaired).</p>	C5

17th June 2022

Changes	General Condition
<p>Contract Information & Contract Summary: PECS providing service to Consumers, Micro & Small Enterprise and Not-for-profit customers must provide contract information as set out in the Annex to C1, on a durable medium. They must also provide a Contract Summary and both documents form part of the contract between the two parties. These documents must be made available, on request and with no charge, in a suitable format for end-users with disabilities.</p> <p><i>For specific Ofcom guidance relating to contract information and summary:</i> https://www.ofcom.org.uk/data/assets/pdf_file/0018/205416/ecc-annex-7-guidance.pdf</p> <p>Contract Modifications: Providers must give at least one months' notice of any contract changes unless it is exclusively to the benefit of the customer, is purely administrative in nature with no negative impact or is required by law. This notice must be clear and provided on durable medium.</p> <p>Right to exit: Upon notification of a contract modification the customer is to be informed of their right to terminate the contract – and any associated bundle contract - at no additional cost (other than service charges to the date of termination) if the proposed terms are not acceptable to them. The contract should terminate when the changes take effect and if that is not possible the original terms should be maintained until termination.</p> <p>Price variation clauses are permitted where there is reasonable justification for them (e.g., to deal with international rate variations) but the terms must be prominent and transparent and cannot be said they were not agreed to by the customer (i.e. must meet the specific tests at §8.20 of the Statement implementing the EECC)</p> <p><i>See Ofcom's guidance to comply with GC C1 from this date:</i> https://www.ofcom.org.uk/data/assets/pdf_file/0026/209537/annex-11-revised-guidance-gc-contract-requirements.pdf</p>	<p>C1 C5</p>

19th December 2022

Changes	General Condition
<p>Condition B3, previously 'Number Portability', now changes to 'Obligations to enable number portability' and some conditions have been removed and replaced in C7 (Switching and number porting) for consistency.</p> <p>There is also a new condition in B3 that requires communication providers, whose ECN is used by either the donor or recipient provider, to ensure there is no loss of service that will delay portability.</p>	<p>B3</p>

<p>Switching and number porting: This general condition now incorporates some of the conditions previously in B3. Rules apply to all switching customers except where we state it applies to residential only. Key points are:</p> <ul style="list-style-type: none"> - Where technically possible, migrations should take place on a date specified by the customer. Otherwise, it should be done as soon as possible and no later than one working day after the day all validation is completed, any network connection is ready and any porting numbers are ready to activate. - In the case of mobile, the migration date must be no later than one working day after SIM activation or submission of a PAC/STAC to the gaining provider. - New conditions require providers to maintain simple and efficient processes and co-operate in good faith and "take all necessary steps within their control" to complete the migration process in accordance with the GCs and industry agreed processes. It specifically requires that providers do not delay or abuse the process. - There should be continuity of service during the migration, and where that is not technically feasible any loss of service must not exceed one working day. - The process must be gaining provider led. - Number portability must be provided on reasonable terms and conditions to any switching customer who requests it. - Number portability must be provided for a minimum of one month after the date service is terminated by the customer, unless expressly otherwise agreed on termination of service. If terminated by the service provider this does not apply (note, provider still can't refuse to port due to debt). - No direct charges may be applied to the customer for number portability. - Compensation is payable to switching customers when providers have failed to comply with the obligations as well as for any missed appointments. For residential customers the payment must be made within 30 days. - Splitting of number blocks for portability must be allowed where technically possible. <p>The <u>losing provider</u> must:</p> <ul style="list-style-type: none"> • Where technically feasible, continue to provide service until the migration is complete. • Automatically terminate contracts on the day the migration completes. • In the event of failure during the porting process, reactivate service until it can be successfully completed. 	<p>C7 <i>Please note some of GC C7 is potentially subject to change as a result of a live Switching consultation</i></p>
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- Refund, on request, any remaining credit on prepaid services (minus fees allowed for in contract).
- In the case of migrating fewer than 25 mobiles, or any service for a consumer, the customer will only be required to pay charges which are incurred as a result of the service being transferred up to and including the date of migration and must not include any notice period. Early termination charges agreed in the contract will still be due.
- Ensure the customer has been provided with details of the services being transferred, the planned migration date, the anticipated impact of the migration and any charges that will be due.

The gaining provider must take reasonable steps to ensure that:

- It does not transfer a service without express consent and the customer is authorised to migrate the service.
- Customers are adequately informed before and during the migration process.
- They provide guidance to the customer about the right to compensation and that this is publicised and readily available on the website. Information must be accurate, clear and on a durable medium (specifically for residential consumers).
- They provide information to the customer about what services will migrate (including any CLI details if applicable) and where they can find guidance. Information must be accurate, clear and on a durable medium (specifically for residential consumers).
- The gaining provider must keep records for no less than 12 months, including a record of consent, customer details and all available records regarding the sale of services.

There is also a new condition in C7.17 that requires communication providers, whose ECN is used by either the donor or recipient provider, to ensure there is no loss of service that will delay switching.

Ofcom's guidance on compensation can be seen here:

https://www.ofcom.org.uk/data/assets/pdf_file/0017/205415/ecc-annex-8-new-guidance.pdf

Definitions

No more ‘PATS’ – from December 2021

The EECC uses the definition ‘Voice Communications Service’ which has the same meaning as our ‘Publicly Available Telephone Service’ so for consistency any reference to the latter will be replaced. The General Conditions will be updated to reflect this in December 2021.

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

There is also a new definition ‘Number-Based Interpersonal Communications’ which is in some cases a more appropriate term, so this has also replaced ‘Publicly Available Telephone Service’ in some GCs. Specifically this references services that require telephone numbers used in the GCs relating to Directory Information and CLI facilities.

“Number-based Interpersonal Communications Service’ means an Interpersonal Communications Service made available to the public which: (a) connects with publicly assigned numbering resources, namely, a number or numbers in a national or international numbering plan; or (b) enables communication with a number or numbers in a national or international numbering plan”

And finally, again for consistency, the term ‘Internet Access Services’ will be used instead of ‘Publicly Available Internet Access Services’ as the definition is the same.

Types of consumers

New definitions apply throughout the GCs for consistency and to ensure protections are afforded to the right types of consumer while giving larger organisations more flexibility to negotiate their own terms. These new definitions replace ‘Small Business Customer’ and ‘Domestic and Small Business Customer’.

Microenterprise or Small Enterprise	An organisation with 10 or less staff or volunteers and not a communication provider themselves
Not-for-profit	An organisation with 10 staff or less, excluding volunteers
Consumer	A person who uses the service outside of their business or trade
End-User	A person (other than a comms provider themselves) that is a customer of the service

Others

The definition of ‘Porting Process’ will be updated to include fixed as well as mobile services. This is important to comply with the upcoming changes to switching in December 2022, which Ofcom is currently consulting on.

The definition of 'Network Termination Point' will be updated to swap the word 'Subscriber' with 'End-user' for consistency with the EECC and because it makes the definition apply more broadly rather than just to those with a contractual relationship with the provider.

The definition of 'Bundle' will be added to clarify that it means "a contract, or two or more closely related or linked contracts" which relate to the provision of at least one IAS or NBICS.