



Commission for
Communications Regulation

Consultation: Contract Change Notifications

Consultation

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1 Introduction

- 1 In this consultation document the Commission for Communications Regulation (“the Commission”) seeks the views of stakeholders on proposed specifications in relation to the format of the notifications given to subscribers by electronic communications service (“ECS”) providers when informing them of proposed changes to their contracts.
- 2 Under Regulation 14 of the European Communities (Electronic Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”) an ECS provider must notify its subscribers, one month in advance of proposed modifications to their subscribers’ contracts. They must at the same time, notify their subscribers of their right to withdraw without penalty from their contract if they do not accept the proposed modification(s).
- 3 These are key consumer rights. The Commission considers it essential that consumers are made fully aware of them and that no impediments are placed in the way of a consumer exercising them.
- 4 The Commission is aware that there is considerable variation in the approaches (and media) being used by ECS providers when giving these notifications to their subscribers. The Commission is also aware of cases where they have not been properly given, or where they have not been given at all. The Commission is firmly committed to ensuring that best practice in this matter is adhered to and that ECS providers comply fully with their legal obligations at all times. In this regard, the Commission is given the power to specify the format of these statutory notifications.
- 5 This consultation considers the current formats and media being used to give the notifications required by statute and proposes minimum specifications for them. The Commission believes that its proposals will create uniformity, predictability and will improve industry practice, thereby strengthening the protection that the Regulations are intended to guarantee for consumers.
- 6 The Commission also believes that the proposed specifications will be of benefit to industry as they should ensure a consistent approach and avoid a situation where some ECS providers may gain a commercial advantage.
- 7 The Commission looks forward to receiving responses from all stakeholders in relation to the proposals in this consultation. The Commission will review and fully take into account all responses it receives and will issue a final decision shortly afterwards.

2 Executive Summary

- 8 Under Regulation 14 (4) of the Regulations, ECS providers¹ must notify their subscribers², one month in advance, of modifications they propose to make to their subscribers' contracts. They must at the same time, notify their subscribers of their right to withdraw without penalty from their contract if they do not accept the proposed modification(s).
- 9 Regulation 14 (5) of the Regulations allows the Commission to specify the format of these notifications.
- 10 The Commission has a statutory duty to protect the interests of consumers in their dealings with ECS providers and for this reason it is consulting on minimum specifications for these notifications.
- 11 In 2010, the Commission was concerned that the methods used by many undertakings to give these notifications did not properly safeguard the rights of consumers. The Commission had also received a number of queries from consumers and stakeholders on the matter. Some stakeholders were not aware of modifications made to their contracts and their right to statutory notifications in this regard.
- 12 The Commission considered that (in accordance with the legislation) each subscriber had to be *individually* notified of proposed contractual modifications and their right to withdraw without penalty from their contracts, if they did not accede to them. The Commission considered it necessary to remind ECS providers of their obligations in this respect. Accordingly, in October 2010, the Commission wrote to ECS providers to remind them that they must notify their subscribers individually (using an appropriate means e.g. e-mail, letter, SMS, phone call) of proposed contract changes and the associated rights of consumers. The Commission made it clear that the practice of giving these statutory notifications by publishing them in the national press and/or the ECS provider's website alone, does not comply with the Regulations. The requirement to notify subscribers individually is not being consulted on in this consultation document as it is clear that ECS providers must do so.
- 13 This consultation is about the minimum specifications for the format of the statutory notifications to be given by ECS providers under Regulation 14(4) of the Regulations.

¹ Also referred to in the Regulations as "undertakings."

² The terms "subscriber" and "consumer" are used interchangeably in this consultation document.

- 14 There are currently a variety of approaches and a variety of media being used by ECS providers to give these notifications to subscribers. ECS providers may determine for themselves *the medium* by which they contact their subscribers, (SMS, e-mail etc) as long as the subscriber is notified one month in advance of the proposed change, and of their right to exit the contract.
- 15 In most cases, ECS providers have stated in the terms and conditions of their subscriber contracts the medium(s) that they will use to give these notifications.
- 16 Notwithstanding this, the Commission is of the view, that these notifications must be presented to subscribers clearly and transparently and that full details of the proposed contract modification(s) must be given to subscribers.
- 17 The Commission proposes that the minimum format specifications for notifications under Regulation 14 (4) of the Regulations must include the following:
 - i. An appropriate heading to describe the subject matter of the notification.
 - ii. The effective date of the proposed contractual modification
 - iii. Full details of the proposed contract modification.
 - iv. A clear statement of the subscriber's right to withdraw from their contract.
- 18 The Commission is aware that the Office of the Data Protection Commissioner (the "ODPC") has concerns in relation to direct marketing messages that form part of the contract notification being sent to consumers. (This is generally where contract notifications are been sent by SMS). This consultation also proposes that this practice should cease.

3 Individual contract notifications

3.1 General

- 19 In this section, the Commission proposes minimum format specifications, (including font sizes) for use in written communications, the use of standard titles, the exclusion of direct marketing, and the elements, in accordance with Regulation 14 (4) of the Regulations that must be contained in the notification.
- 20 While in principle any medium may be used to notify subscribers of changes to their contract, (so as long subscribers receive the notification without action on their part and are individually notified) the format of notifications is often influenced by the medium used by ECS providers.
- 21 For example, in the case of SMS notifications, the Commission has observed that the details provided to the subscriber have in some cases tended to be minimal, and in some cases insufficient, having regard to the requirements of Regulation 14 (4) of the Regulations.
- 22 All notifications, irrespective of the means of delivery to subscribers, must be transparent, clear, and legible (or audible depending on the delivery medium). The notifications must in all cases be easy for subscribers to understand. The Commission believes that it is self evident why this would be desirable and that this proposition is not one that should be controversial.
- 23 However, the Commission has observed that some ECS providers are adopting the following practices for these notifications:
- Not detailing the proposed contractual modification (for example, specifying what the new terms and conditions are, but not the old ones, thus making it difficult for the consumer to understand the difference between the old and the new).
 - Including selective details, but not all of the changes.
 - Indicating that there are contractual changes and pointing the subscriber to another location (website) for full details. In many cases, the hyperlink or URL³ provided is a home page link, not a link to the exact page detailing the proposed changes.
 - Including the notification at the bottom or in the middle of another communication (e-mail, bill etc) with a very small font size.

³ Uniform Resource Locator. This is used to provide an internet address.

- In the case of SMS, sending a communication which has (or appears to have) marketing content, with details of the proposed contract changes as secondary item. In this respect, the Commission is aware that the Office of the Data Protection Commissioner (ODPC) has concerns as set out in section 3.4.

24 The Commission believes that the practices detailed above do not ensure compliance with the Regulations. Such practices have, or are likely to have, the effect of obscuring the details of proposed contractual modifications, thereby substantially depriving consumers of the rights and protections to be afforded to them by the Regulations.

25 In order to remedy the types of problems identified above, and in order to protect consumers, the Commission proposes to require that ECS providers adhere to minimum specifications for the format of notifications under Regulation 14 (4) of the Regulations. The Commission considers that its proposals will create uniformity, predictability, and will improve industry practice, thereby strengthening the protection that the Regulations are intended to guarantee for consumers. These minimum specifications are described further below.

26 While the Commission does not intend to propose the medium by which the consumer is contacted (e-mail, SMS, etc), it will intervene as necessary, if it observes that the method of delivery does not give reasonable assurances that the consumer will receive the notification.

3.2 Proposed Minimum Format Specification

27 The Commission is of the view that due to the range of notification methods employed by service providers when informing subscribers of contract changes, that there is a need to set out a *minimum information* requirement and a *full and further information* requirement.

28 For service providers, this information requirement means they can still employ whichever medium they wish to notify subscribers of contract amendments.

29 By allowing for a minimum amount of information in a notification, this will allow consumers to immediately gauge the impact of any change on them, and to determine if they require further information. The requirement to provide full and further information means consumers can also easily access the entire details of any proposed amendments, should they so wish.

Minimum Information

30 The minimum information relates to a proposed contract modification (a change). Proposed contract changes include, but are not limited to, price changes, adjustments to the minutes in a price plan, changes to broadband speed, download limit modifications, special promotions, and wording changes to contract terms.

31 So that consumers are immediately aware of a proposed change, the Commission proposes that the individual notification to the consumer must have the following title (in capital letters) at its beginning:

“NOTICE: CONTRACT CHANGE”

32 The Commission proposes that the notification must, in addition to the title, and regardless of the notification medium, at a minimum contain the following information in this order:

- A summary of all proposed changes.
- Contact/location information where further and full information can be accessed.
- A clear and unambiguous statement that the subscriber has a right to withdraw from their contract, without any penalty.
- The effective date of the proposed contract change.

33 The Commission appreciates that, depending on the changes being made, it may not always be possible to give subscribers complete information about the proposed change, particularly where space is limited (for example in SMS notifications). Therefore, the Commission proposes that at a minimum, an intelligible summary of the proposed changes must be included in the notification.

34 The summary of the changes in the notification must clearly specify the proposed change to the consumer’s contract, such that the consumer can immediately understand how the change will impact them. For example, the summary may notify consumers of a price *increase* to local calls, but it would not be sufficient to notify of a “price *change*.” In this example, the notification would lack transparency.

35 The date the proposed changes come into effect must be clearly set out in the notification.

Full Information

36 The ECS provider must inform the consumer where full details of proposed changes can be accessed. This additional information must be transparently provided and it must allow consumers to easily interpret the impact of the change on them. The Commission proposes that this further information must include:

- Details of the amended terms and conditions, together with the old terms and conditions (so that the subscriber can see the difference between the old and the new).
- Details of how consumers can notify their ECS provider of their wish to withdraw from their contract, if they wish to do so.
- The timeframe within which the subscriber can withdraw without penalty from their contract (which cannot be less than one month from the date the notification is properly sent to the subscriber).

37 Details of amended terms and conditions must be unambiguous, accurate, and presented clearly to ensure that the consumer can easily understand what changes are being made.

38 The ECS provider must provide sufficient information so that a consumer can fully understand the impact of the proposed change on them, and decide whether or not they wish to withdraw from their contract.

Q. 1 Do you agree or disagree that the notification must state “NOTICE: CONTRACT CHANGE” (in capital letters) at the beginning? Please provide detailed reasons and supporting evidence for your answer.

Q. 2 Do you agree or disagree with the proposed minimum information for inclusion in contract change notifications? Please provide detailed reasons and supporting evidence for your answer.

Q. 3 Do you agree or disagree with the requirement to provide full information relating to the proposed contract change? Please provide detailed reasons and supporting evidence for your answer.

3.3 Notification Medium

- 39 ECS providers determine the medium they use to contact their subscribers. This may for example be by SMS, e-mail, telephone call. The Commission does not propose to specify the exact means by which the consumer is contacted. However, the ECS provider must ensure that the consumer will actually receive the notification at least a month in advance of proposed contract changes becoming effective. The Commission however, believes it should further specify the format which is required in each type of notification.
- 40 While this consultation does not propose to mandate that ECS providers store or record notifications that are given, it is a matter for ECS providers to ensure that on a case by case basis, they can demonstrate that they comply with the Regulations (and indeed, the draft direction in this consultation, if it is adopted as final). However, ECS providers should at the same time note that this consultation proposes that where notifications are given via telephone call, the details of the call must be noted on the customer's account.

3.3.1 Notification by SMS

- 41 Some ECS providers notify their subscribers of proposed changes to their contracts via SMS. The Commission appreciates that it may not be possible to set out the full details of any contract change in a SMS, because SMS(s) are generally intended to be quite short.
- 42 The Commission proposes that the required minimum standard information must be presented in the main text (160 characters) of the SMS(s). If a hyperlink is provided in the main text for additional information, this link must bring the consumer to a page on the ECS provider's website which contains full information of the contract change (as set out above). This hyperlink must not direct the consumer to the ECS provider's home page or another page where the consumer is required to navigate further to locate the notification.

Q. 4 Do you agree or disagree with the proposed standards in relation to a contract notification by SMS? Please provide detailed reasons and supporting evidence for your answer.

3.3.2 Print notifications

- 43 Some ECS providers notify subscribers of proposed changes to their contract in a written format other than SMS. These are often contained within other communications; for example, ECS providers may notify their subscribers on their telephone bill, or by bill inserts or separately.

- 44 The Commission proposes that the minimum information, as described above, when presented in print format, must appear on the front page (or in the case of e-mails, at the start of) of the communication.
- 45 The Commission notes that some ECS providers include contract notifications at the bottom of another communication with a very small font size. Consumers often neglect to read this small print and are therefore, unaware of impending changes to their contracts. Such practices have, or are likely to have, the effect of obscuring the details of proposed contractual modifications, thereby substantially depriving consumers of the rights and protections to be afforded to them by the Regulations.
- 46 The Commission therefore proposes that where ECS providers notify their subscribers of impending changes in print format that the title: “**NOTICE: CONTRACT CHANGE**” (as previously referred to above) must be a minimum of 11 point font so as to ensure that it is legible. The title must be in a different font to the remainder of the contract change details, which must be written in a minimum of 9 point font.

Q. 5 Do you agree or disagree with the proposed standards in relation to print contract notifications? Please provide detailed reasons and supporting evidence for your answer

3.3.3 Non-written Notification

- 47 ECS providers may choose to notify subscribers of contract changes by telephone call. Notification of contract changes via telephone call may be the most appropriate way to inform visually impaired consumers. As with all notifications, the proposed minimum specified information described above must be provided to the consumer.
- 48 The ECS provider must ensure the subscriber responsible for the contract is contacted. The information must be clearly provided to the consumer. The ECS provider must record on the consumers account, the date, time, agent and details of the call.
- 49 For the purposes of clarity, the consumer should also be made aware that full, detailed information is available and the means by which this can be accessed, as set out above.

Q. 6 Do you agree or disagree with the proposal in relation to a verbal contact change notifications? Please provide detailed reasons and supporting evidence.

3.4 Direct marketing

- 50 The ODPC monitors compliance in relation to the legislation pertaining to direct marketing. The ODPC is concerned that, what it considers to be direct marketing messages, are part of the contract change notification. The legal requirements in relation to direct marketing by all electronic means are very clear and are set out in the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011.
- 51 The Commission is concerned that some ECS providers may be seeking to use the opportunity of contract change notification messages to direct market consumers who may not wish to receive direct marketing. Those ECS providers have advised the ODPC (in response to its investigations of complaints from recipient subscribers) that they were required to send the message concerned to comply with Regulation 14 of the Universal Service and Users' Rights Regulations.
- 52 In relation to information relating to modification to contractual conditions proposed by an undertaking, the Commission proposes that where such information is conveyed over an electronic communications network (by electronic means), consumers shall only receive the required standard information in relation to the contract change as set out in Regulations 14(4)(a) and 14(4)(b) of the Regulations.
- 53 The Commission believes that in accordance with the proposal in paragraph 31, consumers will be fully aware that the message is a regulatory message, because it will have the following title (in capital letters) at its beginning:

“NOTICE: CONTRACT CHANGE”

Q. 7 Do you agree or disagree that the regulatory message, delivered by electronic means, must exclude marketing material? Please provide detailed reasons and supporting evidence for your answer.

4 Draft Regulatory Impact Assessment (“RIA”)

4.1 Role of the RIA

54 A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should indicate whether or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the probable impact of regulatory options on different stakeholders.

55 The Commission’s approach to RIA is set out in the Guidelines published in August 2007, in Commission Document No. 07/56 & 07/56a. In conducting this RIA, the Commission takes account of the RIA Guidelines,⁴ adopted under the Government’s *Better Regulation* programme.

56 Section 13(1) of the Communications Regulation Act 2002, as amended, requires The Commission to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings the Commission must conduct a RIA in accordance with European and International best practice, and otherwise in accordance with measures that may be adopted under the Government’s *Better Regulation* programme. In conducting the RIA, the Commission also has regard to the fact that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements can be quite different to regulation that arises by the enactment of primary or secondary legislation.

57 In conducting RIA, the Commission takes into account the six principles of *Better Regulation*. These are:

1. Necessity.
2. Effectiveness.
3. Proportionality.
4. Transparency.
5. Accountability.

⁴ http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

6. Consistency.

58 To ensure that a RIA is proportionate and does not become overly burdensome, a common sense approach is taken. As decisions are likely to vary in terms of their impact, and if after initial investigation a decision appears to have relatively low impact, the Commission would expect to carry out a less exhaustive RIA. In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate, or, in exceptional cases, where robust, detailed, and independently verifiable data is available. This approach will be adopted when necessary.

59 The requirement to provide notifications pursuant to Regulation 14 (4) of the Regulations is already an obligation imposed by law.

4.2 Policy Issue and Objectives

60 The Commission considers it essential that consumers are made fully aware of their rights in relation to changes to their contracts and that no impediments whatsoever are placed in the way of a consumer exercising their rights.

61 The Commission is aware of the variation in approaches (and media) used by ECS providers when giving the statutory contract notifications to their subscribers. The Commission is also aware of cases where notifications have not been given.

62 The Commission's objective is to ensure that *all* notifications are transparent, clear and legible or audible (depending on the delivery medium), and that notifications are easy for subscribers to understand. The Commission also wishes to ensure that contract notifications are in compliance with the Regulations.

4.3 Assessment of the regulatory options

63 The Commission is of the initial view that there are two options:

- **Option 1:** the Commission does not intervene, but instead allows ECS providers to issue statutory notifications, without regulatory oversight or intervention in respect of the format of such notifications.
- **Option 2:** the Commission issues a direction to all undertakings, requiring minimum standards in relation to the format of notifications required by Regulation 14 (4) of the Regulations.

Option 1

64 The Commission is of the preliminary view that if it does not intervene to specify the format of notifications of proposed contractual changes, there is a risk of detriment to both consumers and industry.

Impact on consumers

65 There is a clear risk that ECS providers will continue to use a variety of inconsistent approaches to the format of notifications required by Regulation 14 (4) of the Regulations. Such a variety of inconsistent approaches will likely mean that the clarity and the transparency of these notifications will deteriorate further. This has, and is likely to continue to have, the effect of obscuring the vital information about proposed contractual modifications, thereby substantially depriving consumers of the rights and protections to be afforded to them by the Regulations. The likely negative impacts on consumers include the following:

- Many consumers are likely to be increasingly unaware of their statutory rights.
- Many consumers who might not wish to accept a proposed contractual modification may not be fully aware, or at all aware, of the proposed contractual modification.
- Many consumers who might not wish to accept a proposed contractual modification may, through a lack of awareness of a proposed contractual modification, fail to exercise their right not to accept a proposed contractual modification and to withdraw from their contract (as of course they are legally entitled to do).
- The modifications might include a price increase that many consumers would not have accepted, or a change to their service offerings (in terms of type or quality) that they would not have accepted, had they instead received full and transparent information. As a consequence, many consumers may then be in a position where they have become unwilling parties to a contract with their ECS provider, because of unaccepted modifications to their terms and conditions.

Impact on industry

66 Without regulatory intervention by the Commission, there is a risk that ECS providers will continue to adopt diverging and inconsistent practices. ECS providers who are currently adopting best practice may be disadvantaged by other ECS providers who continue to issue regulatory notifications that are not transparent and do not adequately provide the required information to subscribers.

Impact on competition

67 There is a risk that where consumers do not receive full information in respect of proposed changes they are unable to accurately assess the impact of changes on them and decide whether or not they should exercise their right to exit their contract. This will affect competition as consumers are not fully informed and may not switch due to lack of transparent information regarding changes to their contract.

Option 2

68 The Commission is of the preliminary view that its proposed direction is both necessary and proportionate and that it will benefit consumers and industry. In this regard, it should be noted that ECS providers are *already obliged by law* (Regulation 14 (4) of the Regulations) to give notifications of proposed contractual modifications to subscribers.

Impact on consumers

69 By further specifying minimum standards and information in relation to the format of notifications of proposed contractual modifications, consumers will be better informed of and in a better position to avail of the rights and protections afforded to them by the Regulations.

70 The Commission considers that its proposals for minimum specifications for the statutory notifications will create uniformity, predictability, and will improve industry practice, thereby strengthening the protection that the Regulations are intended to guarantee for consumers.

71 The likely beneficial impacts on consumers include the following:

- Consumers will be more aware of their statutory rights.
- Consumers who might not wish to accept a proposed contractual modification will be more likely to be aware of the proposed contractual modification.

- Consumers who might not wish to accept a proposed contractual modification will be more likely to exercise their right not to accept a proposed contractual modification and to withdraw from their contract, as they are legally entitled to do.
- As a consequence, consumers are less likely to be unwilling parties to a contract with their ECS provider, because of modifications to their terms and conditions and the service(s) they receive, that they would not have accepted, had they otherwise received full and transparent information.
- Where consumers are fully informed of changes to their contract they can make informed decisions as to whether they should avail of their statutory right to withdraw from their contract.

Impact on industry

- 72 ECS providers are already obliged by law (Regulation 14 (4) of the Regulations) to give notifications of proposed contractual modifications to their subscribers. Therefore, the incremental impact and the costs on ECS providers of the specifications proposed by the Commission are not likely to be very significant. A relatively small incremental impact and costs (if any) on ECS providers is in the Commission's view, greatly outweighed by the corresponding benefits to consumers (as identified above).
- 73 The Commission's proposed direction will ensure a consistent approach throughout industry. This should help to address a situation where ECS providers who *do not* adopt best practice gain a commercial advantage, to the detriment of consumers, over those who *do* adopt best practice.
- 74 By adhering to a specified regulatory format for notifications provided in accordance with Regulation 14(4) of the Regulations, ECS providers will be better assured that they are complying with their obligations under the Regulations and that they are meeting the needs of their subscribers.
- 75 This will in turn mean that the Commission should be able to expend less effort assessing compliance with Regulation 14 (4) and Regulation 14 (6) of the Regulations. In addition, it is possible that the reputation of the ECS provider with its subscriber base may well be enhanced.

- 76 Notifications under Regulation 14 (4) of the Regulations differ (sometimes markedly) from one ECS provider to the other. A specified regulatory format adhered to by all ECS providers, will introduce predictability and uniformity. This, in the Commission's view, can be done with relatively minimal additional effort by ECS providers. Indeed, the Commission's proposals should reduce additional effort by in effect, guiding and assisting ECS providers with the preparation of these statutory notifications. The proposals will not impact on any other type of communications issued by ECS providers.
- 77 The Commission understands that the notifications issued by providers of ECS, under Regulation 14(4), are designed, worded, and issued on a case by case basis and tend to vary depending on the proposed change. Contract notifications are by nature once-off communications and therefore, the Commission does not believe any adjustments to font sizes or text layout will result in any system change requirements for the operators. The Commission therefore believes the format set out in this consultation will not result in any additional costs on operators.
- 78 The Commission is of the preliminary view that its proposed specifications can be adopted by providers when a notification is being prepared, in the normal course of business, and do not require any preparation in addition to what is already necessary to meet the requirements of Regulation 14(4) of the Regulations. In fact it is the Commission's view that proposed specifications will assist providers of ECS in preparing their notifications as they provide a standard approach. The Commission is of the view that the proposed specifications will be of benefit to industry as they will ensure a consistent approach, avoiding a situation where ECS providers who do not adopt best practice gain a commercial advantage over those who do adopt best practice.

Impact on Competition

- 79 Notification of changes to prices, terms and conditions allows consumers to compare the offers available from all operators in order to decide which operator provides them with the best value for money. Advance notification may lead to increased competition as consumers can easily compare offers. Ensuring consumers are aware of their statutory entitlement to withdraw from their contract, when changes are made to it, will further increase competition.
- 80 The Commission therefore concludes that the option which best achieves the objectives as set out above is **Option 2**. There are clear benefits to issuing a direction to undertakings in relation to contract change notifications, and the benefits of such will exceed the costs of implementing the required format, if any.

Q. 8 Do you agree or disagree with the Commissions assessment of the impact of the proposed direction? Please set out reasons for your answer.

Q. 9 Do you agree or disagree that the proposals set out above can be implemented with immediate effect? Please set out reasons for your answer.

5 Draft Direction

1 Statutory Powers

- 1 This direction is hereby issued by the Commission for Communications Regulation (“the Commission”):
 - i. Pursuant to Regulations 14 (5) of the European Communities (Electronic Communications Networks and Services) (Universal Service and users’ Rights) Regulations 2011 (“the Regulations”).
 - ii. Pursuant to Regulation 30 of the Regulations.
 - iii. Having regard to the submissions received and set out in Commission Document No.●.
 - iv. Having regard of the following analysis and reasoning set out in Commission Document No.●.
 - v. Having regard to the Commission’s functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act 2002, as amended by the Communications Regulation (Amendment) Act 2007.
 - vi. Having, where relevant, complied with Policy Directions made by the Minister for Communications, Energy, and Natural Resources.
- 2 Terms used in this direction shall have the same meaning as when they are used in the Regulations and the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011, unless the context otherwise admits or requires.

2 Scope and Application

- 1 This direction applies to all undertakings that provide subscribers and other end-users connection to a public communications network or publicly available electronic communications services (“undertakings”).

3 Notice of Proposed Modification of Contractual Conditions pursuant to Regulation 14 (4) of the Regulations

Minimum Information

- 1 All undertakings shall ensure that notifications to subscribers of proposed modifications to contractual conditions pursuant to Regulation 14 (4) of the Regulations, contain at a minimum, the following information (“the minimum information”) in this order:
 - i. The heading: “NOTICE: CONTRACT CHANGE” (to be in uppercase).
 - ii. Summary details of the proposed modifications to contractual conditions.
 - iii. Details of how full information of the proposed modifications to contractual conditions can be obtained.
 - iv. A clear and unambiguous statement of the consumer’s right to withdraw from their contract.
 - v. The effective date of the proposed modifications to contractual conditions which shall be not less than one month before the effective date of the proposed modifications to contractual conditions.
- 2 Hyperlinks or website addresses to online full information about the proposed modifications to contractual conditions shall link directly to the full information.
- 3 The minimum information shall always be presented transparently, clearly, prominently, and in an easily legible font style and size.
- 4 The minimum information shall always be presented in isolation from other information ordinarily provided to the subscriber, so as to give it prominence and so as to avoid any confusion on the subscriber’s part.

Full Information

- 1 Information about the proposed modifications to contractual conditions shall include the following information (“full information”):
 - i. Details of the proposed new terms and conditions, together with the terms and conditions that are proposed to be modified.

- ii. A clear statement that the subscriber can exercise their statutory right to withdraw from their contract with their service provider should they so wish and a clear explanation of how they can do so without delay, through a simple procedure.
 - iii. The date by which the subscriber can withdraw, without penalty, from their contract.
- 2 The full information shall always be unambiguous, accurate and presented clearly to ensure the customer can easily understand what changes are being made.

SMS Notifications

- 1 Where undertakings notify their subscribers of proposed modifications to contractual conditions via short messaging service ("SMS"), the minimum information shall be presented in the main text (160 characters) of the SMS.

Print Notifications

- 1 Where undertakings notify their subscribers of proposed modifications to contractual conditions in print, the minimum information shall be written in a font size of at least 9 point.
- 2 The heading "NOTICE: CONTRACT CHANGE" shall be in a different font to the other text and shall be written in a font size of at least 11 point.

Notifications by telephone

- 1 Where undertakings notify their subscribers of proposed modifications to contractual conditions by telephone, the date, time, agent and details of the call must be recorded on the customer's account

Direct Marketing

- 1 Undertakings shall not include any direct marketing messages in a notification of a proposed contract modification, which is delivered by electronic means.

4 Statutory Powers Not Affected

- 1 Nothing in this direction shall operate to limit the Commission in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the effective date of this direction) from time to time as the occasion may require.

5 Maintenance of obligations

- 1 If any section, clause or provision or portion thereof contained in this direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this direction and shall not in any way affect the validity or enforcement of this direction.

6 Effective Date

- 1 This direction shall be effective from the date of its publication.
- 2 This direction shall remain in force from the effective date until further notice by the Commission.

Q. 10 Do you have any comments on the substance or the drafting of the draft direction? If necessary, please provide a marked up version of the draft direction, indicating what changes you believe are appropriate and why.

6 Submitting comments

- 80 The consultation period will run from 1 August 2012 to 12 September 2012. Responses must be submitted in written form. If responses are submitted electronically, they must also be unprotected so as to facilitate online publication.
- 81 It is sometimes necessary for respondents to provide confidential information in their submissions. Confidential information must be clearly identified as such. The Commission will publish all of the responses it receives to this consultation, subject to its guidelines on the treatment of confidential information (see ComReg Document No. 05/24 at: <http://www.comreg.ie/fileupload/publications/ComReg0524.pdf>).

Questions

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