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Communications Regulation

Response to consultation and decision : Contract Change Notifications

Response to Consultation and Decision

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 E-mail info@comreg.ie Web www.comreg.ie

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1 Introduction

- 1 The Commission for Communications Regulation (“ComReg”) issued a public consultation on 1 August 2012 (ComReg document 12/85)¹ (“the consultation”) in relation to proposed specifications regarding the format of notifications given to subscribers by electronic communications service (“ECS”)² providers when informing them of proposed changes to their contracts.
- 2 ComReg is aware that there is considerable variation in the approaches (and media) being used by ECS providers when giving these notifications to their subscribers. ComReg is also aware of cases where they have not been properly given, or where they have not been given at all, and ComReg has taken appropriate enforcement action. However, in some cases, ComReg’s concerns relate to the presentation of the specific details of the notification. ComReg 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.
- 3 The consultation considered the current formats and media being used to give the notifications required by statute and proposes minimum specifications for them. ComReg believes that its decision will create uniformity, predictability and will improve industry practice, thereby strengthening the protection that the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011³ (“the Regulations”) are intended to guarantee for subscribers⁴.
- 4 ComReg also believes that the 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 and cause consumer detriment.
- 5 ComReg received eight (8) responses to the consultation and has reviewed and fully taken into account all responses. ComReg would like to thank all respondents for their submissions.

¹ http://www.comreg.ie/publications/consultation_contract_change_notifications.583.104175.p.html

² Also referred to in the Regulations as “undertakings.” Undertakings are defined in Regulation 2 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011, S.I. 333 of 2011, Undertakings are defined as a person engaged or intending to engage in the provision of Electronic Communications Networks or Services or associated facilities.

³ European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011- S.I. No. 337 of 2011,

⁴ “subscriber” means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services.

2 Executive Summary

- 6 Under Regulation 14(4) of the Regulations, ECS providers must notify their subscribers, one month in advance, of modifications they propose to make to the conditions of their subscribers contracts. In accordance with Regulation 14(6), ECS providers must, at the same time, notify their subscribers of the subscribers right to withdraw without penalty from their contract if they do not accept the proposed modification(s)⁵
- 7 These are key consumer rights. ComReg considers it essential that subscribers are made fully aware of them and that no impediments are placed in the way of subscribers exercising them.
- 8 Regulation 14(5) of the Regulations allows ComReg to specify the format of these notifications.
- 9 The Commission has a statutory duty to protect the interests of consumers and other end-users in their dealings with ECS providers and for this reason it is specifying minimum specifications for these notifications.
- 10 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, print, 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 without penalty.
- 11 Notwithstanding this, ComReg is of the view, that these notifications must be presented to subscribers clearly, unambiguously and transparently and that full details of the proposed contract modification(s) must be given to subscribers.
- 12 ComReg is aware that the Office of the Data Protection Commissioner (the "ODPC") has concerns where direct marketing messages form part of the contract notification being sent to consumers, in particular where contract notifications are being sent by SMS. In this regard, ComReg has decided that ECS providers are entitled to send direct marketing messages/information in accordance with relevant Data Protection legislation, that are separate to, but at the same time as the statutory notification.

⁵ Regulation 14(6) of the Universal Service Regulations - 2011

3 General

- 13 A number of respondents submitted general queries in relation to contract notifications that do not form part of the consultation. ComReg has reviewed the specific queries and has addressed them in this section. These queries relate to the medium of the contract change notification, the scope of contract change notifications and the use by ComReg of certain terminology within the document.
- 14 While, in principle, any medium may be used to notify subscribers of changes to their contract, (so long as 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.
- 15 For example, in the case of SMS notifications, ComReg 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.
- 16 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. ComReg believes that it is self evident why this would be desirable.
- 17 However, ComReg 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 actual changes been made.
 - Including selective details and not all of the relevant proposed changes.
 - Indicating that there are contractual changes and pointing the subscriber to another location (website) for full details. In many cases, the hyperlink or URL⁶ provided is a home page link, not a link to the exact page detailing the proposed changes, making it difficult for the subscriber to find.
 - Including the notification at the bottom or in the middle of another communication (e-mail, bill etc) with a very small font size.

⁶ Uniform Resource Locator. This is used to provide an internet address.

- In the case of SMS⁷, sending a communication which has (or appears to have) marketing content, with details of the proposed contract changes as a secondary item. In this respect, ComReg is aware that the ODPC has concerns.

18 ComReg 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 and other end-users of the rights and protections to be afforded to them by the Regulations. In this respect, in order to ensure that subscribers rights are upheld in a consistent manner by ECS providers, ComReg is of the view that it is appropriate to specify the format of notifications as it is permitted to do in accordance with the Regulations. This will remove any doubt from ECS providers as to what is required and ensure consistent implementation.

19 It should be noted that in this decision, ComReg does not specify the medium by which the subscriber is to be contacted (e-mail, print SMS, etc), however it will intervene as necessary, if it observes that the method of delivery does not give reasonable assurances that the subscriber will receive the notification. In this regard, ComReg notes that where ECS providers notify consumers and other end-users using on-line customer account systems alone, the customer may not access that account system one month prior to the proposed change or indeed before the proposed change and, therefore, it is ComReg's view that the subscriber may not have been duly notified.

Respondents' views

20 BT⁸ states in its response that ComReg's consultation in relation to the format of contract notifications appears aimed at protecting the consumer, however, "*the interchangeable use of the terms "consumer", "subscriber" and "end-user" within the consultation widens the scope of the consultation on notification format to potentially include changes to business contracts, including multi-million Euro business contracts*". BT also states that in relation to business contracts that either party may request a change to this type of contract and the requested change would be negotiated rather than just notified and enforced.

⁷ Short Message Service

⁸ BT Communications Ireland Limited

- 21 Telefónica raises concerns in relation to the scope of a contract change, *“the scope of what is considered a modification of a contractual condition requires clarification as this has significant regulatory impact. For example, if an operator was required to permit exit from a contract due to a wording change, (which as noted may be outside an operators control), this would undermine the ability of an operator to compete in the market and will restrict consumer choice. With regard to the requirement to notify customers of modifications to contract conditions that are to their benefit or have no impact whatsoever the full cost burden on industry should be considered. There is a significant cost burden on industry to implement notifications and deal with inevitable customer enquiries that arise. In addition a competitive market and the need to meet customer demand for (subsidised) smart technologies dictate that costs to acquire and retain customers are greatly increased. If exit rights apply on such a broad interpretation then it is essential that consequential administrative and commercial costs arising are considered as part of this assessment.”*
- 22 ALTO⁹ and Magnet also raise issues in relation to the scope of the contract modifications. *“ALTO recommends that ComReg clearly defines what it means by contract change notification and proposes the following as a definition “contract modification” means a change to a consumer’s general terms and conditions but does not include an enhancement(s) to a consumer’s service which is/are for the benefit of the customer and does not result in any additional cost or costs for the consumer.”*
- 23 Sky¹⁰ state *“If the Commission considers that communications providers and consumers do not understand their rights and obligations as described above, we consider that the Commission should issue sector specific guidance to highlight the framework of regulation around contract change notifications and the Commission’s view as to best practice. If the Commission receives notification that communications providers are not complying with the Commission’s guidance, then the Commission should take appropriate enforcement action, if required.”*
- 24 TIF¹¹ requests that ComReg provides clarity on the use of the term “Subscriber”.

ComReg’s position

⁹ Alternative operators in the communications market

¹⁰ British Sky Broadcasting Ltd

¹¹ Telecommunications and internet federation

- 25 ComReg notes that the Regulations require that if a consumer or other end-users¹², which includes a business, has a contract with an ECS provider as provided for by Regulation 14(1), and the ECS provider wishes to modify the contractual conditions, the ECS provider is required to notify the subscriber (consumer or business) as per Regulation 14(4).
- 26 In the case of business customers¹³, ComReg notes that it is not specifying the medium of the notification that must be used and, therefore, the ECS provider is free to contact the subscriber by voice call, in writing or through a meeting, for example, and detail the changes and the subscriber's right to exit if they do not agree with the changes proposed by the ECS provider. In summary, if an ECS provider provides a contract to a consumer or end-user as detailed in Regulation 14(1) then the undertaking must notify the subscriber of the proposed contract change as per Regulation 14(4).
- 27 Regulation 14(4) of the Regulations requires that ECS providers;
- “shall, not less than one month prior to the date of implementation of any modification to the contractual conditions proposed by the undertaking, notify its subscribers to that service of (a) the proposed modification in the conditions of the contract for that service, and (b) their right to withdraw without penalty from such contract if they do not accept the modification.”*
- 28 In relation to the meaning of contractual conditions and the scope of proposed changes encompassed by the Regulations, ComReg notes that the Regulations use the terms “contract” and “contractual conditions”. The consultation did not seek to interpret this and ComReg's decision is aligned with the terms as used in Regulation 14(4) of the Regulations. In this regard, ComReg also notes that the Regulations are silent in respect of the type or significance of the change proposed.
- 29 In summary, ComReg's decision does not impact the scope of Regulation 14.
- 30 In relation to the costs of notifying subscribers, ComReg notes that ECS providers are already required under Regulation 14(4) to notify subscribers irrespective of this decision¹⁴.

¹² “end user” means a user not providing public communications networks or publicly available electronic communications services.

¹³ referred to as “end-users” in the Regulation 14(1) of the Regulations and ‘subscribers’ in Regulation 14(4) of the Regulations

¹⁴ Please see further discussion on this point in the RIA.

- 31 In relation to costs to ECS providers regarding subsidised smart technologies (for example mobile handsets) in the case of the subscriber exiting from the contract, ComReg notes that Regulation 14(2) (e), states that contracts shall specify, among other items, “*any charges due on termination of the contract including any cost recovery for terminal equipment*”.
- 32 ComReg is of the view that if a subscriber exercises their right to withdraw from their contract under Regulation 14(4), before the end of the prescribed minimum period, appropriate cost recovery with respect to the terminal equipment (for example a mobile handset), which must be specified in the contract, is not considered by ComReg to be a penalty.
- 33 ComReg has previously taken enforcement action, as appropriate, in respect of the issuing of notifications (or lack thereof). However, absent specifications in relation to the statutory notifications, ComReg is of the view that enforcement actions, in relation to the particulars of the statutory notification, may not be appropriate or effective so as to ensure the specific rights of subscribers.
- 34 In respect of the comment regarding best practice guidelines, ComReg is of the view that if ECS providers were to adhere to guidance provided to industry by ComReg, regarding the specification of statutory notifications, that the positive impact(s) on stakeholders would be the same as having mandatory specifications. However, unlike mandatory specifications, if ECS providers do not adhere to such guidance, there would be no way for ComReg to effectively enforce breaches of such guidelines. Therefore, ComReg is of the view, that it is more beneficial for all stakeholders including, industry and subscribers, to have a consistent and transparent approach, which this decision will ensure.

3.1 Format Specification

- 35 ComReg is of the view that due to the range of notification methods employed by ECS 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 if required.
- 36 For ECS providers, the information requirements mean they can still employ whichever medium they wish to notify subscribers of contract amendments.

37 By allowing for a minimum amount of information in a notification, this will allow subscribers 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 if required means that subscribers can also easily access the entire details of any proposed amendments, should they so wish.

Minimum Information

38 The minimum information requirement 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 conditions. In this respect, ComReg notes that Regulation 14(2) provides the minimum details that a contract must specify and ComReg notes that ECS providers generally specify these and further details in their “*terms and conditions*”.

39 To ensure that subscribers are immediately aware of a proposed change, ComReg proposed that the individual notification to the subscriber must have the following title (in capital letters) at its beginning:

“NOTICE: CONTRACT CHANGE”

40 ComReg asked the following question in the consultation.

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.

Respondents’ views

41 H3GI¹⁵ agrees that the notification could state the “Notice: Contract Change”, and Telefónica “agrees *in principle that it is appropriate to differentiate a notification to the customer by means of a concise heading.*”

42 However, several respondents claim that this approach could confuse/mislead customers¹⁶, TIF states that “*the word contract is often perceived to relate to a minimum contract term while mobile prepay consumers often have a limited understanding of the contractual aspect of prepay service*”.

¹⁵ Hutchison 3G Ireland Limited

¹⁶ ALTO,eircom,Magnet,TIF

- 43 Sky *“disagree because existing regulation is sufficient”*. *“Communications providers are already under a statutory duty to notify consumers of contract change notifications in a way that does not mislead, whether by omission or otherwise”*.
- 44 Another matter raised by several respondents is that mandating a specific heading would prevent a more precise description of the contract change as space for example; in an SMS notification is limited to 160 characters.
- 45 BT *“consider that negotiated business contracts cannot be unilaterally modified as implicit in the notification process proposed by ComReg. I.e. negotiated business contracts don’t allow unilateral changes and any changes have to be negotiated and formally agreed in writing. We would therefore suggest that for these types of contract either party can request a change by the other party but they cannot impose it. We therefore consider these types of contract where a change is requested are outside the scope of the notification formats being proposed.”*

ComReg’s position

- 46 Having carefully considered the responses, in relation to the space limitation issues for SMS claimed by some respondents, ComReg has decided that the word “Notice” can be omitted from the notification, therefore, the notification shall state “CONTRACT CHANGE”.
- 47 In accordance with Regulation 14(1) of the Regulations, ComReg notes that pre-pay subscribers do in fact have “contracts” as specified by ECS providers and that the “penalty” referred to in Relation 14(4) may relate to aspects other than those related to the minimum term. ComReg is of the view that the Regulations require that ECS providers inform all subscribers, irrespective of their minimum term or any other factor, of the proposed change and their right to withdraw if they do not accept the modifications proposed.
- 48 ComReg is also of the view, in the case of notification by SMS, that in order to ‘notify’ the subscriber, two (or more) linked SMS(s) can be sent to the subscriber consecutively if required by the ECS provider (as is commonly the practice in respect of other types of notifications sent by SMS to subscribers by ECS providers).
- 49 ComReg is of the view that having the words “CONTRACT CHANGE” at the start of a Regulatory message, sent to customers from their ECS provider, (regarding a change to their contract), is informative and not misleading.

50 In relation to business contracts that are negotiated, ComReg is of the view that it is unlikely that the ECS provider will notify certain business subscribers, for example, by SMS, if the contract needs to be changed through negotiation and agreement by both parties. In these cases, ComReg is of the view that the subscriber can be informed of the proposed contract change by another medium.

Minimum information

51 ComReg also proposed that the minimum information notification must, in addition to the title, 'CONTRACT CHANGE', 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; and
- The effective date of the proposed contract change.

52 ComReg appreciates that, depending on the changes being made and the medium being used, 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, ComReg proposed that, at a minimum, an intelligible summary of the proposed changes must be included in the notification.

53 The summary of the changes in the notification must clearly specify the proposed change to the subscriber's contractual conditions, such that the consumer can immediately understand how the change will impact them. For example, the summary may notify subscribers 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.

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

55 ComReg asked the following question in the consultation.

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.

Respondents' views

- 56 H3GI agrees that minimum information is required.
- 57 ALTO and Magnet state that the provision of minimum information may be challenging in some cases and that it may not always be possible to meet this requirement. Operators should be free to direct customers to websites which can provide an intelligible summary and full information.
- 58 TIF and Eircom state that the minimum information is excessive given the space limitations of SMS.
- 59 Eircom claims that *“a requirement to include the right to withdraw without penalty in the case of SMS communication due to space limitations would be to the exclusion of potentially material detail about the change.”*
- 60 ALTO and Magnet agree that the timeframe to withdraw should always be stated.
- 61 Telefónica *“agree the effective date of the change should be included in the SMS summary provided to the customer.”*
- 62 TIF states that *“in light of the fact that the notification may be subject to space limitations, it would be disproportionate to mandate the inclusion of advice regarding the right to withdraw in the initial notification. This would further limit the scope to include material detail about the change while creating an unduly negative perception of the change.”*
- 63 *“Sky disagree with the proposed minimum information requirement because it is disproportionate and unnecessary in light of existing regulation.”* Sky is also of the view that Regulation 14(5) permits ComReg to specify the format of a notification but not the content.
- 64 Telefónica state that in reference to *“Paragraph 40 to demonstrate compliance with the Regulations on a case-by-case basis refers to general compliance with whether notifications were generally issued where the requirement arises and not to providing technical evidence of the sending or receipt by each individual customer. If same were to require the latter, this would be entirely impractical and require further disproportionate technical investment and development. Our view is that retention of the basic message sent, together with a list of the numbers to whom such message had been sent (or e-mail addresses, postal addresses as applicable) should be sufficient. This would then be held for a period of six (6) months, as we believe this period to be proportionate and reasonable having regard to our general data protection and retention obligations. We would appreciate your confirmation on this point prior to any final decision being made.”*

ComReg's position

65 ComReg has carefully considered the views of all respondents.

66 As stated above, Regulation 14(4) of the Regulations requires that ECS providers;

“shall, not less than one month prior to the date of implementation of any modification to the contractual conditions proposed by the undertaking, notify its subscribers to that service of (a) the proposed modification in the conditions of the contract for that service, and (b) their right to withdraw without penalty from such contract if they do not accept the modification.”

67 Therefore, ComReg considers that aside from the heading “CONTRACT CHANGE”, the minimum information detailed in the consultation is already required to be provided by Regulation 14(4) and this information must include the subscriber's right to withdraw irrespective of the medium used by the ECS provider.

68 ComReg disagrees that it cannot specify the requirements as proposed. In addition to Regulation 14(5) of the Regulations, ComReg has a statutory power to issue directions further specifying requirements in relation to the obligations imposed on ECS providers by the Regulations which include Regulation 14(4) and Regulation 14(6) of the Regulations. Regulation 30 of the Regulations provides as follows:

“The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction.”

69 Therefore, ComReg is satisfied it has the necessary legal basis to further specify the obligations on ECS providers contained in Regulations 14(4) and 14(6) of the Regulations. The content that ECS providers must include in these notifications is a further specification of obligations in Regulation 14(4) and Regulation 14(6) of the Regulations.

70 In respect of a notification by SMS, ComReg understands that there may be space limitations, however, if an ECS provider chooses to use this medium, the subscriber's entitlement to receive the specified information remains. Therefore, a brief summary of the change must be included in the notification and a link to an ECS provider's website will be permitted if the link directly accesses the page where the full information is provided.

- 71 ComReg has also decided that ECS providers are free to send two (or more) SMS(s) consecutively if they wish.
- 72 In relation to pre-pay customers, ComReg notes that pre-pay subscribers may have contractual terms and conditions in accordance with Regulation 14(1) and when these change it is important, (and required by the Regulations), for pre-pay subscribers to be made aware of the changes.
- 73 In some cases, a particular subscriber (pre-pay or bill-pay) may not be able to exit their contract without penalty for a variety of reasons, for example, their minimum term has not expired or there are particular termination requirements contained in their contract. ComReg also notes that even with pre-pay contracts there may be conditions in respect of terminating the contract which do not allow the subscriber to exit '*without penalty*' under normal circumstances.
- 74 Therefore, ComReg is of the view that it is important, and required by the Regulations, that the pre-pay subscriber is also made aware of their right to exit the contract without penalty if they do not accept the change proposed.
- 75 In light of the above, ComReg has decided that the notification, irrespective of the medium chosen by the ECS provider, must provide the following information, in the following order:
- Heading (at the beginning) – “CONTRACT CHANGE” in capital letters.
 - A summary of all proposed changes.
 - Contact/location information where further and full information can be accessed (if required, this can be a link to the ECS providers website page where the information in relation to the contract modification is noted).
 - 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.
- 76 In relation to compliance, ComReg is of the view that it is a matter for ECS providers to ensure that on a case by case basis, they can demonstrate their compliance with the Regulations and this Direction.

Full Information

77 In the consultation, ComReg proposed that the ECS provider must inform the subscriber where full details of proposed changes can be accessed. This additional information must be transparently provided and it must allow consumers and other end-users to easily interpret the full impact of the change on them. ComReg proposed 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 and other end-users 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).

78 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.

79 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.

80 ComReg asked the following question in the consultation.

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.

Respondent's views

81 Three respondents¹⁷ disagreed with ComReg's proposal that both the old and new contract terms should be presented to customers. Eircom "*strongly disagrees with the suggestion that both old and new terms and conditions should be presented to customers*".

82 Telefónica noted that "*if there is a modification to one contractual condition it is not appropriate that full terms of old terms and conditions are detailed*". A number of respondents also noted that to provide this information to customers would likely result in disproportionate costs for ECS providers.

¹⁷ ALTO, Magnet, TIF.

- 83 Sky “*disagree with the proposed requirements to provide full information in the prescriptive manner set out in the consultation*”.
- 84 H3GI agreed with the requirements proposed.

ComReg’s position

- 85 Having carefully considered the views of respondents, ComReg is of the view that full information may not always be required as the information provided in the initial notification may be sufficient for the customer to understand the contract modification, depending on the medium used.
- 86 In the case where the notification is provided by SMS, ECS providers may need to provide full information on their website as space limitations for text in SMS, as ECS providers have noted, is limited.
- 87 Having considered the views from ECS providers in relation to both the old and new contract terms being provided to the customer, ComReg is satisfied, for the time being, that full information can be provided if required by the ECS provider by presenting the change in full to the customer on its website or the ECS provider could also provide a free-phone number for customers to get full information if required.

3.2 Notification Medium

- 88 ECS providers determine the medium they use to contact their subscribers. This may for example be by SMS, print, e-mail, meeting or telephone call. ComReg did not propose specifying the exact means by which the subscriber could be contacted. However, ECS providers must ensure that the subscriber will actually receive the notification at least a month in advance of a proposed contract change becoming effective. However, ComReg did propose in the consultation that it should further specify the format which is required in each type of notification.
- 89 While the consultation did 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, this direction). However, ECS providers should at the same time note that the consultation proposed that where notifications are given via telephone call, the details of the call must be noted on the subscribers account.

3.3 Notification by SMS

- 90 Some ECS providers notify their subscribers of proposed changes to their contracts via SMS. ComReg 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.
- 91 In the consultation, ComReg proposed that the required minimum standard information must be presented in the main text (160 characters) of the SMS. 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.
- 92 ComReg asked the following question in the consultation.

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.

Respondent's views

- 93 HG3I states that 2 linked SMS may be required.
- 94 ALTO and Magnet agree that the proposals appear reasonable; however, space available may create issues.
- 95 Eircom states that the proposed notification detracts from the objectives of Regulation 14. Eircom consider the proposed notification heading detracts from the objectives of Regulation 14 of the Regulations as *"it would effectively limit the available space in an SMS to 138 characters while also having the potential to confuse customers by drawing the focus away from the specifics of each change. We also refer ComReg to the response to question 2 which highlights that the proposed minimum information requirements would be both disproportionate and unworkable."*
- 96 Sky disagrees with the proposed standards for contract notifications by SMS. Sky also states that *"the standards proposed for contract change notifications are unnecessary and would be disproportionate if introduced, including because s46 of the Consumer Protection Act "CPA" already regulates the withholding of, omitting or concealing material information."*

97 TIF urged ComReg to “refrain from mandating that the minimum notification or initial alert to customers should advise customers of their right to withdraw from their contract. TIF views the proposed minimum information under the draft direction as excessive and, in light of the fact that the minimum notification may be subject to space limitations, it would be disproportionate to mandate the inclusion of advice regarding the right to withdraw in the initial notification. This would further limit the scope to include material detail about the change while creating an unduly negative perception of the change that would not serve the objectives of protecting consumers, as the message would be unbalanced. Neither would it serve the objective of promoting competition as the service provider issuing the notification would likely be unduly compromised.”

ComReg’s position

98 Having carefully considered the views of respondents, ComReg remains of the view that the proposal in relation to SMS is appropriate.

99 ComReg, having considered the responses, remains of the view that if the ECS provider issues a contract change notification by SMS that the minimum information should be provided to the customer as noted in point 75. However, ComReg is now of the view that linked SMS can be sent to the customer (2 or more SMS) if needed by the ECS provider in order to provide the required minimum information to the subscriber. 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.

3.4 Print notifications

100 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.

101 In the consultation ComReg proposed 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 the communication.

102 ComReg 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 subscribers of the rights and protections to be afforded to them by the Regulations.

103 ComReg, therefore, proposed 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.

ComReg asked the following question in its consultation.

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

Respondents' views

104 “ALTO, Magnet and TIF suggest that the current proposal “*seeks to micromanage customer communications and does not guarantee that customers will read the notification.*”

105 ALTO also states that operators should be required to ensure that the notification is reasonably prominent in the communication to customers.

106 Sky state “*that the standards for print notifications are unnecessary and would be disproportionate if introduced*’. Sky ‘*do not consider that the average consumer, who is reasonably well informed, reasonably observant and circumspect, is in all cases likely to make a different transactional decision than they would otherwise make because the minimum information described at paragraph 32 of the Consultation is not presented at the start of an e-mail or on the front page of a letter*”.

107 Eircom states that specifying the text is micromanaging and that ‘*ComReg should be seeking to establish a standard that expresses, in general terms, the requirement that notifications are prominent and concise*’.

108 Telefónica considers the proposal reasonable.

ComReg's position

109 ComReg has carefully considered the views of respondents. ComReg is of the view that the most appropriate way for ECS providers to understand and implement the requirement in a consistent manner is for ComReg to specify the requirements.

110 ComReg is of the view that requiring the wording “**CONTRACT CHANGE**” (in capitals and bold in 11 point font) at the beginning of a contract change notification ensures that the notification is reasonably prominent and legible for contract change notifications in written format.

111 ECS providers may notify their subscribers on their telephone bill, or by bill inserts or separately. In this case, 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.

112 ComReg requires 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 the communication, to ensure as much as reasonably possible that the consumer will see the notification.

113 In this regard, ComReg notes that where ECS providers notify consumers or other end-users using on-line customer account systems alone, the customer may not access that account system one month prior to the proposed change or indeed before the proposed change and, therefore, it is ComReg’s view that the subscriber may not have been duly notified.

3.5 Non-written Notification

114 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 in the first instance.

115 The ECS provider must ensure the subscriber responsible for the contract is contacted. The information must be clearly provided to the subscriber. In order to demonstrate compliance, the ECS provider must record on the subscribers account, the date, time, full name of agent and details of the call.

116 For the purposes of clarity, the subscriber should also be made aware that full, detailed information is available and the means by which this can be accessed if required, as set out above.

ComReg asked the following question in the consultation.

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.

Respondents' views

117HG3I and Telefónica agree that the proposals are reasonable. ALTO and Magnet “welcome” the suggested use of telephone calls.

118Sky disagrees with the proposal in relation to a verbal contract change notifications.

119A number of respondents noted that the Disability Forum may be the best place to appropriately deal with the appropriate standards, which could apply in the circumstances for persons with disabilities.

ComReg's position

120As ComReg's proposals do not prescribe the medium of the contract change notification, ComReg believes that some ECS providers may choose to notify subscribers (irrespective of whether or not they are subscribers with a disability) of a contract change notification by telephone call. In all cases, if the ECS provider contacts a consumer by telephone then the above standards shall apply.

3.6 Direct Marketing

121One of the functions of the ODPC is to monitor compliance in relation to the legislation pertaining to direct marketing. The ODPC is concerned with what it considers to be direct marketing messages, being part of the contract change notification message. 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 (“the Data Protection Regulations”).

122ComReg shares this concern with the ODPC. In particular, ComReg is concerned that some ECS providers may be seeking to use the opportunity of contract change notification messages to direct market subscribers who may not wish to or who have not opted to receive direct marketing. Some 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 in order to comply with Regulation 14 of the Regulations.

123 In relation to information regarding a modification to contractual conditions proposed by an undertaking, ComReg proposed, in the consultation, that where such information is conveyed over an electronic communications network (by electronic means), consumers shall only receive, as part of the statutory notification 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.

124 ComReg asked the following question in the consultation.

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.

Respondents' views

125 *"Telefonica does not agree with this proposal. If an operator has consent to market their customers and they ensure compliance with data protection obligations, ComReg should not restrict provision of this information."*

126 TIF states *"This proposal extends beyond ComReg's powers and would encroach on existing data protection law which already comprehensively addresses the concerns raised."*

127 Several other respondents believe that this proposal goes beyond ComReg's powers and that operators should be free to send marketing material to subscribers that have opted to receive direct marketing by any means.

ComReg's position

128 ComReg does not dispute that ECS providers are free to send marketing material to subscribers in accordance with the Data Protection Regulations. However, ComReg's concern and that of the ODPC is in relation to the combining of the statutory notification with direct marketing. ComReg is of the view that this practice may obscure the statutory message and confuse the subscriber, thereby reducing the purpose of the notification.

129 ComReg believes that, in accordance with paragraph 46, subscribers will be fully aware that the message is a regulatory message, because it will have the following title (in capital letters) at its beginning: "CONTRACT CHANGE"

130 Having reviewed the responses, ComReg is of the view that ECS providers may send direct marketing messages, separate to, but at the same time as the statutory notification. ECS providers are bound by Data Protection Regulations in this regard.

131 ComReg also notes that respondents are of the view that due to space limitations of SMS, it may not be possible to include some of the minimum information specified by ComReg. In this respect, ComReg is of the view that the omission of marketing information, as relevant, from a statutory notification by SMS is appropriate.

4 Regulatory Impact Assessment (“RIA”)- Respondents’ views

132 ComReg issued a draft RIA as part of the consultation in relation to contract change notifications and the following questions in relation to the RIA.

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.

Respondent’s views

133 ALTO and Magnet state that *“ComReg must take account of the impact of mandating headings mediums and the presentation of the new terms and conditions all which need to be considered further in the RIA. The Impact assessment, such as it is, must take account of the costs and inefficiencies, as well as burdens created when considering the commercial and operational realities of certain aspects of ComReg’s proposal”*.

134 Eircom *“urge ComReg to take account of the impact of discriminating against ECS communications, the implication of the proposed extensive minimum information, mandating the heading “NOTICE: CONTRACT CHANGE” and mandating the presentation of and new terms and conditions. These have clearly not been considered in the Draft RIA and cannot be objectively justified.”*

135 Sky *“disagree with the Commissions assessment of the impact of the proposed direction”*. Sky is of the view that *“the findings of the RIA do not reflect best practice as set out in the six principles of Better Regulation” and otherwise under the Governments programme to support evidence based policy making*”. Sky also states that the Governments RIA guidelines in most cases anticipates that at least three options will be considered, however, ComReg has noted only two. *“The Draft Direction goes further than is required by the Commission’s statutory duty to ensure that its actions are proportionate and justified in the light of the objectives laid down in section 12 of the Communications Regulation Act”*.

136 In relation to timing, HG3I suggest that a 6 month grace period be provided for the implementation of the proposed direction.

137 ALTO and Magnet state that as operators could be in the midst of modifications that three to six months might be more realistic.

138 Eircom and TIF noted that a minimum of 2 months would be required.

139 Sky do not agree that the proposals can be implemented with immediate effect. Sky state *“the Draft Direction goes further than is required by the Commission’s statutory duty to ensure that its actions are proportionate and justified in the light of the objectives laid down in section 12 of the Communications Regulation Act; and the Draft Direction is incompatible with European law in so far as it prescribes either less or more restrictive consumer protection measures than are already set out in the CPA”*.

140 Telefónica state that *‘the provision of any appropriate implementation period will ensure that requirements are educated across organisations and correctly incorporated into customer communication plans’*.

ComReg’s position

141 ComReg is not required to consider a specific number of options; it has nonetheless considered the option of industry guidance in its final RIA below. As stated in the RIA, industry guidance would provide no real benefit to consumers nor promote consistency across industry as it would not be effectively enforceable. Further, ComReg’s experience has been that if best practice is an optional requirement, many ECS providers will not implement it, in full or at all, thereby creating inconsistencies and uncertainty for subscribers and industry alike.

142 Having carefully considered the views of respondents, ComReg notes that no reasoning has been provided as to why the changes could not be implemented with immediate effect. ComReg remains of the view that these changes can be implemented with immediate effect, as each notification would need to be planned and designed individually, as is the case currently.

143 However, to allow for any notifications being prepared at this time, ComReg considers it appropriate to defer the effective date until three months after its publication.

5 Regulatory Impact Assessment (“RIA”)

5.1 Role of the RIA

144A 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.

145ComReg’s approach to the RIA is set out in the Guidelines published in August 2007, in Commission Document No. 07/56 & 07/56a. In conducting this RIA, ComReg takes account of the RIA Guidelines,¹⁸ adopted under the Government’s *Better Regulation programme*.

146Section 13(1) of the Communications Regulation Act 2002, as amended, requires ComReg to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings, ComReg 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, ComReg 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.

147In conducting RIA, ComReg takes into account the six principles of *Better Regulation*. These are:

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

¹⁸ http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

6. Consistency.

148 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, ComReg 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.

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

5.2 Policy Issue and Objectives

150 ComReg considers it essential that subscribers 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.

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

152 ComReg'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. ComReg also wishes to ensure that contract notifications are in compliance with the Regulations.

Assessment of the regulatory options

153 ComReg is of the view that there are three options:

- **Option 1:** ComReg does not intervene, but instead allows ECS providers to issue statutory notifications, without regulatory specification in respect of the format of such notifications.
- **Option 2:** ComReg issues guidance to all undertakings in relation to the format of notifications required by Regulation 14(4) of the Regulations.
- **Option 3:** ComReg 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

154 ComReg is of the 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 other end-users and industry.

Impact on consumers and end-users (“subscribers”)

155 There is a clear risk that ECS providers will continue to use a variety of inconsistent approaches in respect of 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 could 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 subscribers of the rights and protections afforded to them by the Regulations. The likely negative impacts on subscribers include the following:

- Many subscribers are likely to be increasingly unaware of their statutory rights.
- Many subscribers 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 subscribers 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 subscribers 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 subscribers 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

156 Without regulatory intervention by ComReg, 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

157 There is a risk that where subscribers 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 subscribers are not fully informed and may not switch due to lack of transparent information regarding changes to their contract.

Option 2

158 ComReg has considered this method and notes that the Regulations at 14(5) state that ComReg may specify the format of notifications referred to in paragraph 4 and not that ComReg may issue guidance.

159 ComReg is reluctant to issue guidance on this matter as the majority of the measures noted in the consultation are currently requirements under the Regulations, specifically Regulation 14 (1), 14 (4) and 14(6).

Impact on consumers and end-users (“subscribers”)

160 ComReg believes that the best way to protect subscribers in their dealings with ECS providers and to ensure that the rights afforded to them by the Regulations, is to direct providers on the format of contract changes. Without a specific direction from ComReg in relation to the format of notifications, ComReg believes that some subscribers may be confused by the various notifications they receive or not be fully informed by the notification they receive, particularly if it does not adhere to best practice guidance. In addition, guidance will not be effectively enforceable and ComReg will not be in a position to ensure compliance with it. This creates uncertainty for subscribers.

Impact on industry

161 If ComReg were to issue guidance, there is a risk that ECS providers will continue to adopt diverging and inconsistent practices. ECS providers who are currently adopting best practice may continue to be disadvantaged by other ECS providers who continue to issue statutory notifications that are not transparent and do not adequately provide the required information to subscribers. In addition, guidance will not be enforceable and ComReg will not be in a position to ensure compliance by ECS providers with it. This creates uncertainty for industry and will lead to an inconsistent approach.

Impact on competition

162 There is a risk that where subscribers do not receive full information in respect of proposed changes, in accordance with any best practice guidelines issued by ComReg, they will be unable to accurately assess the impact of changes on them and to decide whether or not they should exercise their right to exit their contract. This may have an impact on competition within the market as subscribers would not be fully informed and may not switch due to lack of transparent information regarding changes to their contract.

Option 3

163 ComReg is of the view that its direction is both necessary and proportionate and that it will benefit both subscribers 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 and end-users (“subscribers”)

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

165 ComReg considers that the minimum specifications for the statutory notifications will create uniformity, predictability, clarity and will improve industry practice, thereby strengthening the protection that the Regulations are intended to guarantee for subscribers.

166 The likely beneficial impacts on subscribers include the following:

- Subscribers will be more aware of their statutory rights.

- Subscribers who might not wish to accept a proposed contractual modification will be more likely to be aware of the proposed contractual modification.
- Subscribers 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, subscribers are more likely to be willing parties to a contract with their ECS provider. Any modifications to terms and conditions of the contract will have been knowingly accepted because subscribers have received full and transparent information
- Where subscribers 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

167 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 on and the costs to ECS providers, that arise as a consequence of Option 3, are not likely to be very significant. A relatively small incremental impact and costs (if any) on ECS providers is in ComReg's view, greatly outweighed by the corresponding benefits to consumers and other end-users (as identified above).

168 Option 3 ensures a consistent approach throughout industry. This should help to address any imbalance between ECS providers who *do not* adopt best practice and gain a commercial advantage, to the detriment of subscribers, over those who *do* adopt best practice.

169 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.

170 This will in turn mean that assessing compliance with Regulation 14(4) and Regulation 14(6) of the Regulations is more efficient. In addition, it is possible that the reputation of the ECS provider with its subscriber base may well be enhanced as compliance with the specifications will ensure transparency.

171 Notifications provided in accordance with Regulation 14(4) of the Regulations differ (sometimes markedly) from one ECS provider to the other. A specified format adhered to by all ECS providers, will introduce predictability and uniformity. This, in ComReg's view, can be done with relatively minimal additional effort by ECS providers. In effect, ComReg's decision should reduce additional effort by guiding and assisting ECS providers with the preparation of these statutory notifications. This decision will not impact on any other type of communications issued by ECS providers.

172 ComReg understands that the notifications issued by ECS providers, 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, ComReg does not believe any adjustments to font sizes or text layout will result in any system change requirements for the ECS providers. ComReg further believes the required format will not result in any additional costs on ECS providers.

173 ComReg is of the view that the specifications can be adopted by ECS 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 ComReg's view that specifications will assist ECS providers in preparing their notifications as they provide a standard approach. ComReg is of the view that the 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.

174 Some ECS providers have claimed issues in relation to costs if ComReg mandate certain requirements in relation to contract change notifications. However, no details have been provided in respect of incremental costs of implementing these specifications. Having reviewed the requirements of this decision, given the already existing legal requirements under the Regulations, ComReg notes the following:

- Cost to add the words 'contract change' to the beginning of the notification on contract changes – minimal if any.
- Cost to change font sizes in written communication so the communication is legible – minimal, if any.
- Costs to log call details if the contract change notification is verbal – minimum, if the operator chooses this method of communication.

- Cost to customer care department in handling calls from subscribers - as Regulation 14(4) is already a Regulatory requirement and, therefore, costs must be borne by the operator.

Impact on Competition

175 Notification of changes to prices, terms and conditions allows subscribers 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 subscribers can easily compare offers. Ensuring subscribers are aware of their statutory entitlement to withdraw from their contract, when changes are made to it, will further increase competition.

176 ComReg, therefore, concludes that the option which best achieves the objectives as set out above is **Option 3**. 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.

6 Direction

6.1 Respondents Views

177ComReg published a draft direction as part of the consultation with the following question.

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.

Respondent's views

178HG3I notes a suggestion in relation to ComReg considering the provision of information in two SMS(s) messages.

179ALTO and Magnet request ComReg to consider amending the "Authorisation" requirements to achieve robust compliance.

180Eircom *"recommend that the specification set out the following minimum information: A concise summary of the change, the effective date of the change information on accessing full detail about the proposed change. Further to our previous observations in relation to the provision of current and new terms and conditions, we believe that the requirement to provide "Details of the proposed new terms and conditions, together with the terms and conditions that are proposed to be modified" to be removed. Regarding print notifications, we do not disagree with the proposed requirement for a font size of at least 9 point however further to the response to question 5, the specification in respect to the wording of the headings and differing font sizes should be removed. Further to the objections raised in response to question 7, we call for the removal of the proposed prohibition of direct marketing given that any abuse can adequately be addressed through the enforcement of existing data protection regulations"*.

181TIF raises an issue in relation to paragraph 4 of the minimum information section and state that the draft direction should be amended by replacing the words "in isolation from other information ordinarily provided to the subscriber" with the words *"in a separate paragraph or section of a communication provided to the subscriber"*.

182Sky do not consider that the Direction is required and they repeat the points made in response to question 9. *"Sky is concerned that the draft direction would lead to inconsistent processes between sectors, which would not promote the wider interests of users within the Community."*

ComReg's position

Having reviewed the submissions, ComReg has changed the Direction in relation to the following areas:

- Minimum information - In respect of the heading for SMS messages, this has changed from 'Notice: Contract Change' to 'Contract Change', so as to reduce the amount of characters used.
- Full information - Full information can be provided if required by the ECS provider by presenting the change in full to the customer on its website or the ECS provider could also provide a free-phone number for customers to get full information if required.
- ComReg has decided, for the time being, that the old and new terms and conditions do not need to be presented.
- Notification by SMS - two or more SMS(s) (if required) can be sent to provide the required minimum information.
- ComReg considers that it is important to ensure that the statutory notifications are clear, unambiguous and transparent. However, ComReg acknowledges the relevant Data Protection Regulations regarding direct marketing and as such, ECS providers may send direct marketing messages, in accordance with the provisions of the Data Protection Regulations, separate to, but at the same time as the statutory contract change notification.
- In relation to the comment that this requirement would lead to inconsistent processes between sectors, ComReg is of the view that this is the most appropriate wording, in light of the Regulations, for the electronic communications sector, which it regulates.
- ComReg is of the view that its decision to issue a Direction in accordance with Regulation 14(5) of the Regulations¹⁹ is the most appropriate legal basis and regulatory mechanism for dealing with notifications in respect of changes to contracts.
- The Direction will apply three months from its publication.

¹⁹ The full legal basis which ComReg is relying on in the issuing of this Decision, is clearly set out in the Direction below.

7 Direction

1 Statutory Powers

1. This direction is hereby issued by the Commission for Communications Regulation (the Commission“):
 - i. Pursuant to Regulations 14(4), (5) and (6) of the European Communities (Electronic Communications Networks and Services) (Universal Service and end 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. 12/128s
 - iv. Having regard to the following analysis and reasoning set out in Commission Document No 12/128
 - v. Having regard to the Commission’s functions and objectives under sections 10 and 12 respectively of the Communications Regulation Acts 2002 - 2011.
 - 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 and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations, 2011, (“the Data Protection Regulations”) unless the context otherwise admits or requires.

2 Scope and Application

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

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

3.1 Minimum Information

3.1.1 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: “CONTRACT CHANGE” (to be in uppercase) at the beginning of the notification.
- 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, if required.
- 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 given to subscribers no less than one month before the effective date of the proposed modifications to contractual conditions.

3.1.2 Hyperlinks or website addresses to online full information about the proposed modifications to contractual conditions shall link directly to the full information.

3.1.3 The minimum information shall always be presented transparently, clearly, prominently, and in an easily legible font style and size.

3.1.4 The minimum information shall always be presented in isolation from other information ordinarily provided to the subscriber (including Direct Marketing information), as relevant, so as to give it prominence and so as to avoid any confusion on the subscriber’s part.

3.2 Full Information

3.2.1 Information about the proposed modifications to contractual conditions shall include the following information (“full information”), if required:

- i. Full details of the proposed modifications to contractual conditions
- ii. A clear statement that the subscriber can exercise their statutory right to withdraw from their contract with their undertaking 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.

3.2.2 The full information shall always be unambiguous, accurate and presented clearly to ensure that the subscriber can easily understand what changes are being made.

3.3 SMS Notifications

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 and may also be provided by a second or further consecutive or linked SMS(s), if required.

3.4 Print Notifications

3.4.1 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.

3.4.2 The heading "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.

3.5 Notifications by telephone/meeting

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

3.6 Direct Marketing

Undertakings may send direct marketing messages; separate to, but at the same time as the contract change notification in accordance with Data Protection Regulations.

3.7 Statutory Powers Not Affected

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.

3.8 Maintenance of obligations

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.

3.9 Effective Date

- 3.9.1 This direction shall be effective from three months from the date of its publication.
- 3.9.2 This direction shall remain in force from the effective date until further notice by the Commission.

**KEVIN O'BRIEN
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 30th DAY OF NOVEMBER 2012**