

Conditions regulating Sexual Entertainment Services

This document sets out Ofcom's decision regarding
the future regulation of Sexual Entertainment Services

Statement

Publication date: 8 March 2007

Amended: 26 April 2007

Contents

Section		Page
1	Summary	1
2	Background and Legal Framework	4
3	Responses to the Consultation and Ofcom's comments	9
4	Ofcom's conclusions following the consultation	20
Annex		Page
1	Summary of Ofcom's Impact Assessment	24
2	Notification of a modification under section 48 (1) of the Act	28
3	Modification to provisions of the Plan under section 56 (2) of the Act	33
4	Modification to General Condition 17 under section 48(2) of the Act	36

Section 1

Summary

Proposals

- 1.1 Ofcom (“the Office of Communications”) exists to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and providers. However, consumers may need protection from inappropriate behaviour by certain providers that may undermine confidence in the market as well as causing consumer detriment.
- 1.2 One example of such protection is the regulation of Premium Rate Services (“PRS”). PRS are defined in section 120 of the Communications Act 2003 (“the Act”). In broad terms, PRS offer consumers some form of content, product or service accessed via fixed or mobile telephones and charged to the user’s telephone bill. While the majority of PRS providers promote and provide PRS responsibly, a minority do not. The activities of that minority can harm consumers; for example, by causing them to unknowingly incur charges or run up high phone bills, or by providing children with access to content that is inappropriate for them. Some PRS providers even use PRS to deliberately mislead or defraud. PRS regulation is designed to offer consumers a degree of protection from such harm.
- 1.3 The statutory provisions for the regulation of PRS are set out in sections 120 to 124 of the Act. These provisions provide Ofcom with the power to set conditions (“the PRS Condition”) that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of PRS. Briefly, where Ofcom has approved a code for regulating the provision and contents of PRS, the PRS Condition can require the persons to whom they apply to comply with directions given in accordance with that code by that code’s enforcement authority.
- 1.4 PRS are currently regulated primarily by the Independent Committee for the Supervision of Standards in the Telephone Information Services (ICSTIS) under a code which Ofcom has approved (“the Approved Code”). The currently applicable version of the Code (eleventh edition) was approved for the purposes of sections 120 and 121 of the Act on 9 November 2006 and took effect on 4 January 2007.
- 1.5 The currently applicable version of the PRS Condition was published on 17 October 2006 and requires ‘Communications Providers’ (as defined in the PRS Condition) to comply with directions given by ICSTIS under the Approved Code. ‘Communications Provider’ is defined within the PRS Condition in such a way as to restrict that expression to persons involved in the provision of a subset of PRS known as ‘Controlled Premium Rate Services’ (“CPRS”). Of particular significance for the purposes of this Statement is that the definition of CPRS in the existing version of the PRS Condition does not expressly include Sexual Entertainment Services (‘SES’).
- 1.6 A failure by a Communications Provider to comply with an ICSTIS direction will normally amount to a contravention of the PRS Condition and may lead ICSTIS to take action under section 8 of its Code. In cases of non-compliance by network operators ICSTIS may refer the matter to Ofcom. Ofcom may then take enforcement action under the relevant procedures set out in the Act.

- 1.7 On 19 April 2006 Ofcom issued its statement “*NTS: A Way Forward*” (the ‘April 2006 NTS statement’)¹ in which, amongst other significant policy decisions, Ofcom announced the decision to extend the definition of Controlled Premium Rate Services (‘CPRS’) to include all adult services regardless of call price. NB: The term adult services has been modified to SES in this consultation exercise in recognition of the view, given subsequently, that the term adult could also include gambling services.
- 1.8 Furthermore, to facilitate selective call barring in relation to SES, Ofcom further gave notice, in the April 2006 NTS statement, of its intention to amend The National Telephone Numbering Plan (“the Plan”) to clarify that SES should only be provided on the ‘0908’ and ‘0909’ ranges that were designated for SES services, at the time.
- 1.9 On 10 August 2006 Ofcom published a statement entitled “*Supplying numbers for ‘09’ premium rate services and codes to facilitate mobile number portability*” (the ‘August 2006 Numbering statement’)². This document introduced a new range (the ‘098’ range) to be used for SES in future. The ‘098’ range was made available on the date of publication of the statement and at the same time the existing ‘0908’ and ‘0909’ ranges were closed to new number allocations. For the avoidance of doubt, ‘0908’ and ‘0909’ numbers already allocated for SES may continue to be used for that purpose for the present time (see further paragraph 1.15 below).
- 1.10 On 9 November 2006 Ofcom published a consultation document entitled “*Conditions regulating Sexual Entertainment Services*”³ (the November 2006 SES Consultation) in which Ofcom made three proposals in order to implement the decision in the April 2006 NTS statement and to align with the August 2006 Numbering statement. These were, namely:
- a) To modify the PRS Condition to extend the definition of CPRS to all SES regardless of price;
 - b) To modify the Plan to facilitate migration of SES currently operating on ‘08’ NTS numbers to the new ‘098’ number range; and
 - c) To amend part 5 of the Annex to General Condition 17 to make it clear that ‘0908’ and ‘0909’ numbers are no longer available for new allocation by Ofcom.

In this consultation Ofcom also proposed that the timescale allowed for services to migrate from ‘08’ to ‘09’ numbers should be six months from the date of this statement.

- 1.11 The consultation closed on 14 December 2006 and Ofcom received responses from six stakeholders representing Communications Network Providers and groups representing PRS service providers.
- 1.12 The responses were generally supportive of the proposals although some scepticism was expressed as to the need to prevent SES from continuing to operate on ‘08’ numbers. The predominant concern was that Ofcom had allowed insufficient time for migration to new ‘09’ to be completed. From the network perspective it was suggested that Ofcom had underestimated the contractual time needed by BT to establish new price points in ‘098’ should prices other than those that presently exist (5ppm and 10ppm) be requested. From the advertising perspective it was suggested

¹ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

² http://www.ofcom.org.uk/consult/condocs/supply_numbers/statement/

³ http://www.ofcom.org.uk/consult/condocs/entertainment_services/

that some services advertise on media either with long shelf lives or which require a minimum of three months notice to change advertisements.

Conclusion

- 1.13 Having carefully considered the responses to the consultation, Ofcom has now decided to proceed with the proposed modifications to the PRS Condition, the Plan and to General Condition 17. However, in recognition of concerns that Ofcom had underestimated the time required to implement new price points in the '098' number range and for advertisements to be revised in some media, whilst acknowledging that the probability of both the numbering and media issues applying to the same services is likely to be small, Ofcom has agreed to extend the migration timescale from six to eight months.
- 1.14 Ofcom is also satisfied that the statutory requirements for modifying the PRS Condition are met in respect of the amendment. In that regard, Ofcom believes the inclusion of all SES within the same regulatory controls is consistent with the principles of transparency, proportionality and non-discrimination.

Effective Date

- 1.15 The modifications to the PRS Condition shall come into force with the date of publication of this document. However, in order to allow SES providers currently operating on '08' numbers an adequate period to migrate their services to the '098' number range, the amendments to the Plan and Annex 5 of General Condition 17 shall take effect 8 months after the publication of this document.
- 1.16 It should be noted that as a result of the modification to the PRS Condition, SES using '08' numbers will be brought within the scope of the ICSTIS Code with immediate effect. However, ICSTIS indicated that this will not be enforced for a period of four weeks from the date of the statement to allow the relevant SES providers to complete the necessary registration process required by ICSTIS.

Section 2

Background and Legal Framework

Premium Rate Services

- 2.1 Premium Rate Services ('PRS') are defined in Section 120 (7) of the Act (see paragraph 2.5 below) and offer some form of content, product or service that are provided via fixed and mobile telecoms services and paid for via call or other telephony charges. These may be accessed as conventional voice services or using SMS text, telephone line, PC (e-mail, internet, and bulletin board), mobile phone or interactive digital TV. Services include TV voting lines, competitions, scratchcards, sexual entertainment, chatlines, business information services, technical helplines, mobile phone ringtones and game downloads, horoscopes and interactive TV games.
- 2.2 In the UK PRS are typically accessed via numbers prefixed by '09'. Directory enquiry services (on 118xxx) also fall within the definition of premium rate services for the purposes of the Act.
- 2.3 Call prices vary typically between 10 pence per minute or per call up to a ceiling of £1.50 per minute or per call (for BT customers) and can be higher, especially if called from mobiles.
- 2.4 In most cases the bulk of the revenue from calls to PRS goes to service providers ('SPs') who are responsible for the content, product or services provided or who act as resellers or aggregators on behalf of a number of such providers. The SPs are responsible for compliance with the bulk of the obligations imposed by the ICSTIS Code. The remainder of the revenue is shared by: the consumer's 'originating' telephone company (the Originating Communications Provider ('OCP')), which receives a fee for 'origination' of the phone call; and the telephone company that contracts with the SP and 'terminates' the call on behalf of the SP through the provision of network facilities ('the Terminating Communications Provider ('TCP')).
- 2.5 PRS are defined in section 120(7) of the Act which provides that a service is a premium rate service, if:
 - a) it is a service falling within subsection (8)⁴;
 - b) there is a charge for the provision of the service;
 - c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.

⁴ A service falls within this section if its provision consists in:

- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
- (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to users of the electronic communications service.

Sexual Entertainment Services

- 2.6 Sexual entertainment services ('SES') in the context of this consultation are services provided for an adult audience and which are PRS as defined in the Act. The Plan, under "Definitions and Interpretations" currently defines SES as follows:

“**Sexual Entertainment Service**’ means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;”

- 2.7 After the recent publication of the new edition of the (Eleventh) ICSTIS Code section 7.11.1 of the Code now defines SES as follows:

“Definition of sexual entertainment services

Sexual entertainment services are services of a clearly sexual nature or any services for which the associated promotional material indicates or implies, that the service is of a sexual nature.

- 2.8 Ofcom notes that this latest definition now differs slightly from that in the Plan in relation to “associated promotional material”. Ofcom considers, however, that this difference is not material and that there is no urgent need to amend the Plan to coincide with the latest ICSTIS Code. Whilst it reserves its right to do so in the future, it is Ofcom’s opinion that such an amendment would require a further consultation which would unnecessarily delay implementation of this decision.
- 2.9 SES are generally available on ‘084X’, ‘087X’, ‘09’ numbers. However, some services providing sexual entertainment are available on other numbers including 080X (Freephone) and ‘01’ and ‘02’ geographic numbers, where they are paid for by means other than through the price of the call, usually by credit card. Because of this, at the present time, these services are not classed as PRS as defined in the Act and are therefore outside of the scope of this statement.

The regulatory framework and PRS

- 2.10 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe, and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.
- 2.11 Under the new regulatory framework, Ofcom must have regard to its principal duty set out in section 3 and, in particular 3(1) of the Act, which states that “*it shall be the principal duty of Ofcom, in carrying out their functions –*
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

- 2.12 In addition, it is the duty of Ofcom to act in accordance with the six Community requirements (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive)⁵.
- 2.13 The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. These provisions provide Ofcom with the power to set conditions (“the PRS Condition”) that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of PRS. Where Ofcom has approved a code which has been made by any person for regulating the provision and contents of PRS and the facilities made available in the provision of such services, the PRS Condition can only require the persons to whom it applies to comply with directions given in accordance with the approved code by that code’s enforcement authority. Any condition set under section 120 must comply with section 47 of the Act, i.e. it must be objectively justifiable, not unduly discriminatory, proportionate and transparent. It must also comply with the notification and consultation requirements in section 48 of the Act.

The role of ICSTIS and Ofcom in the regulation of PRS

- 2.14 The current regulatory arrangements for PRS follow a self- and co-regulatory approach. The primary role of consumer protection with regard to PRS falls to ICSTIS⁶, the industry-funded regulatory body for premium rate charge telecommunications services. ICSTIS regulates the content and promotion of PRS through a Code of Practice which imposes certain specified obligations on both ‘service providers’ and ‘network operators’ (as those parties are defined therein).
- 2.15 The current version of the Code of Practice (eleventh edition) was approved for the purposes of sections 120 and 121 of the Act on 9 November 2006 (the “Approved Code”) and took effect on 4 January 2007.
- 2.16 The current edition of the Approved Code is available from the ICSTIS website⁷.
- 2.17 Under the current version of the Approved Code, ICSTIS has a range of sanctions it can impose on ‘service providers’ in respect of breaches of the Approved Code. These include requiring the giving of assurances about future behaviour, the imposition of financial penalties, barring access to services and prohibiting a named individual from operating services for a set period.
- 2.18 The obligations imposed on ‘network operators’ are more limited. Broadly speaking, those obligations require network operators to assist ICSTIS, for example by complying with its directions to provide information about particular services or service providers, withholding revenues from particular service providers, or suspending the provision of particular services.
- 2.19 As noted above, Ofcom has the power under section 120 of the Act to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS that bind the persons to whom they are applied. The current PRS Condition, which was published on 17 October 2006, binds each and every person falling within the definition of ‘Communications Provider’ in the PRS Condition, to comply with:

⁵ Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

⁶ Independent Committee for the Supervision of Standards of the Telephone Information Services.

⁷ http://www.icstis.org.uk/pdfs_code/11th_edition.pdf

“(a) directions given in accordance with an Approved Code by the Enforcement Authority⁸ and for the purposes of enforcing the provisions of the Approved Code; and

(b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.”

- 2.20 The definition of ‘Communications Provider’ in the PRS Condition is confined to persons involved in the provision of a subset of PRS nominated within the Condition as ‘Controlled Premium Rate Services’ (“CPRS”). CPRS are defined in the PRS Condition to include a PRS only where: (i) the charge or rate for the call is more than 10 pence per minute; (ii) the service is a Chatline Service; or (iii) Internet Dialler Software is operated. Unless a service falls within the definition of PRS in section 120 of the Act, however, it cannot constitute a CPRS, irrespective of the cost of calling it.
- 2.21 A failure by a Communications Provider to comply with an ICSTIS direction will normally amount to a contravention of the PRS Condition and may lead ICSTIS to take action under section 8 of its Approved Code. In cases of non-compliance by network operators, ICSTIS may refer the matter to Ofcom as is set out in paragraph 9.5 of the Approved Code. Ofcom may then take enforcement action under the relevant procedures set out in the Act. The PRS Condition is sometimes referred to as Ofcom’s ‘backstop power’ because that power performs the function of supporting ICSTIS’ effectiveness in circumstances where a party falling within the definition of ‘Communications Provider’ in that condition is failing to comply with directions that ICSTIS has given to that party.

Number Translation Services

- 2.22 Number Translation Service (‘NTS’) calls are calls to numbers identified in the National Telephone Numbering Plan (‘the Plan’) as Special Service numbers (broadly, numbers that start with ‘08’ or ‘09’). In addition, NTS includes calls to the legacy ‘0500’ Freephone numbers, which, whilst still in use, are not listed in the Plan as they are no longer available for new allocations.
- 2.23 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is ‘translated’ by the network to a geographic number to deliver the call to its destination.
- 2.24 Services offered using ‘08’ NTS numbers are similar to those using the ‘09’ number range except that prices range from free to caller up to a maximum of 10ppm (from a BT landline). Types of services include information services, some technical helplines, access to telephone banking, sales and customer service lines and dial-up pay-as-you-go internet services.
- 2.25 Because of the lower prices charged for ‘08’ NTS calls generally, the scope for consumer detriment from making long calls and from fraudulent activity is generally considered less of an issue. However, there is still potential for consumers to accrue high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.

⁸ Currently ICSTIS.

The regulatory framework and NTS

- 2.26 Most services operating on the '08' number range are not captured by the PRS Condition as the regulatory framework of the PRS Condition only applies to services the charge of which exceeds 10 pence per minute or per call from a BT landline, or where the service is a Chatline or is Internet Dialler Software operated.
- 2.27 Ofcom conducted a review of the regulatory framework for NTS, and published a statement, Number Translation Services: A Way Forward (the April 2006 NTS Statement), on 19 April 2006⁹. That document sought to address certain policy issues associated with the NTS regime as it applies to '08' number ranges rather than the '09' range, and confirmed a number of changes to the regulatory regime for '08' numbers.
- 2.28 The April 2006 NTS Statement also announced Ofcom's decision that SES currently operating on '08' numbers should be brought within the regulatory framework of the PRS Condition regardless of the call cost, and that the Plan should be amended to clarify that SES should only be provided on numbers in the '0908' and '0909' ranges that were set aside for such services at the time.
- 2.29 However, on 10 August 2006 Ofcom published a further statement as part of the ongoing Numbering Framework Review. This statement entitled "*Supplying numbers for '09' premium rate services and codes to facilitate mobile number portability*" (the August 2006 Numbering Statement) was in response to the fact that the existing '0908' and '0909' number ranges were nearing exhaustion a situation that would be exacerbated by the migration of SES from '08' numbers. As a consequence, Ofcom opened the '098' range for SES and ceased allocating new '0908' and '0909' numbers.
- 2.30 This means that the range set aside for SES will be the '098' range rather than the '0908' and '0909' ranges as indicated in the NTS Statement. However, TCPs and SPs may be holding spare '0908' and '0909' numbers from blocks previously allocated to them and may choose to use these in order to save having to apply for new numbers. Whilst providers are entitled to do this, Ofcom advises providers to give regard to the possibility that following the planned consultation on the future arrangements for the entire '09' range, the requirement might arise for all '0908' and '0909' SES to migrate to '098'. This would result in some services having to migrate to new numbers on two occasions in a relatively short period.
- 2.31 It should also be noted that there are also relatively few 10 pence (per minute or per call) price points in the '0908' and '0909' ranges and certainly none at below 10 pence and since no more '0908' or '0909' allocations will be made, new sub 10 pence price points can not be established. This means that where '08' services currently costing less than 10 pence chose to move to spare '0908' or '0909' numbers the price of calls would inevitably increase.
- 2.32 This is not the case for services migrating to '098' numbers where SES providers can apply for number ranges which correspond to price points below the 10 pence prices. It is Ofcom's understanding that BT will then establish the new prices on its network on request and will notify other providers accordingly.

⁹ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

Section 3

Responses to the Consultation and Ofcom's comments

Respondents

- 3.1 The consultation attracted four responses from a cross-section of communications providers and two from groups representing PRS service provider interests. None opposed the proposals but a number of reservations were voiced about the implementation detail. Some criticism was also levelled at Ofcom's alleged piecemeal approach to updating PRS regulation.

Consultation question

- 3.2 Ofcom posed only one formal question in the consultation document, namely:

"Do Ofcom's proposals adequately implement the policy decision set out in the April NTS Statement to extend the definition of CPRS to include all SES that are PRS and to ensure migration of SES operating on '08' numbers to appropriate '09' numbers?"

- 3.3 Only three respondents commented on the question. Their comments are summarised below.

BT

- 3.4 BT broadly agreed that the proposals appear to implement the earlier policy decision but wondered whether a more specific provision in the NTNP requiring that new SES must only be provided on 098, would also be necessary.
- 3.5 BT also said it is not clear what measures will be necessary to enforce migration of SES from '08' to '09', or the time scale for this migration.

Ofcom's Comments

- 3.6 Ofcom understands BT's view that by requiring all SES to use only '098' numbers consumer awareness of '098' as the range on which SES operate may be enhanced more quickly. It would also reduce the risk of services having to migrate twice. The consultation on whether to close '0908' and '0909' and require existing services on these number ranges to migrate to '098' is expected later in 2007 which means the final decision is unlikely to be confirmed for several months. Until such a decision is made and since this consultation was solely in relation to the implementation of the decision made in the April NTS statement it would be inappropriate for Ofcom to seek to prevent TCPs from utilising spare '0908' or '0909' numbers from ranges already allocated to them. However, Ofcom does advise TCPs to consider the implications of a possible double migration in a relatively short time should the decision to close the '0908' and '0909' number ranges be taken in the near future.
- 3.7 In making the modifications to the PRS Condition all SES, regardless of the number on which they operate, become Controlled Premium Rate Services (CPRS) and as such will be subject to ICSTIS control. As a result of the inclusion of SES under the definition of Controlled PRS, ICSTIS will be able to apply the procedures and sanctions set out under section 8 of its Code vis-à-vis SES providers, for example in

response to complaints, against SES providers who continue to operate on numbers other than those designated for SES.

- 3.8 Ofcom has enforcement powers under sections 120, 123 and 94 – 96 of the Act in regard to communications providers on whose networks services are provided. Ofcom may make use of these powers depending on the scale of any non-compliance with the requirements of this statement and its associated notifications.

Premium Rate Association (PRA)

- 3.9 The PRA agreed that the proposed modifications are effective and practical in terms of achieving their purpose, but had other concerns (see General Comments below).

Network for Online Commerce (NOC)

- 3.10 NOC believed the definition of SES is somewhat dated and may unintentionally trap sexual education services. They suggested narrowing the definition to Erotica or Erotic Services to align the Telemedia industry with print and other media forms.
- 3.11 NOC agreed that the proposed six month migration timescale is reasonable and that the proposal adequately implements the April 2006 NTS Statement decision.

Ofcom's Comments

- 3.12 Ofcom considered the proposed definition in the light of the comments made by NOC and is of the opinion that the existing definition of SES makes it clear that SES are: *"entertainment services of a clearly sexual nature"* or such services for which the associated promotional material *"is of a clearly sexual nature, or indicates directly or implies that the service is of a sexual nature"*. Whilst Ofcom does not wish to advise whether specific types of service or those serving particular interest groups would be classed as SES, it would like to point out that where services are purely non-entertainment services and solely established for educational or information purposes, and where the promotional material is not of such quality as described above, the service is unlikely to be captured by the definition for SES. ICSTIS does provide a free compliance service and can offer advice in this area.

General Comments

BT

- 3.13 BT agreed that SES should only operate on '09' to enhance consumer awareness and protect minors. It also believed that migration to '098' should be easy due to the short term promotion of these services.

SES on other numbers

- 3.14 BT argued that Ofcom's proposals do not clarify its position on the potential for SES to be offered on other numbers such as Freephone, '03', '05' or '07', particularly '070' Personal Numbering. SES are also available on '69XXX' and '89XXX' mobile short codes often at prices in excess of the £1.50 limit for fixed calls which BT considers not to be in the public interest.

Ofcom's Comments

- 3.15 Except for mobile short codes (see below), none of the number ranges listed by BT support revenue sharing. Such services can not therefore be paid for through call charges which means they are not premium rate services and are not captured by the new regulations.
- 3.16 Ofcom is aware that some services providing sexual entertainment do operate on mobile short codes and that as such these are premium rate services as defined in section 120 (7) of the Act. Ofcom notes that these services are constrained to operate on specific numbers ('69XXX' or '89XXX') and are subject to ICSTIS regulation and also to a content classification Code of Practice¹⁰ established by all the mobile operators. Ofcom considers these services to be outside the scope of this consultation, which seeks only to implement the decision taken in the April 2006 NTS Statement in relation to SES operating on 08 numbers.
- 3.17 In order to clarify that there is no intention that services providing sexual entertainment on mobile short codes should be required to migrate to '098' numbers, Ofcom has adjusted the definition of SES in the Plan.
- 3.18 Ofcom considers that it would be more appropriate for the concerns raised by BT about services using mobile short codes to be considered as part of its review of the regulation of premium rate services commencing in the spring of 2007. This review will include all services defined as premium rate services in section 120 of the Act. The terms of reference of this review can be found on Ofcom's website¹¹.

Prospective migration from '0908' and '0909' to '098'

- 3.19 BT stated that permitting rangeholders to continue to allocate '0908' and '0909' numbers in the knowledge that a consultation on requiring migration to from '0908' and '0909' to '098' is imminent is not good practice. Ofcom should either close the '0908' and '0909' ranges to any new allocations or remove the threat of any future closure of those ranges.
- 3.20 The former would mean subjecting the ranges to the Code of Practice for Closed Ranges and amending both the Plan and General Condition 17 to require rangeholders to cease allocating these numbers for new business. The latter would permit continued use of numbers already allocated which would lead to efficient number utilisation.
- 3.21 BT noted that, in proposing the modifications to Part 5 of the Annex to General Condition 17, Ofcom has remained silent on '0207' and '0208' ranges which are also no longer being allocated. If Ofcom does not deem it necessary to include '0207' and '0208' then neither do '0908' and '0909' need to be included.

Ofcom's Comments

- 3.22 Ofcom would like to point out that where a CP has been allocated telephone numbers in the '0908' and '0909' range General Condition 17.1 (a) currently allows him to adopt such spare numbers as he is already holding in accordance with the usual requirements in connection with the adoption of telephone numbers. Ofcom does not wish to amend the Plan and General Condition 17 as an interim measure to

¹⁰ <http://www.imcb.org.uk/assets/documents/10000109Codeofpractice.pdf>

¹¹ <http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/tor/>

prevent future use of such unused numbers as it might pre-empt the review of the whole '09' range which is planned for this year. However, as previously noted, Ofcom recommends SES providers to consider carefully the risks of having to migrate services twice in a relatively short period.

- 3.23 Ofcom notes BT's comment about the 0207 and 0208 ranges not being included within Part 5 of the Annex to General Condition 17. Since this matter is outside the scope of this consultation, Ofcom plans to address it in the review of the General Conditions which started with the consultation entitled "Review of General Condition 18 – Number Portability" published in November 2006¹² and which is to be completed during 2007.

Migration of services from 0908 and 0909

- 3.24 BT added that the '0908' and '0909' ranges were only created relatively recently for SES, to remove them at some future stage may provoke a backlash from conformant users. BT felt there was a similarity to the omission of '056' from Ofcom's Numbering Policy Review consultation.
- 3.25 BT also advised that, in considering whether to consult on requiring SES to migrate from '0908' and '0909' to 098, Ofcom should weigh the following benefits against the potential cost and disruption:
- whether such a migration would facilitate call barring; and
 - whether customer awareness of '098' is high and awareness of '0908' and '0909' low, resulting in detriment to callers of legacy '0908' and '0909' numbers.
- 3.26 BT described how OCPs may offer different levels of call barring. Customers of those offering barring at the '09' level only are unable to selectively bar access to anything below the whole '09' range. Those offering barring at the '09XX' level can already bar access to each or all of '0908', '0909' and '098'. Therefore, only customers of OCPs offering barring at the '09X' level will benefit from forced migration to '098'.
- 3.27 Being a new range consumer awareness of '098' will be low. BT therefore felt it makes no sense to force migration from familiar to unfamiliar numbers until the latter are recognised as being for SES.

Ofcom's Comments

- 3.28 Ofcom notes BT's comments and considers they are relevant to the forthcoming consultation on '09' issues as part of the ongoing Numbering Review. As a consequence they have been brought to the attention of the numbering policy team which intends to deal with migration issues surrounding the 0908/0909 ranges.
- 3.29 In regard to BT's point about similarities between stakeholders reactions to '0908/0909' numbering policy and that underpinning 056 numbers, Ofcom would like to refer BT to the comments in paragraph 7.7 of the November 2006 Numbering Review Statement. Here it was confirmed that "*Ofcom has no plans to close the 055 or 056 number ranges and supports the growth of both service types*". In the case of '0908' and '0909' it was clear that demand for numbers would soon exceed the capacity of the available ranges at a time when the future operation of the entire '09' range was under review. Ofcom took the opportunity to rationalise where SES should

¹² <http://www.ofcom.org.uk/consult/condocs/gc18/>

best sit whilst at the same time ensuring sufficient numbering capacity would be available for the foreseeable future.

- 3.30 In relation to call barring, the key intention of the proposed changes is to enable some selective call barring of ranges which carry SES. This is possible in '09' where call barring at the '09X' or '09XX' level is currently available. It is not possible in '08' where SES are scattered throughout entire number ranges, usually in '0870' or '0871'. The question of different call barring options in the '09XX' to '09X' ranges might be discussed in the forthcoming consultation on the whole '09' number range.

Migration timescales

- 3.31 BT commented that Ofcom does not appear aware of the likely (telecoms) industry lead times to migrate services from '08' to '09'. At present the only tariffs existing in both ranges are 5ppm and 10ppm. As long as all services require nothing other than these prices then six months is achievable. If SPs require sub 10ppm prices other than these, more time would be needed to establish the new price points on BT and other networks. There is also likely to be a 'bow wave' effect of demand for new prices. The resultant DMA demand could prejudice an orderly transition to the new numbers. BT therefore recommended a 9 month lead time.

Ofcom's Comments

- 3.32 Ofcom accepts BT's point that the contractual timescale of eight weeks for BT to open new '098' numbers applies only where migrating services adopt existing price points. Whilst Ofcom considers it likely that a significant proportion of SES currently on '08' will choose the 10ppm price point in '098' it acknowledges that where TCPs seek prices other than those already in existence BT's contractual lead time to open the new numbers is 85 working days (17 weeks). Ofcom accepts that this additional lead time was not sufficiently taken into account in its original proposal, although when suggesting a six month migration timescale Ofcom considered the key activities in its Impact Assessment (which is summarised at Annex 1 of this document).
- 3.33 The proposed period included an allowance, based on Ofcom's estimates, of approximately eight weeks to allow for unforeseen slippages in 'normal' lead times. Ofcom accepts that, as BT pointed out in its response, some additional time needs to be allowed for those few services requiring new price point but considers that any 'bow wave' is likely to be small. This is because SES operating in '08' tend to be priced at the top end of the price range (i.e. 10 pence per minute) and Ofcom considers it unlikely that service providers will apply for price points below their current prices when moving to '098'.
- 3.34 Ofcom has decided to change the proposed migration time to accommodate the main concern BT raised in its response and to allow for any exceptions. As a result the migration period has been extended to eight months from the date of this statement. Whilst this extension may not completely meet the suggestions made by BT and other respondents Ofcom considers it sufficient time for migration and reminds stakeholders that the decision require SES to migrate from '08' numbers was made in the April 2006 NTS Statement. Given the timely warning SES providers can be expected to comply with the new requirements in the quickest possible timeframe.

UKCTA

Prospective migration from '0908' and '0909' to '098'

- 3.35 UKCTA said that CPs are already carrying out an audit to ensure their existing PRS customers are complying with ICSTIS's 11th Code of Practice. As such it seems unreasonable to force them to make further changes. Nevertheless UKCTA appreciates the need to group all SES under one number range and requests that any consultation to force migration from '0908' and '0909' should be undertaken as early as possible.

Price Transparency

- 3.36 UKCTA commented that whilst Ofcom has recently required CPs to give equal prominence to geo and NTS ('08') prices in price lists the same does not apply to '09' calls particularly on mobile networks. Forcing migration of SES from '08' to '098' may give rise to increased numbers of complaints about the much higher prices charged by mobiles since consumer will not know that calls are much more expensive than the advertised price on fixed lines.

Ofcom's Comments

- 3.37 Ofcom hopes that mobile operators will act responsibly in the charges they make for access to any services that have migrated to '09' numbers but remain priced at the same or similar rates as they were on their old '08' numbers. However, the general question of mobile charges for access to '09' numbers is beyond the scope of this consultation and has been referred for consideration as part of the 2007 PRS Review.

Definition of SES

- 3.38 UKCTA considered that Ofcom may have served to confuse stakeholders about of what constitutes SES. The 'official definition' is clear but paragraph 3.1 of the consultation referred to sexually orientated material. UKCTA seeks clarification/examples of what is meant by this e.g. does it refer to services aimed at specific groups such as gays and lesbians?
- 3.39 UKCTA noted that Ofcom frequently referred to migration of SES provided on all '08' numbers and sought clarification on whether this excluded SES offered on '080X' numbers paid for by other means such as credit card.

Ofcom's Comments

- 3.40 Ofcom notes that its reference to the term 'sexually orientated' in paragraph 3.1 of the consultation document was in relation to chatlines which are already classed as CPRS and therefore not the subject of this consultation. As stated in paragraph 3.12 Ofcom considers that the definition of SES in both the Plan and the ICSTIS Code is clear. In Ofcom's opinion it is not for the regulator to advise in each individual case whether particular services fall within the scope of the regulations. Service providers will understand the purpose of their services and must decide themselves on which numbers they should operate.
- 3.41 Ofcom notes UKCTA's point about references to SES using all '08' numbers and whether this excludes those that use '080X' numbers. In common with services operating on geographic or other numbers where the service is not paid for through

the price of the call, where SES on '080X' numbers are not classed as premium rate services under Section 120(7) of the Act they are not therefore included under the proposed definition and not within the scope of this consultation.

Enforcement

- 3.42 UKCTA noted that Ofcom has given no detail about how migration will be enforced and whose responsibility it will be to ensure SES on '08' transfer. UKCTA believed it is not clear what will happen to services which continue to operate on '08' after the six month deadline. UKCTA also asked who will enforce the requirement, how will costs of enforcement be met and who will police non-compliant services?

Ofcom's Comments

- 3.43 Ofcom intends to apply its general enforcement policies in relation to SES. As outlined above in paragraphs 3.7 and 3.8, both Ofcom and ICSTIS have powers to take action against transgressors. Ofcom can exercise powers under Section 94 of the Act and General Condition 17.8 to require network provider who continue to allow SES providers to operate on their '08' numbers, to stop them from doing so. ICSTIS can similarly take action against the service providers themselves. In both cases it is likely that any action will be in response to complaints although as stated above if the level of non-compliance is found to be significant Ofcom may deem it necessary to conduct an own-initiative enforcement programme to identify and take action against offenders. Other than the ICSTIS levy, and any fines that may be imposed no additional costs will be levied against SES providers in general for any enforcement action that needs to be taken.

Thus

Grouping SES under the PRS Condition

- 3.44 Thus raised 3 concerns, namely:
- a) CPs should be allowed to migrate to '0908' and '0909' numbers if they have them, especially if they have not yet ordered '098' numbers;
 - b) Six months is insufficient time to complete the transition to new numbers, new price points/business plans and to accommodate the ICSTIS levy. It can also take six months to implement new number ranges before they can be sold to SPs;
 - c) Some mobile networks bar access to or charge very high prices for '09' calls. Some SES providers use '08' specifically to avoid high mobile prices. If Ofcom proceeds action needs to be taken to ensure mobiles act reasonably, so as not to cause the failure of business models.
- 3.45 As a consequence Thus considered that Ofcom's Impact Assessment (IA) is inadequate in considering these issues and that a new assessment is required which increases the migration timescale to twelve months.
- 3.46 Other than this, Thus's response echoed that of UKCTA.

Ofcom's Comments

- 3.47 Ofcom has stated that TCPs can migrate services to spare '0908' and '0909' numbers already allocated to them although they are advised to take into account that they may need to migrate to 098 numbers at some point. However, until a decision is taken on this matter the '0908' and '0909' ranges remain closed to new applications but may continue to be used for existing and migrating services where the TCP has spare numbers from allocations already made.
- 3.48 As stated in reaction to BT's response, Ofcom notes that the migration timescale proposed as a result of the original Impact Assessment in the consultation document did not sufficiently address the time required by BT to establish new price points in addition to those already available in the '098' range. As a consequence of the concerns raised in response to the consultation the migration timescale has been extended to eight months to allow for this.
- 3.49 Ofcom also indicated how it needed to balance the need to minimise consumer harm through the protection of minors in the shortest possible timescale without imposing unnecessary or excessive costs on consumers or SES providers who are, at the present time, trading legitimately on '08' numbers. Given that six months was felt to be achievable at the time of the consultation, there was no justification for allowing longer than this. However, in response to comments made to the consultation proposals, Ofcom has extended the time to be allowed for migration to eight months. Some respondents called for this time to be extended to twelve months but as stated in paragraphs 3.33 to 3.35, Ofcom believes that eight months will be sufficient.
- 3.50 From an examination of their websites, Ofcom is aware that some mobile operators bar access to some or all PRS numbers on new contracts. This bar may be lifted on request presumably where the mobile operator is satisfied that the customer will not default on payment of higher PRS charges. These are also usually higher than fixed networks sometimes by a considerable amount depending on the call plan. Currently, Ofcom has no wish to intervene but hopes that mobile charges for '09' services costing in the region of 10 pence per minute or per call from fixed networks will be set at reasonable levels for mobile calls.

Mobile Broadband Group

- 3.51 The Mobile Broadband Group (MBG) responded on behalf of 3, O2, Orange, T Mobile, Virgin Mobile and Vodafone.

Impact Assessment

- 3.52 The MBG was very supportive of the need to protect children and supported Ofcom's aims but had concerns about the approach taken and, in particular, the IA. The MBG asserted that Ofcom has no evidence that minors are accessing SES on '08', are being harmed as a result or that there is public concern about the issue. These SES have been available for some time so evidence of a proven risk should be available, if it exists. In the MBG's opinion the proposal is based on a hypothetical risk based on a consultation completed more than twelve months previously. Given that six months are being allowed for the transition, the MBG felt the matter can not be urgent which implies the risk of harm to minors is small.
- 3.53 The MBG would like to see greater clarity and coherence in Ofcom's treatment of PRS regulation. Furthermore, the MBG hopes that Ofcom's forthcoming PRS review will take a more strategic approach towards regulating a vibrant and successful PRS

industry, which in the MBG's opinion is becoming subject to piecemeal and uncoordinated regulation.

- 3.54 The MBG added that in 2005 Ofcom committed to improving IAs but felt that this one falls short of that objective. Lack of evidence of harm makes it impossible for stakeholders to carry out a cost benefit analysis. Neither has the impact on ICSTIS been quantified where resources may be diverted away from more serious issues.

Ofcom's Comments

- 3.55 Ofcom reminds the MBG that this consultation was about the proposals for implementing a decision taken in the "NTS: A Way Forward" statement issued in April 2005 and not about the decision itself. As such the IA was not intended or required to provide evidence of harm of the decision itself but to solely assess the impact and the adequacy of the proposed implementation measures.
- 3.56 Ofcom notes the MBG's and others' concerns about a lack of co-ordination in the application of regulation to PRS. The 2007 PRS Review is designed to address this issue but the specific modifications carried out recently were deemed necessary to address specific, urgent and often serious issues which were causing significant detriment to consumers and which could not wait for a full review to be undertaken.
- 3.57 The extension of ICSTIS regulation to SES currently on '08' numbers and the resource implications have been thoroughly discussed with ICSTIS.

Implementation

- 3.58 The MBG agreed that with '0908' and '0909' numbers running out migration to '098' seems reasonable. The MBG does not, however, support a number plan which attempts to signal service categories beyond the first 2 digits. Consumers identify 07 as mobile, 01 as geographic, '09' as premium rate but are unlikely to understand the significance of numbers beyond the first two.

Ofcom's Comments

- 3.59 Whilst Ofcom acknowledges that transparency might be best served by service categories with only 2 digits, for practical reasons the number of such categories is limited. As a result Ofcom considers that an alternative solution is to improve visibility for SES by migration to a 3 digit range. Furthermore, Ofcom notes that there is little to indicate that consumers have had difficulty recognising that '0908' and '0909' are currently used for SES. As such moving to '098' can only help to improve visibility once the new number range becomes established.

Amendments

- 3.60 The MBG agreed that the proposed amendments to the PRS condition are clear.

Premium Rate Association

- 3.61 The Premium Rate Association (PRA) makes no comment on the original decision but directs stakeholders to their comments on the matter in their response to the NTS consultation.

Discrimination against SES on '08'

- 3.62 The PRA asks whether, by not including SES using different payment methods i.e. using 01/02 numbers, Ofcom is discriminating against those on '08' numbers. This given that the objective is to offer consumers a degree of protection from harm. The PRA went on to ask whether one of the drivers behind Ofcom and ICSTIS's enforcement action over revenue share on 070 numbers was aimed at addressing this balance and ensuring that similar services on other prefixes are drawn into line?

Ofcom's Comments

- 3.63 Ofcom reminds the PRA that SES operating on '08' and '09' numbers are all premium rate services as defined in Section 120(7) of the Act whereas those using 01/02 numbers are not. The key difference being that the service used is paid for through the price of the call rather than some external means such as by credit card. Ofcom is extending the definition of Controlled Premium Rate Service to all SES irrespective of price and which, at least in some cases, are probably charging at or below 10ppm on the '08' range specifically to avoid PRS regulation. Services requiring external payment have to a large extent additional safeguards in place, such as having to give credit card details which acts as a safeguard against attempted access by minors. Additionally, in many cases the use of credit cards can provide callers with security against potential fraud by SES providers.

Migration timescales

- 3.64 The PRA disagreed with Ofcom's estimates of the timescales for changing advertising copy. Some services can use media with long shelf-lives whilst other media require three months notice before publication. As such allowing six months for migration is ambitious and that a minimum of nine months is required.

Ofcom's Comments

- 3.65 Ofcom has taken note of concerns about the six months proposed migration timescale and for the reasons outlined above has extended this period to eight months.

Usage patterns

- 3.66 The PRA suggest that some SES users will use specific numbers regularly. As such they request a period of parallel running between the old '08' and new '09' numbers with free to call introductions and pricing information to comply with ICSTIS regulations.

Ofcom's Comments

- 3.67 Ofcom acknowledges that some SES providers may wish to operate their old '08' numbers in parallel with the new '098' numbers after the end of the migration period. This is perfectly reasonable provided the '08' numbers are used reasonably to carry a short message advising callers of the new '09' number and cease to carry any sexual entertainment content.

Pricing

- 3.68 The PRA request confirmation that BT has made price points below 10ppm available before the start of the migration period.

Ofcom's Comments

- 3.69 BT is unlikely to establish a ladder of sub-10ppm prices in advance of SES providers requesting them. This would require Ofcom pre-allocating sub-ranges of numbers to price points before it is clear what prices SES providers will choose to use, which could prove wasteful of the numbering resource. The new migration timescale (8 months) is designed to allow new price points to be established on request in addition to the 5ppm and 10ppm points already in existence.

Existing '09' SES

- 3.70 The PRA agrees that SES on '0908' and '0909' should migrate to '098' but asks for as much early warning as possible and likely timescales.

Network for Online Commerce (NOC)

- 3.71 NOC is aware of the forthcoming PRS Review and wonders if this consultation should be included in that exercise.

Ofcom's Comments

- 3.72 There are two reasons for conducting this exercise separately. Firstly when the decision was taken to proceed with the extension of CPRS to include SES on '08', Ofcom had not undertaken to carry out the 2007 PRS Review. Secondly the consultation stage of the Review is not due until the summer with a target for completion of before the end of 2007. This would mean that SES could still operate on '08' numbers until the late summer of 2008 which would perpetuate the potential for consumer harm by almost a full year. Ofcom considers this to run counter to the objective of completing the exercise with the maximum reasonable urgency.

Section 4

Ofcom's conclusions following the consultation

- 4.1 Ofcom has considered the responses received to the consultation in the light of the impact assessment summarised at Annex 1, and has concluded on the proposed modifications to the PRS Condition, the Plan and General Condition 17 as set out in the consultation document.
- 4.2 The modifications implement the decision taken in the April 2006 NTS statement, that:
- a) SES operating on '08' numbers should migrate to specific ranges set aside in '09', now principally '098'; and that
 - b) All SES irrespective of price should be brought within the scope of ICSTIS regulation, specifically by modifying the definition of CPRS to include all adult services regardless of price.
- 4.3 Acknowledging comments made by some respondents who believe that the timescale for migration, proposed in the impact assessment, would not allow sufficient time for services requiring price points not already available in the '098' range to obtain and advertise their new numbers Ofcom has reviewed the migration timescale and extended it from six to eight months to accommodate the concerns raised.

Tests set under the Communications Act 2003 for modifying conditions

- 4.4 When deciding to modify a condition set by Ofcom under Act, Ofcom is required to meet various tests set out in the Act. These tests and Ofcom's assessment of how it has met them with regard to the proposed amendment to the PRS Condition are set out below.

Section 3 – Ofcom's general duties

- 4.5 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:
- a) to further the interests of citizens in relation to communications matters; and
 - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 4.6 Ofcom considers that the modifications to the PRS Condition, the Plan and the Annex of General Condition 17 respectively, to clarify that SES should only be provided on the designated '09' ranges are in accordance with its duties under section 3 of the Act.
- 4.7 The modifications are considered the most appropriate means of implementing or confirming previous policy decisions that have been made in line with section 3 of the Act. In particular they seek to extend the consumer protection provided by PRS regulation to SES that are currently not subject to that regulation. In addition, by

requiring these services to use the designated ranges, citizens will have better access to call barring facilities. In both these measures, Ofcom's primary purpose is to ensure that vulnerable consumers, particularly minors are protected.

- 4.8 Ofcom has also considered when carrying out its functions, amongst other things, the requirements in section 3(2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services, and such of those objectives specified in section 3(4) of the Act, as appears to be relevant in the circumstances. In this case, Ofcom considers the following to be particularly relevant:
- the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
 - the opinions of consumers in relevant markets and of members of the public generally.
- 4.9 Ofcom considers that the proposals set out in this document are consistent with the above duties and that, in particular, and as set out above, extending PRS regulation to include all SES regardless of price would be the most effective means of implementing the policy decision given in the April 2006 NTS Statement i.e. to require SES on '08' numbers' to move to designated '09' numbers.
- 4.10 In addition because (as discussed in Annex 5) the costs of migrating services to the designated '09' ranges, for both SES providers and consumers, are low, market exit by SES providers is thought unlikely and, as a consequence, competition in service provision and service availability will not be harmed.

Section 4 – European Community requirements for regulation

- 4.11 Section 4 of the Act requires Ofcom to act in accordance with the six Community requirements for regulation, including the requirement to promote the interests of all persons who are citizens of the European Union. These duties flow from Article 8 of the Framework Directive.
- 4.12 For the same reasons as those given in paragraph 4.9 above, Ofcom considers that the proposed modification of the PRS Condition promotes the interests of all persons who are citizens of the European Union.

Section 47 – Test for setting or modifying conditions

- 4.13 Section 47(1) of the Act states that Ofcom must be satisfied, when modifying a condition, that the test under section 47(2) has been met. That test is that the modification is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not unduly discriminatory against a particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) transparent in relation to what it is intended to achieve.

- 4.14 As discussed in the April 2006 NTS Statement SES operating on '08' numbers raise a number of issues, in part, by virtue of the fact that they are able to avoid ICSTIS regulation and because of the inability to bar access to services not restricted to specific number ranges. Extending the definition of CPRS to include all SES addresses the first of these concerns whilst forcing SES to migrate to the '098' number range helps to address the second concern. Additionally, removing the 10 pence per minute lower price threshold lessens the risk of consumer detriment through price increases.
- 4.15 Ofcom is thus satisfied that the modifications are objectively justifiable, not unduly discriminatory, proportionate and also transparent.
- 4.16 Ofcom considers the modifications to be objectively justified in order to remove or reduce confusion over the fact that at present some SES operate within the scope of the definition of CPRS whilst others do not and in order to increase the possibilities to use call barring facilities to block access to such services for more vulnerable groups of society, such as minors.
- 4.17 Ofcom further does not consider the modifications to be unduly discriminatory, in that they bring all SES regardless of price under the same regulatory umbrella or disproportionate in any way as they reasonably address a previously agreed policy objective.
- 4.18 Ofcom also considers that its proposals have been transparent. The policy decision was initially consulted upon in October 2004 in Ofcom's initial consultation as part of its NTS review in the document entitled "*Number Translation Services: Options for the future*"¹³, and again in September 2005 in the consultation which preceded the April 2006 NTS Statement¹⁴. Additionally, Ofcom consulted upon the proposals to implement these policy decisions in November 2006. Ofcom has taken account of the comments made to it in response to all consultations and considers that the transparency of regulation is likely to be enhanced by modifying the PRS Condition in such a way as to make it apply equally to all SES thereby avoiding unnecessary confusion and by ensuring that, ultimately, all SES are operating on a single number range.

Section 48 – Procedure for setting or modifying conditions

- 4.19 Section 48(2) requires Ofcom, before setting, modifying or revoking, to publish a notification setting out the proposed changes, the effect of those changes, the reasons for those changes and specifying a period within which representations may be made to Ofcom about the proposal. Section 48(3) states that the minimum period for receiving representations is no less than one month after the day the notification was published.
- 4.20 Ofcom has held a separate consultation on the proposed modification to the PRS Condition. This consultation allowed five weeks after the date the consultation was published for representations to be made. The consultation included a draft of the proposed notification and an explanation of the effect of the proposed amendments. Ofcom considers that it has met the section 48 test with regard to the procedure it has followed in proposing a modification of the PRS Condition.

¹³ <http://www.ofcom.org.uk/consult/condocs/ntsoptions/>

¹⁴ http://www.ofcom.org.uk/consult/condocs/nts_forward/

Ofcom's decision

- 4.21 Ofcom has decided to give effect to the modification of the PRS Condition proposed in the November 2006 SES Consultation. Ofcom has published at Annex 2 Notifications of modifications to the PRS Condition, the Plan and Annex 5 to General Condition 17, as required by sections 48(1) and 120(5) of the Act.

Annex 1

Summary of Ofcom's Impact Assessment

Introduction

- A1.1 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf
- A1.2 Ofcom has said in the Guidelines that following consultation, Ofcom will generally publish a decision or policy statement that will contain a summary of analysis contained in earlier impact assessments; responses to the comments made about the impact assessments; show how the comments have affected assessment of the impact of the options considered; and set out the chosen option with reasons.
- A1.3 This section contains a summary of Ofcom's impact assessment, contained in Annex 5 of the November 2006 SES Consultation, as defined in section 7 of the Communications Act 2003 (the Act). The responses received to the original analysis and Ofcom's subsequent comments can be found in section 3 of this document.

Rationale for Intervention

- A1.4 The decision to extend the definition of CPRS to include all SES regardless of price and to require services on '08' to move to designated '09' numbers was made in the April 2006 NTS Statement. The impact assessment sought only to assess the relative merits of the different options for implementing that decision. Key factors in the assessment were the timescales SES providers should be allowed to move their services from '08' numbers to the '098' range and the costs that they and consumers may incur.

Timescale for migration – analysis of the options

- A1.5 Ofcom's aim is that that SES should move from '08' to the designated number range within the '09' range in the shortest reasonable time, In the original Impact Assessment, timescales ranging from six weeks to more than six months were considered.
- A1.6 Ofcom's understanding of the industry processes and relevant timescales Ofcom needed to allocate and BT to implement new '098' numbers was summarised as follows and Ofcom sought comments on this analysis:
- i) The SES provider will need to contact their TCP to request the relevant '098' numbers.

- ii) If the TCP does not already have the required '098' numbers it will contact Ofcom to request their allocation. Ofcom will provide the new numbers within the statutory time of three weeks.
- iii) Once the '098' numbers have been allocated the TCP will ask BT to open the new numbers across BT's network. This is subject to a contractual timescale of eight weeks where existing price points have been chosen. However, as pointed out by BT this timescale extends to seventeen weeks (eighty five working days) where the TCP asks for new price points not already established for the '098' number range on BT's network.
- iv) BT will also forward the request to other OCPs to request that the numbers are 'opened' on their networks. Other OCPs are not subject to BT's contractual obligations and some might need some additional time to open the new number ranges.
- v) Once the numbers are ready for use the TCP will advise the SES provider who will start the process of changing relevant advertisements. Ofcom considered that in most cases this will be limited to short term media such as television, newspapers and magazines mostly with short circulation periods. There will be some exceptions but these are considered to be relatively few. Total lead times for changing advertisements in the majority of cases was considered to be no more than one month.

A1.7 Ofcom has noted BT's reminder of the contractual timescale to establish new prices. However, this comment and comments made by other respondents about the need for more time to change advertisements in certain types of media have to be balanced against the stated need to complete this exercise in the shortest reasonable time because of the ongoing risks faced by minors. Ofcom also reminds stakeholders that the decision to require SES to migrate from '08' numbers was signalled in the consultation process leading to the April 2006 NTS Statement. Ofcom should therefore be able to apply the shortest feasible migration timescales.

A1.8 Ofcom believes the likely numbers of services facing serious risks of loss through being unable to complete their migration in the time given are likely to be small. In addition SES providers have the option of maintaining their '08' numbers with changed number announcements re-directing callers to the new '098' numbers until all their revised advertisements are in place.

Option 1 – Six weeks

A1.9 This is the period ICSTIS usually allows for SPs to conform to changes in the ICSTIS Code. The SES industry was placed on notice that the requirement to move services away from '08' numbers was proposed in the September 2005 NTS Consultation. However, Ofcom noted that the number of responses from SES providers to the proposal as a result of the consultation was negligible. It is therefore likely that many may not have been aware of the final decision. Ofcom therefore assumed that providers would not initiate the migration process at least until the final statement is published.

A1.10 From the analysis of the various activities needed to complete migration to new '098' numbers Ofcom estimated that opening new number ranges would take a minimum of three months and changing advertisements in the majority of media used to promote these services could take up to a further month.

A1.11 A six week time allowance would clearly, therefore, be insufficient.

Option 2 – Three months

A1.12 This was felt to be achievable only if SES providers sought to change advertisements as soon as they were allocated new numbers, before they were brought into service on BT's and other networks. This was considered a risky operation which could result in services being advertised on new numbers before those numbers were fully operational and for this reason a period of three months was also rejected.

Option 3 – Six months

A1.13 Ofcom considered that despite knowing that this requirement was imminent, many SES providers would be unlikely to take any action to migrate their services in advance of publication of the final decision in this statement. With this in mind, the analysis of activities indicated that for the majority of services migration could be completed in around four months. However, to accommodate any unforeseen slippages that may occur in the various processes, including the likely volume of demand, Ofcom proposed a period of six months for migration to be completed.

A1.14 It is now clear, however, that where TCPs require price points not already established in '098' that a further nine weeks is required by BT to open the new numbers. It must be recalled though that the initial period of six months allowed for migration, included an allowance of approximately eight weeks for unforeseen delays in the process.

A1.15 Ofcom believes that the majority of SES will migrate from '08' to prices at or above 10 pence per minute or per call in '098', which already exist, in which case the longer timescale for implementation on BT's network will not apply. However, to allow for those SES providers that do decide to charge prices other than those already set up in 098, Ofcom has extended the migration period from six to eight months. This period still includes a time allowance for unforeseen slippages.

Option 4 – More than six months

A1.16 Ofcom indicated how it needed to balance the need to minimise consumer harm through the protection of minors in the shortest possible timescale without imposing unnecessary or excessive costs on consumers or SES providers who are, at the present time, trading legitimately on '08' numbers. Given that Option 3 was felt to be achievable, there was no justification for allowing longer than six months at the time of the consultation.

A1.17 However, in acknowledgement of information provided by BT in the response to the consultation Ofcom is now allowing eight months for migration to be completed. Some respondents, in fact, called for this time to be extended to twelve months but because in extending the time allowance Ofcom has continued to include an allowance for unexpected delays a period longer than eight months is not justified as this would unnecessarily prolong the potential for consumer harm.

Migration Costs

A1.18 Ofcom relied heavily on the analysis undertaken for the work leading to the April 2006 NTS Statement, particularly the costs relating to the migration of '0845' and '0870' voice (rather than data) services. Ofcom also reminded SES providers that

they may incur additional costs if they opted to migrate to unused numbers in '0908' and '0909' since Ofcom planned shortly to consult on closing these ranges and to require services to move to '098'.

Costs to consumers

A1.19 Merely changing numbers should not impose additional costs for consumers as long as SES providers informed their customers of the price of the calls and retained the '08' prices on the new '098' numbers. Consumers who regularly use individual services may incur misdialling costs estimated at an average of 25p per service. This could be minimised where SES providers retained their '08' numbers for a limited time and used recorded announcements to redirect callers to their new numbers. Furthermore, since the shelf life of most newspapers and periodicals carrying SES advertisements is short, misdialling resulting from out of date advertising was not felt to be a significant problem.

Costs to Service Providers

A1.20 Here again the relatively short shelf lives of media carrying SES advertisements means that the costs of changing numbers on the advertisements is likely to be low. Most providers costs will be limited to their own internal staff cost and those levied by their CP for changing the numbers. There will also be some cost associated with compliance with ICSTIS regulation which may have to be reflected in some calls price increases.

A1.21 It is also possible that call volumes may decline as a result of some consumers' perception of the higher charges associated with calls to '09' numbers.

Conclusion

A1.22 Whilst Ofcom originally considered that a six month migration period struck a sensible balance between the need to move quickly to prevent further consumer harm and the need to minimise the costs of the migration exercise in the light of additional information received during the consultation and for the reasons set out above, Ofcom now considers an eight months migration period to represent an appropriate and feasible balance between the interests of the different parties involved.

Annex 2

Notification of a modification under section 48 (1) of the Act

Modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(2) of the Act published by OFCOM on 9 November 2006

WHEREAS:-

- A) OFCOM issued a notification pursuant to section 48 (2) of the Act on 9 November 2006 ('the Notification');
- B) in the Notification and accompanying consultation document, OFCOM invited representations on the proposals set out therein by 14 December 2006;
- C) By virtue of section 48 (5) of the Act, OFCOM may give effect to any proposals to modify the PRS Condition as set out in the Notification, with or without modification only if-
 - (i) it has considered every representation about the proposal that is made to it within the period specified in the Notification; and
 - (ii) it has had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;
- D) OFCOM received responses to the Notification and has considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document;

Therefore OFCOM gives the following modification

1. OFCOM, in accordance with section 48 (1) of the Act hereby makes the following modifications of the PRS Condition as set out in the Schedule to this Notification.
2. OFCOM considers that the modification referred to in paragraph 1 above complies with the requirements of section 120(5) of the Act, as appropriate and relevant to each of the proposals.
3. In taking the measures as set out in this Notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
4. The effect of, and OFCOM's reasons for making, the modification referred to in paragraph 1 above is set out at sections 2, 3 and 4 and Annex 1 of the accompanying explanatory statement.
5. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
6. In this Notification:

- (i) "the Act" means the Communications Act 2003;
 - (ii) "the Director General" means the Director General of Telecommunications;
 - (iii) "OFCOM" means the Office of Communications;
 - (iv) "the PRS Condition" means a condition under section 120 of the Act which is set out in the Notification under Section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003"
7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
8. For the purpose of interpreting this Notification:
- (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
9. The Schedule to this Notification shall form part of this Notification.
10. The modification set out in the Schedule to this Notification shall take effect immediately with publication of the Notification of the modification under section 48(1) of the Act.

Signed by

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the
Office of Communications Act 2003

8 March 2007

Schedule

The modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(1) of the Act published by OFCOM on 9 November 2006.

The PRS Condition shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

- (a) "Act" means the Communications Act 2003;
- (b) "Approved Code" means a code approved for the time being under section 121 of the Act;
- (c) "Communications Provider" means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;
- or
- (iii) a person who:
 - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) "Chatline Service" means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) "Controlled Premium Rate Service" means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:
- (i) the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute; or
 - (ii) the service is a Chatline Service; or
 - (iii) is Internet Dialler Software operated; **or**
 - (iv) the service is a Sexual Entertainment Service;**
- (f) "Controlled Premium Rate Service Provider" means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (g) "Dial-up Telephone Number" means the telephone number used by an end user's computer that connects it to the Internet
- (h) "Enforcement Authority" means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- (i) "Facility" includes reference to those things set out in section 120(14) of the Act;
- (j) "International Call" means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- (k) "Internet Dialler Software" is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number;

other than where it is used so that:

- a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;
- b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.
- (l) "Internet Service Provider" means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.
- (m) "National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
- (n) "Premium Rate Service" shall have the meaning ascribed to it by section 120(7) of the Act;
- (o) "Sexual Entertainment Service" means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;**

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

Annex 3

Modification to provisions of the Plan under section 56 (2) of the Act

Modification to the Plan under section 56 (2) of the Act

WHEREAS: -

- A) section 56 (2) of the Act provides that it shall be Ofcom's duty from time to time to review the Plan and make such revisions that it thinks fit, provided such revisions are made in accordance with section 60 of the Act;
- B) section 60 of the Act applies whereby General Condition 17 is a numbering condition for the time being having effect by reference to provisions of the Plan;
- C) by virtue of the Transitional Provisions, reference to the Director in General Condition 17 should be read as references to OFCOM;
- D) Ofcom issued a notification pursuant to section 60 (3) of the Act of a proposal to make a modification to the Plan on 9 November 2006 ('the Notification');
- E) for the reasons set out in the statement accompanying this modification OFCOM is satisfied that, in accordance with section 60 (2) of the Act, this modification is:
- Objectively justifiable in relation to the matters to which it relates
 - Not such as to discriminate unduly against particular persons or against a particular descriptions of persons;
 - Proportionate to what the Modification is intended to achieve; and
 - In relation to what it is intended to achieve transparent;
- F) for the reasons set out in the statement accompanying this modification OFCOM is satisfied that it acted in accordance with the relevant duties set out in sections 3 and 4 of the Act;
- G) a copy of the Notification was sent to the Secretary of State;
- H) in the Notification and accompanying consultation document OFCOM invited representations about any of the proposals therein by 14 December 2006;
- I) by virtue of section 60 (5) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without modification, only if-
- (i) it has considered every representation about the proposal that is made to it within the period specified in the Notification; and
 - (ii) it has had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State;

- J) OFCOM received responses to the Notification and has considered every such representation made to them in respect of the proposals set out in the Notification and accompanying consultation document;
- K) in considering whether to make the modification proposed in the Notification OFCOM has complied with all relevant requirements set out in section 60 of the Act.
- L) in this Modification:
- ‘Act’ means the Communications Act 2003;
 - ‘Condition’ means General Condition 17 of the General Conditions of Entitlement set by the Director by way of publication of a Notification on 22 July 2003;
 - ‘Director’ means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - ‘Ofcom’ means the Office of Communications; and
 - ‘Plan’ means the National Telephone Numbering Plan published from time to time by Ofcom.
- M) The modification set out in the Schedule to this Notification shall take effect eight months from the date of publication of the modification to the provisions of the Plan under section 56(2) of the Act.

NOW, THEREFORE, OFCOM, PURSUANT TO SECTION 56 (2), HEREBY MAKES THE FOLLOWING MODIFICATION-

1. Ofcom in accordance with section 56 (2) of the Act hereby makes the following modifications to the National Telephone Numbering Plan to take effect on 8 November 2007 (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

a) Under ‘Definitions and Interpretations’ in the Plan the definition of Sexual Entertainment Service shall be amended as follows:-

‘Premium Rate Service’ shall have the meaning ascribed to it by section 120(7) of the Act;

‘Sexual Entertainment Service’ means a Premium Rate Service, other than services operating on mobile short codes, which is an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

b) In Part A1 (Public Telephone Network Numbers) of the Plan the entries for 090, 091 and 098, shall be amended as follows: –

090 and 091	Special Services at a Premium Rate, that is charged at rates for Customers of BT which are generally either a) higher than 10p per minute up to and including £1.50 per minute including VAT, or b)
-------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	fixed fee calls costing over 10p, up to and including £1.50 including VAT (including 0908 and 0909 for Sexual Entertainment Services at a Premium Rate)
098	Sexual Entertainment Services, at a Premium Rate, that are charged at rates for Customers of BT which are generally either a) higher than 10p per minute up to and including £1.50 per minute including VAT, or b) fixed fee calls costing over 10p up to and including £1.50 including VAT

Signed by

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

8 March 2007

Annex 4

Modification to General Condition 17 under section 48(2) of the Act

Modification to the provisions of Part 5 of the Annex to General Condition 17 (Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated) regarding Allocation, Adoption and Use of Telephone Numbers which is set out in the Schedule to the Notification under Section 48 (1) of the Communications Act published by the Director General of Telecommunications on 22 July 2003 as amended by OFCOM on 8 March 2006.

WHEREAS:

- A. the Director General of Telecommunications issued on 22 July 2003 a notification setting general conditions under section 45 of the Act which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48 (1) of the Act;
- B. OFCOM modified the provisions of General Condition 17 as set out in its statement of 8 March 2006;
- C. section 45 of the Act provides that OFCOM may make proposals to modify the provisions of General Condition 17;
- D. OFCOM issued a notification pursuant to section 48 (2) of the Act of a proposal to make a modification to General Condition 17 on 9 November 2006 ('the Notification');
- E. for the reasons set out in the explanatory statement accompanying this modification, OFCOM is satisfied that the test for modifying conditions, set out in section 47 (2) of the Act has been met;
- F. for the reasons set out in the consultation document accompanying this proposal, OFCOM considers that it has performed its general duties under section 3 of the Act and acted in accordance with the six Community requirements as set out in section 4 of the Act;
- G. a copy of the Notification was sent to the Secretary of State;
- H. by virtue of section 48 (5) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without modification, only if:-
 - it has considered every representation about the proposal that is made to it within the period specified in the Notification; and
 - it has had regard to every international obligation of the United Kingdom (if any) which has been notified to it for its purpose by the Secretary of State;
- I. OFCOM received responses to the Notification and has considered every such representation made to it in respect of the proposals set out in the Notification and the accompanying consultation document;
- J. In considering whether to make the modification proposed in the Notification OFCOM has complied with all relevant requirements set out in sections 47 and 48 of the Act.

NOW, THEREFORE, OFCOM PURSUANT TO SECTION 44 HEREBY MAKES THE FOLLOWING Modification-

1. OFCOM in accordance with its powers under section 45 of the Act to modify conditions and the procedure set out in section 48 of the Act hereby makes the following modification of Part 5 of the Annex to General Condition 17 regarding Allocation, Adoption and Use of Telephone Numbers.
2. The modification is set out in the Schedule to this Modification.
3. In this Modification:
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "General Conditions" means as set out in the Schedule to the Modification under section 48 (1) of the Communications Act 2003 published by the Director General on 22 July 2003; and
 - (iii) "OFCOM" means the Office of Communications.
4. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Modification and otherwise any word or expression shall have the same meaning as in the Act.
5. For the purpose of interpreting this Modification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Modification were an Act of Parliament.
6. The Schedule to this Notification shall form part of this Modification.
7. The modification set out in the Schedule to this Modification shall take effect eight months from the date of publication of the Modification under section 48(1) of the Act.

Signed by

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

8 March 2007

Schedule

Modification of Part 5 of the Annex to General Condition 17 (Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated) regarding Allocation, Adoption and Use of Telephone Numbers which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act published by the Director General of Telecommunications on 22 July 2003.

Part 5 of the Annex to General Condition 17 shall be modified as set out below (the added text has been underlined and highlighted in yellow for ease of reference):-

5: Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated	
Numbers beginning	Designation
0500	No charge to Caller
07624	Radiopaging and Mobile Services (Isle of Man)
0800 (plus-6-digits)	Special Services – No charge to caller (except where charges shall be notified to callers at the start of the call)
<u>0908 and 0909</u>	<u>Sexual Entertainment Services at a Premium Rate</u>