

## Your response

Question	Your response
<p>Q5. Do you have any comments about our proposed approach to registration and registration exemptions in Part 2 of the draft PRS Order?</p>	<p>Confidential? – N</p> <p>We note that <b>Draft Order, PART 2, 10.2 (a)</b> states:</p> <p><i>A provider meets the requirements in this paragraph if the provider— (a) has given OFCOM the information described in Schedule 1 [see below] in respect of the regulated activity in the manner specified by OFCOM on their website,</i></p> <p><b>Schedule 1, 12(f)</b> <i>Where a PRS provider is a merchant, the PRS provider must also provide the following information in respect of each controlled PRS being provided to consumers— (b) the name of <b>any other person</b> contracted for the provision of that service, including for promotion and marketing of that service.</i></p> <p>We would instead like to recommend the amendment below. This will protect the commercially confidential information that will otherwise be available to competitors.</p> <p><b>Schedule 1, 12(f)</b> <i>Where a PRS provider is a merchant, <b>Ofcom will hold in confidence</b> the following information provided by the PRS provider in respect of each controlled PRS being provided to consumers— (b) the name of <b>any other person</b> contracted for the provision of that service, including for promotion and marketing of that service.</i></p> <p>And for this to also be reflected in the relevant parts of Schedule 2.</p> <p>We ask for confirmation that the Registration tool will remain the same, including the ability for batch uploads to provide new or revised information.</p>
<p>Q6. Do you have any comments on our proposed requirements relating to due</p>	<p>Confidential? – N</p>

diligence and risk assessment in Part 4 of the draft PRS Order?

We note that **Article 17, 2** states that:

*The assessment must consider the risks to consumers that may arise having regard to (b) details of whether the party is unable to pay its debts, or is likely to be unable to pay its debts as they fall due,*

We suggest that in many cases it will be impossible to know this ahead of time.

We note that **Article 17, 3** states that:

*2) The assessment must consider the risks to consumers that may arise having regard to—*

*3.(c) details of the party's involvement in any legal proceedings, including any previous or ongoing legal proceedings and judgments or any other decisions made by a court, tribunal or other body in respect of the counterparty*

We propose that this be amended to read:

*3.(c) details of the party's involvement in any legal proceedings **relevant to the provision of CPRS**, including any previous or ongoing legal proceedings and judgments or any other decisions made by a court, tribunal or other body in respect of the counterparty*

This small amendment will remove the requirement for all legal history, even such history that is irrelevant to the provision of these services, to be included.

Additionally on this point, we note that no definition of risk is included here. Is a risk a complaint/fraud/criminal activity? We ask for a little further clarity on this.

Q9. Do you have any comments about our proposed approach to pre-contract information and express consent for imposing certain charges in Part 6, Chapter 3 of the draft PRS Order?

Confidential? – N

We note that at Article 27.4 it is stated:

*(4) The merchant must give or make available to the consumer the information referred to in paragraph (3) clearly and legibly on the merchant's website, adjacent to the button or other similar function mentioned in paragraph (6).*

Due to the volume and nature of information required, "adjacent" may not be practical in all circumstances. We suggest that instead this clause should mirror current standards, i.e this information is available pre-purchase at various points.

We note at **Express consent for charges imposed under a contract for an ICSS - Article 29,3-5** it states

*(3) The first requirement is that the merchant must give or make available to the consumer, and directly before the consumer pays or agrees to pay the charge for the provision of the service, the information specified in sub-paragraphs (a), (b), (c), (f), (g), (j) and (o) of paragraph 2 of Schedule 3 in a clear, comprehensible and prominent manner, and in a way that complies with paragraph (4).*

*(4) The merchant must give or make available to the consumer the information referred to in paragraph (3) during their electronic communication by way of an automated message*

*(5) The second requirement is that the merchant must obtain the consumer's express consent by ensuring that the consumer explicitly acknowledges that the provision of the service in question implies an obligation to pay the charge in question.*

Very significant regulatory changes were applied to ICSS since 18<sup>th</sup> September 2023, and these should not be ignored. The impact of these recent changes should be reviewed before further (potentially unnecessary) and costly changes are required.

We are aware that PSA are in the process of conducting a *Request For Information* for ICSS, which should serve to provide more relevant insight and measurement on the impact these recent regulatory changes have had on ICSS before deciding whether further regulation is proportionate and necessary.

It is our experience that the September 2023 changes have already had a significant impact on ICSS in general, and we expect that the data gathered by PSA will show this in the last third of the period covered in this latest *Request For Information*. and demonstrate that these changes have already brought about an overall reduction in both detriment and complaints.

We also note that the consultation document state at **4.150**:

*We consider the free pre-contract information should be able to be provided to the consumer in less than 60 seconds (by way of an automated message).*

We ask for guidance around Access Charges for these services, which come at a cost to the consumer and as such would mean that the first minute of the call would not be free.

We note that at **Express consent for charges imposed under a contract for an ICSS - Article 29** it also states

*(7) Once the merchant has obtained the consumer's express consent in accordance with paragraph (5), it must provide to the consumer the information specified in paragraph (8) before the consumer is connected to another person or service through the use of the ICSS.*

*(8) The specified information is— (a) the telephone number of the person or service to whom the consumer is wishing to be connected through the use of the ICSS, and*

*(b) a clear explanation of the fact that, if the consumer still wishes to be so connected, the charge for the continued*

*use of the ICSS would be more expensive than the cost (if any) of the consumer speaking to the person or accessing that person's service directly*

If express consent has been given but the call duration is less than sixty seconds and therefore is still within the free minute, what should happen? The ICSS provider should not be obligated to provide free of charge "(a) the telephone number of the person or service to whom the consumer is wishing to be connected through the use of the ICSS". Is the caller expected to wait until 60 seconds have elapsed and charging has been initiated so that the service can then be provided?

#### **Additional Considerations**

If the first sixty seconds are to be free this presents additional issues for implementation timing. Only one price point with a free first minute exists, which is a free minute followed by a pence per minute charge. If Industry requires further price points, such as a free minute followed by a drop charge, then this will take longer than the proposed three months to implement.


Consideration should also be given as to how the proposed free minute will work in conjunction with the express consent, within the constraints of the tariff.

Current ICSS automated messages may take approx 30 seconds before the request for consent is requested. Will providers be forced to cause unnecessary delay to extend these messages to fill just under 60 seconds? How long exactly should these messages be so that the consent is given at exactly 60 seconds? How long does it take for a caller to give their consent?

If the first sixty seconds are to be free, and express consent is required before charging commences, what happens if:

- The caller has heard the information and given their consent but less than 60 seconds have elapsed

	<ul style="list-style-type: none"> <li>• The caller has not given their consent after 60 seconds have elapsed</li> <li>• The caller is still being given the information and has therefore not given their consent after 60 seconds have elapsed</li> </ul> <p>We would like to request clarification on what type of tariff mechanism Ofcom proposes be implemented that will satisfy the above scenarios, and the timeframe required by Ofcom and Industry for such an implementation?</p>
<p><b>Q8. Do you have any comments about our proposed approach to misleading information and/or the promotion and marketing of PRS in Part 6, Chapters 1 and 2 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>We ask how Ofcom will reasonably assess -in the event of a potential contravention -what makes an “average consumer”?</p> <p>For example, a focus group of 10 people of a certain demographic might respond differently to a different demographic making it difficult to decide on what is “average”.</p>
<p><b>Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p><i>(7) References in this article to the average consumer, so far as relating to cases where a group of consumers are vulnerable consumers, are to be read as references to an average member of that group</i></p> <p>Judging what an average consumer might be - within the breadth of considerations of vulnerability - very difficult, or at the very least open to a high level of subjectivity.</p>
<p><b>Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?</b></p>	<p>Confidential? – N</p> <p>We believe that a minimum of 3 months is required for implementation, and should that 3 months fall over the Summer holiday period then this will not be enough time (due to staff absence and much lower resource levels).</p> <p>Regarding ICSS services, without a firm idea of whether OFCOM will require additional price points or re-use existing redundant price points for the ICSS sixty seconds free calls, if such a condition exists, it is not possible to confirm whether it can be done in three months. Re-using of exiting price points should be quicker</p>



but additional price points would mean rebuilding systems and could take considerably longer.