

Your response

Feedback on amendments to the draft PRS Order as a result of this consultation

As the PRS Order is a Statutory Instrument it is important to get it right. We propose that a further public review and feedback opportunity on proposed revisions of the draft PRS Order is offered by Ofcom. PRS providers can assist in sense checking the revisions and help the publication of the Order runs as smoothly as possible.

Question	Your response
<p>Q1. Do you agree with our assessment that our proposals will not affect any specific groups of persons (including persons that share protected characteristics under the EIA 2010 or NIA 1998)? Please state your reasons and provide evidence to support your view.</p>	<p>Confidential? – Y / N</p>
<p>Q2. Do you agree with our assessment of the potential impact of our proposal on the Welsh language? Do you think our proposal could be formulated or revised to ensure, or increase, positive effects, or reduce/elimin</p>	<p>Confidential? – Y / N</p>

<p>ate any negative effects, on opportunities to use the Welsh language and treating the Welsh language no less favourably than English?</p>	
<p>Q3. Do you have any comments about our proposed definitions in articles 3 to 8 of Part 1 of the draft PRS Order for key service concepts that are used throughout the Order?</p>	<p>Confidential? – Y / N</p>
<p>Q4. Do you have any comments about our proposed definition for PRS regulated providers and regulated activity in article 9 in Part 1 of the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q5. Do you have any comments about our proposed approach to registration and registration exemptions in</p>	<p>Confidential? N</p> <p>Schedule 2 Specific information required from merchants. 9. <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—</i> <i>(a) details of the name of any other PRS provider involved in the provision of that service, including for promotion and marketing of that service, and</i> <i>(b) the name of any other person contracted for the provision of that service, including for promotion and marketing of that service.</i></p>

<p>Part 2 of the draft PRS Order?</p>	<p>Cancer Research UK propose that Schedule 2 9(b) is an excessive requirement for registration information . Persons contracted in the provision of the PRS service, including for promotion and marketing of the service will be included within the risk assessment requirement upon the PRS provider and it will be the PRS provider who is regulated by Ofcom.</p> <p>Cancer Research UK ask that the requirement in schedule 2 9(b) is removed from the PRS Order.</p>
<p>Q6. Do you have any comments on our proposed requirements relating to due diligence and risk assessment in Part 4 of the draft PRS Order?</p>	<p>Confidential?N</p> <p>Article 17, 2 and 3 states that: 2) <i>The assessment must consider the risks to consumers that may arise having regard to—</i> 3.(c) <i>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</i></p> <p>The requirement to consider details of the party’s involvement in any legal proceedings when conducting a risk assessment is too broad, including areas which are not relevant to CPRS. For example, this would include employment tribunals or disputes over intellectual property.</p> <p>Cancer Research UK believe this point is unreasonable in its current form and ask it is amended to include reasonable limitations on the area to be considered for risk assessment to ensure it is relevant to CPRS and proportionate for the PRS provider.</p> <p>For example, an amendment could read: 3.(c) <i>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</i></p>
<p>Q7. Do you have any comments about our proposed approach to security testing in Part 5 of the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q8. Do you have any comments about our proposed approach to misleading information and/or the</p>	<p>Confidential? – Y / N</p>

promotion and marketing of PRS in Part 6, Chapters 1 and 2 of the draft PRS Order?

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

Information to be provided before entering into a controlled PRS contract
26.—(1) Before entering into a controlled PRS contract with a consumer, a merchant must provide the consumer with the information specified in Schedule 3 in a clear, comprehensible and prominent manner, and in a way appropriate to the means of communication used.

Currently, those operating prize draws, competitions and votes, and charity donation services will present key information to consumers, with more detailed information such as terms and conditions, contact details and policies available via a web link. This is particularly useful for those with limited space (perhaps on TV) or time (perhaps on radio). This ensures that the information which aids a consumer to make up their mind about whether to participate is presented clearly pre-contract, along with further, more detailed information available to the consumer if they wish to view it – at whatever stage in the contract process they choose.

The above **Article 26** states that information in **Schedule 3** (which is a lot to get across in a promotional message) must be given pre-contract, in a prominent manner, appropriate to the means of communication used, whereas we would suggest that key information/significant terms are provided upfront in the promotion and the other information be ‘made available’ to consumers/supporters prior to transacting, which can then be achieved via a link to the full Ts&Cs for example.

An example of where this becomes problematic is on TV, it would be unreasonable to expect viewers to read all of this information on screen in advance of participating in a competition/vote or making a donation, and indeed it can be argued that not all of the information is key to influencing their decision to participate.

Cancer Research UK propose that the requirement is amended such that certain key information, and the web link to further terms, should be prominent and appropriate to the means of communication used. This reflects the current regulatory model from Code 15 and allows consumers to receive enough information for them to decide whether to participate, along with the opportunity to review further information should they want to at a time convenient to them.

As such, Cancer Research UK propose that the information influencing a consumer’s decision to participate be given in the ‘Call To Action’, and then further information that might be useful be provided for example via a web link that can be accessed at the consumers convenience.

This also mirrors the requirements in the Draft Order for subscription services where space is again limited, by presenting certain key information up front with further information being available by web link. Competitions, votes (specifically those in the broadcast space) and donation services historically attract minimal complaints (see PSA stats below) from consumers, so we suggest that the current regulatory framework (providing some of Schedule 3 upfront and the rest in a web link) is working effectively and does not need to change.

Assessed complaints by service type

	2018/19	2019/20	2020/21	2021/22	2022/23
Information, news and education	3,289	1,819	726	435	
Assistance Services (includes DQ and ICSS)	320	570	589	456	
Digital payments	1,782	2,750	817	226	
Games	4,180	2,909	482	64	
Lifestyle	751	1,271	736	21	
Competitions and quizzes	1,268	163	20	33	
Betting, gambling and lotteries	191	60	43	26	
Entertainment	1,504	640	168	49	
Device personalisation and security	229	137	27	6	
Sexual entertainment	26	11	51	4	
Personal and relationship services	285	199	14	2	
Charity Donations	0	1	0	0	
TV and Radio engagement	0	0	0	0	
N/A	75	163	348	25	
Total assessed complaints	13,751	10,753	4,021	1,347	1,347

Q10. Do you have any comments about our proposed approach to provision of CPRS in Part 6, Chapter 4 of the draft PRS Order?

Confidential? – N

Article 36. (1) states: *A merchant who provides a controlled PRS to a consumer must make and keep in writing a record of the consumer’s consent to entering into a controlled PRS contract and for any charges imposed under such a contract*

Please can Ofcom provide clarification as to whether this requirement can be met by the intermediary holding the records on behalf of the merchant, accessible by the merchant when necessary under the contract between the merchant and intermediary? (That is, not physically retained by the merchant but by its provider on its behalf).

Article 37, 4(b) states that customer care policies must contain:

- (i) *a statement of a consumer’s entitlement to take the enquiry or complaint to OFCOM, together with OFCOM’s contact details, where the consumer expresses dissatisfaction with the handling or resolution of the enquiry or complaint, and (ii) up-to-date contact information for the merchant,*

Please can details be provided for how a consumer can raise an enquiry or complaint to Ofcom regarding CPRS ahead of the implementation period so this requirement can be met at the point that the Order comes into force.

<p>Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q12. Do you have any comments about the proposed requirements relating to prevention of harm and offence in Part 6, Chapter 5 of the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q13. Do you have any comments about our proposed approach to competition and voting services in chapter 6 of Part 6 the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q14. Do you have any comments about our proposed requirements in respect of certain CPRS in chapter 7 of Part 6 our draft PRS Order?</p>	<p>Confidential? – N</p> <p>Explanatory document point 4.227 states: <i>“In article 49 of the draft PRS Order, we propose to prohibit merchants of the following types of CPRS from providing these services to consumers under the age of 18: (a) Chatline services; (b) Live entertainment services; (c) Remote gambling services; (d) Sexual content services; (e) Subscription services; and (f) Virtual chat services.”</i></p> <p>However, in the draft PRS Order the point states (e) a subscription service (see article 8) comprised in a sexual content service.</p> <p>We anticipate the draft PRS Order is correct, but please can this be confirmed.</p>

Definition of Children's Services within Article 23 and Article 51

Cancer Research UK are concerned that donation services would be defined de facto as Children's services based just on their likelihood to appeal to children even when their primary purpose is not providing a service for children or targeting children in the promotion of a service.

We are particularly concerned that this will mean donation services will be required to adhere to Article 51 even though the donation service explicitly excludes children as part of the terms and conditions of the service.

Cancer Research UK agree that there is a need to protect children in the regulation of CPRS but ask that consideration is made to keep clear separation between services that provide a facility specifically for or are targeted towards children and the services that are nonetheless likely to appeal to children, rather than combining both into the definition of Children's Services.

Cancer Research UK believe that this is unclear and could be contradictory in the draft Order. For example, we recognise that donating to a charity to help others is likely to appeal to children but if a donation service is not aimed at, or marketed to children and should not be used by children, as set by the donation service's terms and condition, it is contradictory to define it as a Children's Service.

It also inconsistent with the approach of other regulators, and in particular the fundraising standards regulated by the Fundraising Regulator. Their Code of Fundraising Practice requires the following:

1.3.11 You must take all reasonable steps to avoid asking for regular donations (for example, by direct debit) from anyone aged under 18. Young people aged between 16 and 18 can take part in charity lotteries, but if you receive money for a lottery from a child or young person aged under 16 you must return the money.

This does not assume or define charity donations as being children's services but the opposite and asks that they are promoted accordingly.

The Advertising Standards Authority uses the following definitions (in its Broadcast Code of Practice):

- *"Children's products and services" are products or services of more or less exclusive interest to children.*
- *"Products and services of interest to children" are products or services that are likely to appeal to children but are not of exclusive interest to them.*

Beyond this, the ASA looks at whether the marketing itself is conducted in such a way as to have strong appeal to children.

If text donation services are classified as children's services, this will be severely limiting for charities and leave us uncertain whether we can use text donation services at all given other regulatory requirements to not target children. If we somehow could do both, it seems we would still need to adhere to Article 51 of the draft Order which would be very challenging for charities. For example,

	<p>when a consumer donates via an SMS the charity does not have information of their date of birth to identify if a donation is from a child or an adult to apply price caps in a targeted manner. As such to ensure compliance with Article 51 the price cap would have to be applied to all donations having a significant negative impact on the amount of donated funds the charity could raise.</p> <p>Cancer Research UK ask that the definition of Children’s Services is changed to such that it does not de facto include charity donations or the low threshold of ‘services that could reasonably be expected to appeal to a child’ and to align to other regulatory approaches, and Article 51 updated accordingly. If that is not possible, Cancer Research UK asks for clarity that if a donation or other charity service is not promoted or marketed to children and it is clear in the terms and conditions that there is a 16+ minimum age limit, then the service is exempt from Article 51.</p>
<p>Q15. Do you have any comments about our proposed approach to the recovery of Ofcom’s expenditure in Part 3 of the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q16. Do you have any comments about our proposed approach to additional requirements on network operators in Part 7 of the draft PRS Order?</p>	<p>Confidential? – Y / N</p>
<p>Q17. Do you have any comments about our proposed requirements relating to information requirements in Part 8 of the</p>	<p>Confidential? – Y / N</p>

draft PRS Order	
Q18. Do you have any comments about our proposal to retain current PSA data retention periods for 2 years (for consumer data) and 3 years (for DDRAC data) in Part 9 of the draft PRS Order, with a preservation requirement following an investigation being opened?	Confidential? – Y / N
Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?	Confidential? – Y / N
Q20. Do you agree with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent? Please provide further information	Confidential? – Y / N

Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?

Confidential? N

As the PRS Order is looking to come into force on 1 October 2024 the proposed 3 month implementation period will cover the summer holiday period. This is a time when resources will be reduced due to people taking leave and will make it challenging to implement the changes required. We ask that additional time is added to the 3 month implementation period to account for the impact of the summer holiday period, for example starting June 2024 instead of July 2024.

Please complete this form in full and return to prsregulation@ofcom.org.uk.