

Your response

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? – N</p> <p>Agreed.</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/eliminate any negative effects, on opportunities to use the Welsh language and treating the Welsh language no less favourably than English?</p>	<p>Confidential? – N</p> <p>Agreed.</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? – N</p> <p>Under clause 3(2)(b)(i)&(ii) and 3(b)(i)&(ii) the price is stated as an explicit amount. Given the likelihood this order will be in place for 20+ years, it would be prudent not to specify a unit amount, or if this is necessary then have a mechanism to allow this to be reviewed and adjusted annually, for example, to account for inflation.</p> <p>Clause 8 does not appear to allow for a society lottery to operate as a subscription service. The overall Order appears to consider society lotteries as either a standalone product or as part of a gambling service. For the sake of this clause 8, it would be better to explicitly reference a society lottery and gambling service as two separate propositions and included them under the provisions of a subscription service.</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? – N</p> <p>Whilst we recognise the term ‘Merchant’ is a carry-over from Code 15, the term does not particularly support the use of charity donations. At this time, a more suitable and inclusive term should be adopted to better capture the full spectrum of premium rate use cases. An example is the term ‘Provider’.</p>

Q5. Do you have any comments about our proposed approach to registration and registration exemptions in Part 2 of the draft PRS Order?

Confidential? – N

Clause 10(b)

This refers to "senior management" and then defines the term as a "generally authorised person", who is further determined to be a decision maker in sub-clause 5. We would suggest the term 'Senior Management' is not wholly appropriate and a term such as "responsible person" is a better fit. This follows the UK Gambling Commission approach that names the person(s) with overall responsibility within an organisation but allows flexibility to recognise that this responsibility does not necessarily fit within the different interpretations of senior management across the wide spectrum of organisations. A "responsible person" reference would remove the ambiguity of this clause.

Clause 10(2)(b)

This appears to require providers to wait five working days between registering a service and commencing the service. Under Code 15, no such delay exists although we acknowledge clause 10(3) does mirror the 5 working days requirement to update any changes (3.8.4(d) in Code 15). Since Code 15 has successfully operated without this registration delay, it should be removed from the Order as it simply creates an unnecessary time constraint.

Clause 10(3)

This clause makes it clear that the responsibility for keeping the providers records up to date sits with the provider. It would be beneficial to clarify the role an Intermediary or Network operator takes in this approach.

As we understand it, Clause 12(h) places the emphasis on OFCOM to collect all information it requires under this Order and therefore the burden of collecting this data sits with OFCOM. This implies that the task of confirming the accuracy of this information also sits with OFCOM as collecting false or misleading information would undermine the integrity of OFCOM performing this role.

Therefore, clarity is sought over the role Intermediaries have in ensuring the registration has been correctly completed. If the risk assessment criteria is simply that registration has been completed then that operationally would be acceptable, however if this is not the case then OFCOM should clearly communicate its expectations.

Clause 11(4)(e)

This appears to be anti-competitive. Under Code 15, an organisation could gain an exemption following a documented process that was fair for all providers. This process appears to have been removed in the Order and therefore it remains unclear how participants of services worthy of future exemptions obtain the same benefits as those under Code 15.

Clause 11(4)(h)(vi)

A specimen signature seems unnecessary and would create an unacceptable administrative burden. It is also worth noting that the reason for requiring this has not been published.

Clause 12

This clause sets out a list of expectations to OFCOM for maintaining a register but does not appear to offer any repercussions should the register not be fit for purpose or contain false or missing records. Given the sanctions aimed at the providers of premium rate services, it would be prudent to have incentives to ensure OFCOM takes the responsibility of operating this service seriously and dedicate suitable resources to do so. If this is not the case, then OFCOM should consider if they are the suitable agent to facilitate this register versus managing it via a third-party contract.

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?

Confidential? – N

Clause 16

This clause relies on the goodwill of OFCOM to complete its duties under section 12, however it should be noted that there is no penalty or sanction should OFCOM not fulfil its obligations or data is recorded late, incomplete or inaccurate.

There also does not appear to be any facility for an intermediary to monitor its clients for any notifications by OFCOM to this register, meaning an intermediary could potentially have to monitor this register each day for any changes that may affect their clients. If OFCOM had a requirement to additionally provide an email alert to notify of all changes to the register, then this would better manage the concerns raised.

Clause 17(2)

It is unclear what is considered as a risk. It is generally accepted that consumers will complain about a service for a variety of reasons, so should a complaint be considered a risk? Clearly fraudulent or criminal activity is a risk, but it would be prudent for OFCOM to identify any risk criteria they would use in their decision-making process beyond this threshold within the Order to ensure transparency to all parties.

Clause 17(3)

Sub clause (b) and (c) appear to rely on information that is based on anticipating the future. An intermediary won't, for example, be able to accurately estimate a Merchants financial or legal status for future years when onboarding a client. A pragmatic approach for these clauses is for the client to self-certify they are financially solvent and have no pending litigation against them.

Sub-clause (e) relies on OFCOMs register for an accurate record of compliance history. Assuming this is kept up to date by OFCOM then the remaining area to address is any compliance cases that are underway against a merchant. Historically, this information has not been shared by the PSA due to data protection concerns, therefore OFCOM needs to either consider how it will overcome this to publish this data or change the clause to reflect that cases under investigation cannot be included in the risk assessment of a merchant.

	<p>Clause 17(5)</p> <p>The term appropriate and proportionate under this clause is subjective and as such, should be better defined to provide clear guidance on the expectations under the Order. In our experience with other regulators such as the Gambling Commission, we have traditionally found that a lack of real-world knowledge and experience hampers their ability to determine a reasonable expectation.</p> <p>Clause 17(7)</p> <p>This clause refers to an "appropriate interval" yet 17(12)(a) defines this as 12 months. It would be clearer for this clause to just state the timeframe and remove this ambiguity.</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? – N</p> <p>Clause 21(1)</p> <p>The term "security testing" is not appropriately defined within the Order as the term "security compromises" does not really cover the spectrum of operational risks to premium rate services.</p> <p>As an example of a better approach, the Gambling Commission requires providers to be either accredited or to meet the standard of ISO27001. This is a full-fledged security approach that is updated with the latest best practices and would better fit the requirements of this clause in future years.</p> <p>Becoming ISO27001 certified is relatively straightforward should an intermediary be practicing good security awareness.</p>

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?

Confidential? – N

Clause 22(5)

This clause does not make it clear what sample size would be needed to create an 'average' view from a consumer. For example, if two people reviewed a service and thought it was clear and not misleading then would that be an acceptable basis to assume the service is not misleading. If this sample size is too small, then the Order should better state the expectations to determining an appropriate number of people needed to create an "average" view that a service is not misleading.

Clause 23(2)

This clause is confusingly worded and would benefit from a clearer statement. We believe the intention is that a recurring donation service should include the age and bill-payers requirements if it is targeted at children, however this was difficult to understand from the way the clause has been worded.

Clause 25(3)(a)

A society lottery service is captured under this clause by 25(2)(c) including it as a remote gambling service, however a society lottery can be entered by people over the age of 16, rather than the age of 18 as required in 25(3)(a). This clause should be amended to reflect this fact.

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

Clause 27(1)(4)

The information in this clause is extensive and the use of the term "adjacent to the button" appears to prescribe a particular place for this information to appear without considering the practicalities of this approach. There are a wide range of devices in use, from small phones to large desktop monitors and a range of purchasing styles to consider. This clause should state the information required should be available pre-purchase in a prominent and proximate manner, to mirror the current standards.

Clause 27(1)(6)

This clause uses the example of 'Buy Now' and suggests similar words would also be acceptable but does not make any further suggestions. We believe it would be beneficial to state other examples such as SUBSCRIBE NOW, PLAY NOW, JOIN NOW, DONATE NOW to give more context to the statements considered acceptable.

Clause 27(1)(7)

It remains unclear why this article does not apply for a recurring donation service but will apply for a society lottery. The end benefactor is the same (i.e. a charity) with the main difference being one has an incentive to give, and the other does not. We believe the Order should not consider the services to be different based on an arbitrary viewpoint of it being a commercial service (as donation platforms are also run for commercial gain) or that it is regulated by the Gambling Commission (as donations are regulated by the Fundraising Regulator).

Clause 28

It remains unclear how RCS would be permitted under this clause. The term SMS should be extended to a wider encapsulation to allow future technologies to make use of premium rate services without requiring an act of parliament.

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

Clause 31(5)(a)

An appropriate medium does not appear to allow for RCS to be included. This should be better worded to allow for future technologies to be allowed within premium rate services.

Clause 34

Please could you confirm that Clause 34 only applies to a donation service specifically aimed at under 18s. Clause 34(2) appears to suggest this, but does not provide guidance around, for example, a 17-year-old donating via a service aimed at adults. As you are aware, Code 15 made the donation reminders (“SKIP” command) an optional requirement for charities, and we are keen to continue this into the Order.

Clause 35(3)(b)

It is unclear if a weekly reminder message would suffice for this information. Please could you confirm that in the event this is being stated more frequently, an annual message is not required.

Clause 35(4)

We consider it unfair that a subscription service is exempt from this requirement, yet a society lottery isn't. As you are aware, a Society lottery is only available to UK charities and the primary difference between the two types is one offers an incentive for giving to charity. As such, we feel this exemption should be offered to all subscription services that a charity can use.

Clause 39(3)

Whilst we appreciate this clause better supports merchants by placing full responsibility for the decision-making process of a refund with them, we are unclear about the consumer expectations if they disagreed with the decision. Assuming the service meets the requirements, and an average set of consumers considered it to be fair and transparent, would OFCOM consider a blanket ban on refunds to be an acceptable outcome? If this is not the case, then the clause should identify any appeal opportunities to set expectations for all merchants.

<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? – N</p> <p>Clause 40(5)(a)</p> <p>Whilst we accept the need to safeguard against vulnerable consumers, this clause is unclear about how it relates to the average consumer sample in Part 6, Chapter 1. Taking a sample set of average consumers would include a variety of people with different characteristics to ascertain the risks of the service fully. It would not be feasible to operate a service at scale with a full range of safeguards for each type of vulnerable consumer.</p> <p>A balanced approach would recognise within this chapter that appropriate resolution to vulnerable consumers inadvertently interacting with a service would be to offer a refund or to restrict future access rather than, as implied, consider it a compliance matter for breaching the intentions of the Order.</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? – N</p> <p>This section appears fine, although it is not immediately obvious if discrimination based on gender is explicitly captured by the list in 41(4). We accept subclause (i) could imply this, but an additional reference to "gender" would appear to be more pragmatic.</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? – N</p> <p>We have no comment on this, other than to seek confirmation that it does not apply to Society Lotteries as 42(1)(a) states it does not apply to betting services, which 'betting' is only a single element of the Gambling Act 2005.</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>Clause 50 Article 25(2) appears to capture a Society Lottery under (c) a remote gambling service. However, Clause 50 refers to age verification that does not match the self-certification model of the Gambling Act 2005.</p> <p>The Gambling Commission LCCP states: [...] customers must be required to verify their age before being able to make any subscription or purchase entry into the lottery. [...]</p> <p>This self-certification model of the customer verifying their age is standard practice and typically performed by the customer confirming they are over 16 via a confirmation box or date selector. This differs from other gambling products where the gambling licensee must verify the customers age before participating.</p> <p>This Clause 50 should be amended to allow a society lottery to operate as intended by the LCCP/ Gambling Act 2005.</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? – N</p> <p>The current PSA levy excludes charity donations from its calculations, however the calculation for the OFCOM administrative charge appears to now include charity donations. This appears to be unnecessary and unfairly collects an income from people’s intentions to support good causes.</p> <p>All income to charities should be excluded from the calculation to mirror the current process. Furthermore, society lotteries should not be treated differently as they perform the same function as a donation, with the primary difference to the supporter being an incentive to give. As such, we believe both donations and society lotteries should be excluded from the administrative charge to the benefit of UK charities and the good causes they support.</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? – N</p>

	<p>Clause 55(3) We note that this clause relinquishes the 30 days withhold for Society Lotteries. As this is to the benefit of a charity, we feel charity donations should also have the option to benefit from this approach.</p> <p>Operationally, donation services have typically had a very low risk profile and the safeguards this clause offers appears to be unwarranted. By including donations, this creates the possibility for charities to receive donations quicker from supporters - as typically is the supporter expectations.</p>
<p>Q17. Do you have any comments about our proposed requirements relating to information requirements in Part 8 of the draft PRS Order</p>	<p>Confidential? – N</p> <p>Clause 57(1) Whilst we accept the intentions of this clause, the use of the word ‘necessary’ is a cause for concern. A better approach would be for the information requested to be “reasonable and appropriate” to the purpose of carrying out their functions. This will ensure an investigation remains fair and that OFCOM has a requirement to make justifiable decisions when requesting information from any parties it is investigating.</p>
<p>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?</p>	<p>Confidential? – N</p> <p>It should be noted that the PSA does not require any data related to consent to charge to be kept for a period greater than two years.</p> <p>This means that a consumer who has been billed for a subscription service for 3 years would not have the original consent to charge record retained after the first year.</p> <p>It would be good practice to document this expectation in the clause that the original consent to charge data will be deleted over time, to best capture current working practices.</p>
<p>Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?</p>	<p>Confidential? – N</p> <p>Clause 59(1) states that OFCOM “may” publish an investigation on their website. In order to support the risk assessment requirements of section 17, this clause should state that OFCOM “must” publish this information.</p>

<p>Q20. Do you agree with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent? Please provide further information</p>	<p>Confidential? – N</p> <p>Whilst we agree with the proposals documented, we note that no associated cost calculations have been provided to support the intended work of OFCOM.</p> <p>Given providers are expected to pay for this work through an administration charge, we have assumed this will cost no more than c.£2m per year, or roughly a 50% saving on the current budget.</p> <p>Should this not be the case, OFCOM should identify why it feels this approach represents better value for money than the PSA.</p>
<p>Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?</p>	<p>Confidential? – N</p> <p>We have no concerns about the implementation period however, we would like to raise a concern with the proposed process to review the consultation responses.</p> <p>As you will recall, Code 15 was an extensive body of work and still required changes after it was published due to errors. Whilst we accept the best intentions of OFCOM to get this Order correct, there is a high risk of mistakes emerging due to the consultation process having the ability to make wide ranging changes to the Order, which would not be reviewed before coming into force.</p> <p>Our preference is that the Order is revised and re-published before going to Parliament so as any factual or material changes can be highlighted and changed ahead of this becoming a permanent piece of legislation.</p>

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