

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>No response.</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>No response.</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>We would request confirmation that Standard Network Rate/ Standard Network Charge remains out of scope as the wording in Part 1, 3(b) is ambiguous.</p> <p>As a responsible merchant, we are keen that consumers are made of aware of the costs of using a service, and as such refer to Standard Network Rate / Standard Network Charge in our promotional material. The PSA has always been clear that this is excluded from PSA regulation and it has never been considered to be controlled PRS, however the wording at ‘Meaning of Controlled PRS 3.(3)b(i). “A premium rate service falls within this paragraph if the charge for the provision of the service is a single charge of 10 pence or more...)’.</p> <p>It is worth noting that the cost of Standard Network Rate to the consumer varies by provider and by tariff plan and is set separately by each MNO in their standard terms and conditions and their individual contracts with their own customers. In essence, this has the same application as an ‘access charge’.</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?

No response.

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

- 1) Article 10 refers to an “appointed person in senior management” but doesn’t clarify what is meant by ‘senior management’. We would request clarification on whether this is board-level or those responsible for signing contracts lower down etc.

As you may be aware, the breadth of industry is vast from ‘one-man-bands’ where the authorised person owns and runs the business to large-scale organisations such as Global where board-level managers are far removed from the actual operations of Premium Rate Services.

- 2) We don’t agree with 11(1)(a) which seems to suggest that any “merchant who provides a controlled PRS in respect of which the charge to the consumer (for the service) is enabled by means of a facility made available by a sole relevant intermediary” is exempt from registration. We believe this has been misinterpreted from the original Code 15 and that it has huge potential to cause consumer harm. The vast majority of merchants are running services through a sole intermediary and thus will potentially be exempt from registration. This is not how the current Code 15 works. We believe that this new wording will make registration for merchants the exception rather than the rule, where registration has been a key element of rooting bad players out of the market and limiting consumer harm. Additionally, this would rule as ‘exempt’ any single- intermediary merchants out from any ‘number checker’ type functionality that Ofcom may plan to implement.

<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>No response.</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>No response.</p>
<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?</p>	<p>No response</p>
<p>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?</p>	<p>Confidential? – N</p> <p>We don't believe that this is clear enough. Whilst we understand the desire for less prescriptive regulation, we believe that there needs to be a clear definition between 'pre-contract information' and 'material information'.</p> <p>Material information being key information that will impact a consumers' decision to purchase or not, such as cost, time limit etc. Other 'pre-contract information' such as 'conditions of claiming a prize, merchant contact details, customer care provision details' which are less critical as to inform a consumer's decision to purchase need to be separated and handled in a different way.</p> <p>This can be evidenced from our own Customer Satisfaction Survey (August 2023) which asked service users "Do you feel we gave you all the relevant information about our competition in order to make an informed decision to enter?". 96% of respondents agreed that they were given all the relevant information, 2% said they weren't sure and 2% said No.</p>

<p>Q10. Do you have any comments about our proposed approach to provision of CPRS in Part 6, Chapter 4 of the draft PRS Order?</p>	<p>Confidential? – N</p> <ol style="list-style-type: none"> 1) It is totally unclear that article 31 applies to post-purchase/ receipting. This needs to be made much clearer as to what it applies to, in that it is post-purchase and not pre-purchase. 2) Similarly, it is unclear exactly what is meant by article 36 and what constitutes a 'record of consent'. In the case of SMS, it is presumed that the receipt of an MO message received by a merchant from a consumer will suffice as a 'record of consent' in that the consumer has sent the message requesting the service. This should be made clearer and clarification provided.
<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>No response.</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>No response.</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?

Confidential? – N

- 1) NB – the UK Gambling Commission refers to “Prize Competitions” (where something is judged or based on skill, knowledge or judgement) and “Free Prize Draws” (where payment isn’t mandatory for entry i.e free route of entry). It should be noted that by referring only to “competitions” in article 42, some may deem that it doesn’t apply to “Free Prize Draws” where premium rate services are used as an additional route of entry alongside a free route. This may need review and clarification.
- 2) We note that article 43 states: “Where a merchant offers consumers different ways of making use of a competition and voting service, the merchant must take steps to ensure that, so far as possible, consumers are not encouraged to choose one particular such way over others.”

For instances where time or space of the promotion may be limited, or where the consumer may not have the facility to take down all the alternative route details (such as on radio), a weblink/QR Code or other method of signposting to additional routes of entry may actually be more useful to the consumer than trying to contain all the information in the main call-to-action such as the full address, box number and postcode of any free postal route. We would request further clarification on this point so as to ensure that it is clear on whether signposting such ways, where it benefits the consumer, is either permitted or not.

- 3) Regards article 47(4), as was addressed and resolved during consultation on PSA Code 15, we believe the provision to the consumer post-purchase of the fact that an attempt to use the facility was unsuccessful could cause considerable consumer harm.

In radio, we often use short entry windows (often 2 or 3 minutes) and have found that consumers don't tend to understand the majority of reasons as to why an attempt may fail (e.g. network latency etc). Additionally, users entering after one short entry window has closed may automatically be entered into the next entry window (if it is open) and there is no way to discern user's intent here as to which window they intended to enter.

Furthermore, the wording is unworkable as it doesn't consider at what point after a promotion has closed, would it be deemed permissible to stop letting consumers know that their entry will not be valid? (1 day? 1 week? 1 month? 1 year?) It becomes a slippery slope (according to how this point is drafted) and in effect, means that once a keyword or premium rate phone number has been used and closed, it can never be used again.

Data from our customer support team compiled under the category "Has my entry been counted/ is valid?" shows a miniscule number of contacts, to many decimal places of a %. In essence, this come to tens of queries, rather than hundreds or thousands!

In addition to the above, data from the PSA as shown in the Annual Market Report shows that assessed complaints by service type with regards to Radio and TV engagement has been 0 each year over the past 5 years.

As such, it is our belief that by actively messaging consumers post-purchase to tell them that their entry hasn't been entered or charged will cause an increase in consumer harm as consumers will not understand the reasons for the failure, for example, a bar on premium rate messages, network latency, the fact they didn't follow instructions etc. This will increase their frustrations and thus complaints. Ultimately, consumers enter our competitions because they want to and if, for whatever reason

	<p>beyond our control, their entry isn't included (and not charged) then we believe that actively drawing attention to this will only serve to increase harm.</p> <p>As was agreed following PSA Code 15 consultation, notice that unsuccessful entries may not be counted or charged may be given pre-purchase. This aligns with how we currently operate and our policy is clear and simple, made clear within our terms and conditions and material information given at the point of entry. ("If you enter after the closing time, you won't be entered but may still be charged"). This has worked well for a number of years, is easily understood by consumers and causes minimal consumer harm, as evidenced by the data provided above.</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>There doesn't appear to be a 23(2)(d) as mentioned in article 51(3)(6)</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>This really isn't clear and needs significant further clarification, especially on what Ofcom deems the 'market size' to be if it is to determine funding based on this.</p> <p>It is our belief that without the individual costs of the PSA (premises, board, investigative staff, etc), and with shared costs available through Ofcom (HR, payroll, etc), the total cost of regulation should be lower than it has been previously.</p> <p>We would also like to remind Ofcom that under Code 15, charity donation revenues are exempt from Levy inclusion and we seek confirmation that this will remain the case under the PRS Order.</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>No response.</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>No response.</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>No response.</p>
<p>Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?</p>	<p>No response.</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>No response.</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 believe wholeheartedly that there needs to be a further draft and consultation period with industry before the process continues to Parliament and into law. The Importance of getting this right can't be underestimated, and we know from our consultation with the PSA on Code 15 that when it isn't right and industry concerns aren't listened to, it can cause major problems down the line.</p> <p>We are happy, as always, to answer any queries relating to any of the points above, or to add any further clarification as required by Ofcom.</p>

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