Your response

Question	Your Response
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.	Confidential? – N The Mobile Network Operators, responding together under the auspices of the MobileUK, agree that the proposals will not affect any specific groups of persons.
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?	Confidential? – N We agree.
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?	Confidential? – N We are concerned that some of the definitions have been created using an out of date view of the market. Specifically in 2.4 "The cost of calling PRS numbers is made up of two parts: an access charge which goes to your phone company and a service charge which goes to (and is fixed by) the organisation you are calling." This is incorrect, mobile voice shortcodes do not have an access charge. In 2.6(a) only seems to reference calls rather than the entire industry. We recognise that mobile portal content services charged to the customer's phone bill (also known as 'own portal services') were removed from the CPRS definition, following a review by Ofcom, in 2012 (https://www.ofcom.org.uk/__data/assets/pdf_file/0019/46513/statement.pdf) . Specifically: • own portal services: These are services in which fixed communications providers (such as Sky, Virgin Media and BT Vision) offer their customers access to their own on demand content

such as film and catch up television programmes. **MCPs also offer their customers different types of on demand content, such as video clips, music, games and wall papers through their own websites.**

- Own portal services 6.2 We note that respondents substantially agreed with our analysis and proposals in respect of own portal services. Given this, and our assessment of the limited risk of consumer harm arising from such services, we have decided that these should be removed from regulation as proposed.

We would like to point out that the sentence highlighted is reflective of the way the market worked in 2012. Current 'own portal' services are the consumer bundles provided by Vodafone, O2 and EE for Spotify, O2 Extras and Apple Music services respectively, as well as other streaming services. These services are contracted to via MNO websites or retail channels however they may be delivered by other mechanisms including Apps and streaming services. MobileUK would like Ofcom to confirm that this definition to ensure it still reflects modern "own portal" services offered. We note PRS Order 3 Meaning of controlled PRS 5 b "an electronic communications service which is being provided by the same person providing the premium rate service" but we would welcome confirmation.

We note in 4.16 (b) *"We propose to also add the numbers "084" and "098" to reflect the number ranges used in PRS."*

Adding 084 would massively expand the scope of regulation noting that not all 084 numbers are premium rate services, but many are local rate numbers used for customer service by organisations and businesses.

09 numbers are already regulated by PSA, as shown on its list, and so we are unclear why 098 is being specifically added. We would like to understand the reasoning behind the 5.833 pence tariff definition of PRS because the cost of a Standard Network Rate message on networks is significantly higher than this and differs across networks providers. The PSA has always been clear that this is excluded from PSA regulation and has never been considered to be controlled PRS.

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?	Confidential? – N Noting 3.6 "A key factor behind the PSA taking this view was that Ofcom has greater powers and resources to deliver the PRS regulatory regime in the context of a rapidly changing market, and so ensure regulatory certainty and confidence. The PSA Board made a formal proposal to this effect. Ofcom agrees with the PSA's view that we are in a strong position to ensure the continued effective regulation of the PRS sector in light of these market changes." Further bolstered by 3.15 and 3.16 "The PSA's assessment is that the entry of a number of larger established organisations and, in particular, app stores and streaming services, have driven growth and contributed to a more compliant market. These organisations have also played a key role in influencing consumer expectations and best practice around what a digital payment experience should look like, including in relation to the sign-up process, service experience and customer care and refund practices." We would therefore suggest there should be a statement that App Stores are regulated DIRECTLY by Ofcom and request that Ofcom collects the levy directly from them. The premise of absorbing the Phone-paid Services Authority is that the 15th CoP has effectively managed the local merchants, intermediaries and MNO operating companies but the PSA's ability to engage with Global Players is limited and only a Government body such as Ofcom commands sufficient legal powers to exert oversight and control of Global Players. It must be noted that upon the introduction of Code 15, PSA assumed direct responsibility for app stores. If there are to be minimal changes then it follows that Ofcom should also take that direct responsibility. There should be regulatory parity between the Order and Code 15. We would therefore recommend the addition of a sentence that makes this direct regulatory relationship between Ofcom and the app stores clear. The definitions are restricted to Merchants, Intermediaries and Network Providers and do not clearly define what constitutes an App Store. We are concerned that this current drafting inadvertently leaves gaps in its scope which may lead to unintended consequences. These are examined in more detail in the answers to other questions (5, 6) but we

	recommend closing this gap by adding a clearer description and definition of the App Stores in this article to specifically include only those who share the same characteristics as the intended organisations referred to as 'app stores'. This may be geographical reach, number of network connections across the world, financial turnover or another descriptor. The dangers of not clearly defining app stores and ensuring that this definition is only given to those who truly are an app store is examined under Questions 5 and 6. Under the current regulatory regime, responsibility for day to day implementation sits with the PSA via its Code of Practice (most recently Code 15), there is no similar illustration of how the day to day management of the market place will take place. While we are not suggesting that a high level of detail is added to the Order as we understand why this is not feasible, we do feel there is a need to give the MNO Codes of Practice standing within the Order. MNO Codes of Practice play a vital role in protecting the interests of consumers and preventing harm as they can be flexed with ease to address emerging issues. They also provide a level of detail that could be beneficial in the absence of guidance support. Specifically we would point to "2.45 Section 121 of the Act gives Ofcom the power to approve a code made by another party for regulating the provision and contents of PRS" and "A9 Schedule - Every Communications Provider and Controlled Premium Rate Service Provider must comply with directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions. For the avoidance of doubt, this requirement continues to apply notwithstanding the withdrawal by Ofcom of its approval for an approved code in a notification given in accordance with section 121(7) of the Act." As a potential location for reference to the MNO codes of practice.
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 App Stores can apply for an exemption from registering merchant/App Developers. This indicates that an approach applying a blanket Risk Assessment process for every App Developer is also acceptable. The unintended consequence we identify with this approach is that it represents a clear incentive for any member of the value chain to register as an App Store as there is an implied lower regulatory burden on App Stores. The absence of a clear definition facilitates the

	use of this device by players who may have malicious intent and less regard for consumers. While it is not clear that they WILL seek this route, or indeed that such an application for exemption indicates malicious intent, we believe that it is an inadvertent loophole that could be exploited by malicious actors in the future. We therefore request an amendment to the definition to specify the characteristics of the app stores that are currently in mind i.e., be it geographical reach, number of network connections across the world or financial turnover. Ofcom currently has the infrastructure, staff and funding taken on from the PSA to deliver this. The registration process will be new and will require new activities for those seeking to be PRS providers before they can be considered compliant with the regulations. It is not for the MNOs to predict how this will or will not work but it is sufficiently different to provide the potential for procedural delay around the stated deadline. MNOs feel the 'one and done' approach is a good one and that the simplification of the information required to be registered is unlikely to have negative impact on the day-to-day operation of the market. There must be a requirement to de-register as well to ensure that Ofcom has view of the active market. This should be specifically the last date that a payment transaction occurred. De-registered entities must also have an obligation to maintain a customer contact and after sales service for a period of no less than six months after de-registration. We would like to understand whether PSA registration information will be retained for future risk assessment purposes and also to understand how information will be retained about de-registered entities. Is it Ofcom's intention to remove the requirement to register customer service information in 4.37b? We also agree with AIMM that the removal of the facility to request compliance advice in the new regulatory regime could be counterproductive and request Ofcom reconsiders this.
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 While a risk assessment is a part of the current due diligence process, the removal of the "control of risk" element creates a more binary approach. Some risks

	may be worth mitigating and others worth carrying but coupled with the requirement to suspend rather than just the contractual power to suspend, the primary use of risk assessments is likely to return a more risk averse approach at the front end. In addition, MNOs would like to understand more about ongoing risk assessment once a service has gone live. The assumption is that any service amendments are to be risk assessed and that evidence-based information of consumer harm allows the Intermediary or Network to trigger a risk assessment review? We have further concerns that in the absence of a definition of risk and who will determine that, there may arise legal challenges to those who set definitions of risk that may differ from other in the value chain. Once the registration is made and the risk has been assessed it is then up to the MNOs, app stores and intermediaries to prosecute consistent due diligence. The three gaps highlighted under Question 4 (lack of clear definition of an app store, lack of standing for MNO Codes of Practice and lack of direct Ofcom regulatory control over the app stores) now become relevant as they have a direct and deleterious effect on MNO's ability to enforce regulatory controls without the threat of legal challenge: 1. App stores are not clearly defined and are exempted from detailed regulatory oversight by either Ofcom or the MNOs. Without one or both mitigations suggested under Question 4, a local operating company may feel the assessed risk of trading with a Global Player means suspension can be the only outcome. There is a presumption that all App Stores operate without malice, but whether it is intentional or not, the App Store platforms are as vulnerable to fraudulent exploitation as any other member of the value chain. The difference is that under these proposed changes Ofcom does not have direct oversight and control over the App stores (unlike under Code 15 with PSA oversight) and therefore the responsibility for the fraudulent activity is not linked to regulatory enforcement. MNO current experiences indicate that it would be very difficult for MNOs to force the app stores to comply with requests and to act at the

speed of relevance in a market where technological advances can result in very quick and very high levels of consumer harm. Without the addition of either of the proposed mitigations, an App Store is able to take a local operating company of an MNO into non-compliance because of their sheer commercial power within the Group MNO companies where these exist.

The MNOs recognise the value of the App Stores to the PRS market environment and are very aware that they are global companies that may not be willing or may be unable to make geographically specific arrangements. The MNOs do not seek to damage the participation of the App Stores or indeed to deter future market entrants but merely to build on the positive aspects of this regulatory move by fixing a problem that currently exists, namely a reluctance of some App Stores to subordinate their DDRAC processes to scrutiny by the local operating companies of MNOs. This is essential for the joint prevention of fraud, delivering a great customer experience and a crucial part of securing a positive assessment of risk and the requirements of the draft order.

2. The proposed structure of the pre-purchase information and consent processes means that a baseline against which to measure for guidance or best practice no longer exists. There is concern that there is a danger that the current DCB prepayment and payment screens will become non-compliant because they do not contain the list of information cited in Article 26, page 44 of the Order. There is concern that the offer screens could become flooded with information in a way that would make it difficult to see the pertinent information which would represent a step backwards. We are also concerned that this does not take into account other services.

There is also concern, in the absence of clarity on the matter, that the 15 pieces of information could be provided in such loosely connected

	ways that they become meaningless in their role as a 'consent assurance' mechanic. MNOs expect to be able to continue the requirement for "PIN Loop" multifactor authentication mechanism to mitigate the risk to them of taking on providers, currently it is unclear whether this would be permitted within the current draft order. In the absence of explicit legal standing for the MNO Codes of Practice (per the recommendation under Question 4), the initial MNO assumption is that to augment the requirements in any way would attract a legal response from either Ofcom or members of the value chain. In addition, if the MNOs differ in what they require by way of multi-factor authentication this includes a variance which would be at odds with the broad-brush approach of the regulation. Other concerns include the removal of the requirement to provide the merchant name as part of the information, a lack of clarity around the grounds for suspension of a service and who should do that (4.80(a)) whether it is the intermediary or the MNO.
Q7. Do you have any comments about our proposed approach to security testing in Part 5 of the draft PRS Order?	Confidential? – N MNOs are pleased to see the continuation of security testing requirements for operator billing platforms and would point to the concerns raised above about our powers over the App Stores to provide the detail of these as a potential cause for concern within the Risk Assessment process. MNOs will continue to actively manage security risks on an annual basis through both the testing requirements and review workshops, but would welcome a small tweak within the proposal to ensure that MNOs are backed up in their right to demand this. Currently there is a concern that an assessment of the risks to MNOs of contracting with organisations that cannot or will not provide full DDRAC disclosure, including pen testing results, present an unacceptable level of risk. We are happy to have to ask for the tests, but we don't feel there is sufficient compulsion on the App Stores to provide these under the proposed regulation. We would also like clarification about whether or not these tests are required for PSMS platforms.

	We note consultation para 4.95 The relevant security testing must be signed off by a person appointed under article 21(3) of the draft PRS Order and that it is proposed that this person needs to be in "senior management (for the intermediary)" (see article 10(5) of the draft PRS Condition for the definition of "senior management") rather than a "suitably qualified or experienced person with overall responsibility for security or fraud" as currently contained in Code 15. We also note consultation para 4.98 We also propose to require that intermediaries share results of their relevant security testing with the network operators they have arrangements with where that network operator has requested the results. On receipt of the results, if the network operator reasonably believes that consumers are not being adequately protected from risks of security compromises in using the intermediary's payment platform for operator billing, the network operator must notify the intermediary of the same. Both providers are then required to stop carrying out the affected regulated activity For both the intermediary and the network provider to stop supporting the regulated activity requires a strong burden of proof. Reduction in testing sign off by a suitably qualified person to a senior manager might compromise this activity. We believe that Ofcom should review and reconsider the approach in these two paragraphs. In addition, we concur with AIMM's response that Network Operators suggest that the Intermediary should instead be obliged to provide these critical results - as a matter of course and should not rely upon a Network having to request them. In addition we feel there are implications for businesses of a certain size arising from the responsibilities given to the Generally Authorised Person. The responsibilities are currently carried out by the SMEs in the networks (risk assessments, security testing etc) Senior managers are unlikely to have the requisite skills. Would this be more like a senior manager regime as operated under FCA – senior leader with ultimate responsibility but day to day point of contact is different?
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 Response to be read alongside Q6 2). Chapter 1. 3) & 4) specifically obligates merchants not to omit any detail and therefore the application of Risk Assessment may encourage the value chain to return to the old style

	WAP pages T&Cs. The current payment page designs are absolutely designed to meet the needs of the average consumer, MNOs and merchants need to be able to retain these payment page designs. Chapter 2: The MNOs remain comfortable with these provisions.
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 4.128 Consumer journey reframed into two parts: : (a) the consumer receives the required information necessary to make an informed decision regarding entering the contract for CPRS; and (b) the subsequent consent is given by the consumer to enter the contract for CPRS. The MNOs would like clarification about the proposals: • 4.123 Merchants have greater freedom in how and when the pre-contract information they are supposed to provide is delivered to consumers. There is a concern that this greater freedom could be abused either purposefully or inadvertently if there is no guidance or baselining at all. 4.129 and 4.130 open all non-subscription and non ICSS services to wide interpretation for the information provided and consent parts of the journey. • A different side of the coin above is that all 15 pieces of required information have to be provided prominently prior to purchase so that would make the current payment pages non-compliant and would facilitate the swamping of the pages. • 4.126 Schedule 3 information to be given before consumer enters into CPRS: Includes geographical address, web address, telephone number and email, the name and contact details of the person responsible for customer care and complaints handling and policies for complaint handling. We are concerned that this will be difficult for some providers. PSMS based services such as prize draws, competitions and votes, and charity donation services currently present key information to consumers pre purchase, with more detailed

	information such as terms and conditions, contact details and policies available via a web link. These arrangements are in Code 15 and the Consumer Contracts Regulations. To provide all the prepurchase information listed at Schedule 3 would not be appropriate. • We understand the rationale as to why Multi-factor authentication is being removed however the MNOs would like to retain the opportunity to have a two or three step consent process within their codes of practice and it is unclear how that could align with the proposals. • ICSS SERVICES. There is a concern that the timescales to agree new service charge prices and build them for the changes to the ICSS market are not achievable in the timetable laid out. The MNOs would like to understand whether these can be de-coupled from the SI itself. • If ICSS service must use the service charges that have a free minute at the start of the call then Ofcom should make it explicit that Standard Network or Network Access Charge is only payable from the point at which billing commences.
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 There is some concern about MNO roles in the consumer complaints handling process given the responsibility for this within the Draft order sits with the merchants.. The Group would like to understand better what their role in this. Currently Ofcom's website does not contain sufficient facility for consumers wishing to complain about PRS and currently passes responsibility out to PSA. Combined with an assumption that merchants will have robust and mature complaint handling processes in place MobileUK would welcome more information about how this process will work. By removing the requirement for intermediaries to hold the consent data this means that as MNOs we may not be able to get the information we need when dealing with the complaints. Also we have to trust that the information from the merchant is fully accurate

	when we haven't done Due Diligence on them because we are not required to do so. Consent requirements are assumed to lie within the Consumer Contracts legislation. This is essentially an assumption that if enough information has been provided and the consumer continues to purchase then it is with their consent. This is fine but must be read in conjunction with the lack of clarity about the provision of the information for non-subscription/ICSS services. By removing the intermediaries from the complaints process there is a danger that patterns are missed that could be an early indicator of a new abuse mechanic.
Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?	Confidential? – N MNOs already have robust, publicly available policies and procedures in place to protect the interests of our vulnerable consumers. In 4.158 (a) Ofcom note "on-off CPRS does not lead to long-term financial impact". We believe this is as a result of controls within Code 15 and the MNO Codes to monitor and control excessive use which, of course, will be removed by the Order. We would like to understand more about the process for judging what an average consumer might be within the breadth of considerations of vulnerability as this might be very difficult or at the very least open to subjectivity.

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?	Confidential? – N MNOs already have robust, publicly available policies and procedures and technical systems in place to protect consumers from harm and offence. Additionally, MNOs can put in place a variety of tools to prohibit underage usage including bars etc, but we also need to be able to address areas such as excessive use which can be very harmful to consumers, particularly in a cost of living crisis. The Order is not the appropriate place for this to be detailed because it is a complex area involving the consideration of what constitutes excessive use and how it should be addressed. MNO Codes of Practice are the right place for this level of detail and control to protect specific market segments and so we repeat the request that they are given standing within the definition of the PRS value chain to avoid legal challenges arising from their omission from this Order.
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 MNOs are content with the new proposals for a valid ticket of entry and the extension of controls to children's competitions.
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?	Confidential? – N There is concern about the change from requiring age verification to be deployed where necessary to a prohibition on serving certain content to people under the age of 18. Particularly where a child has a phone that might reasonably be assumed to be within a contract to a person over the age of 18**.** Currently MNOs provide Adult Control bars using various different methods depending on how the customer is accessing the content. MNOs would like to see a change in wording that reduces the outcome from a 'requirement to prohibit the provision' to 'all reasonable endeavours must be made to ensure that provision is not made'. If this change is not made it could elevate the risk levels beyond what is acceptable for MNOs to allow some services to go live which in turn would have a significant impact on the market.

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?	Confidential? – N We note the proposal para 4.255 to retain the current PSA funding model which is a levy-based approach (collected by networks) and is determined by the market size vs the amount to be funded by levy. We also note that the amount to be funded by the levy for 2023/2024 is £3,647,494 (£3,797,494 (PSA budget) - £150k (PSA registration fees)). This represents 0.81% of the total sector revenue We note that the Levy model will use a calculation that will be determined by the 'market size' vs the 'amount to be funded by the Levy'. Neither term is accurately defined, and the MNOs note that the artificial inflation of "market size" engendered by the increase in two Apps Store's traffic does not correspond to an increase in regulatory activity**.** We are also concerned that this calculation may be based on voice rather than all services. We would like further clarification about the TCP and OCP arrangements as MNOs could be either and under 4.20 (a) OCPs do not carry the burden of paying the levy. Will information notices be issued to all TCPs and if so how will Ofcom protect commercially confidential information? The Levy must not be artificially maintained at a high level to cause a detriment to the market and create a revenue stream for Ofcom. We believe that with the absorption of the PSA into Ofcom and the consequent reduction in costs (shared building/removal of the PSA board/opportunity for synergies) that the amount to be funded will be greatly reduced. This further leads to the potential for a different funding approach which could also be simpler to manage both for Ofcom and Network Operators.
Q16. Do you have any comments about our proposed approach to additional requirements on network operators in Part 7 of the draft PRS Order?	Confidential? – N MNOs are content with these proposals. (retaining information that is already retained)
Q17. Do you have any comments about our proposed requirements relating to information requirements in Part 8 of the draft PRS Order	Confidential? – N MNOs are content with these proposals. (requiring access to information that MNOs already need to be able to provide)
Q18. Do you have any comments about our proposal to retain current PSA data	Confidential? – N

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?	MNOs are content with these proposals. (retaining information that is already retained)
Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?	Confidential? – N MNOs would like to understand any checks and balances that will operate when Ofcom decides to prohibit or enforce other providers during or after an investigation into another provider as laid out in 5.116.
Q20. Do you agree with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent? Please provide further information	Confidential? – N While MNOs are confident that Ofcom's proposed regulatory regime is justifiable, non-discriminatory and proportionate, we have viewed the unfolding of events of customer harm in other sectors and are, consequently, even more convinced of the need to have our Codes of Practice formally recognised. MNOs take their duties of care to their consumers and partners very seriously and so any wrongdoing must be able to be regulated flexibly and at the speed of relevance. We strongly encourage Ofcom to give the MNO Codes of Practice recognition as per the request at Question 4. MNOs are concerned that without acknowledgement somewhere in the document of the existence of MNO codes of practice within the ecosystem that additional regulatory actions taken by them to reduce risk may be met by a legal challenge. .
Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?	Confidential? – N MNOs would like clarification about the point at which services need to be compliant with the new regulations, is it upon registration or is it when it first went live in which case which set of rules must legacy services align to? Our assumption is that Ofcom will require full compliance with the new rules from 2nd January 2025 at which time all registration requirements should have been met including an up-to-date security test and full risk assessments of all PRS providers within the MNO's contracted value chain. 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). Regarding ICSS services, as a Network Operator, we would like it to be noted that without a firm idea of whether OFCOM will require additional price points or reuse existing redundant price points for the ICSS sixty seconds free calls it's not possible to confirm that it can be done in three months. Reuse of exiting price points should be quick but additional price points would mean rebuilding systems and could take considerably longer. 4.35 (a) (b) (c) – We assume that all the MNOs are already registered with Ofcom as well as PSA and will not we need to do another registration or add to the existing registration?

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