

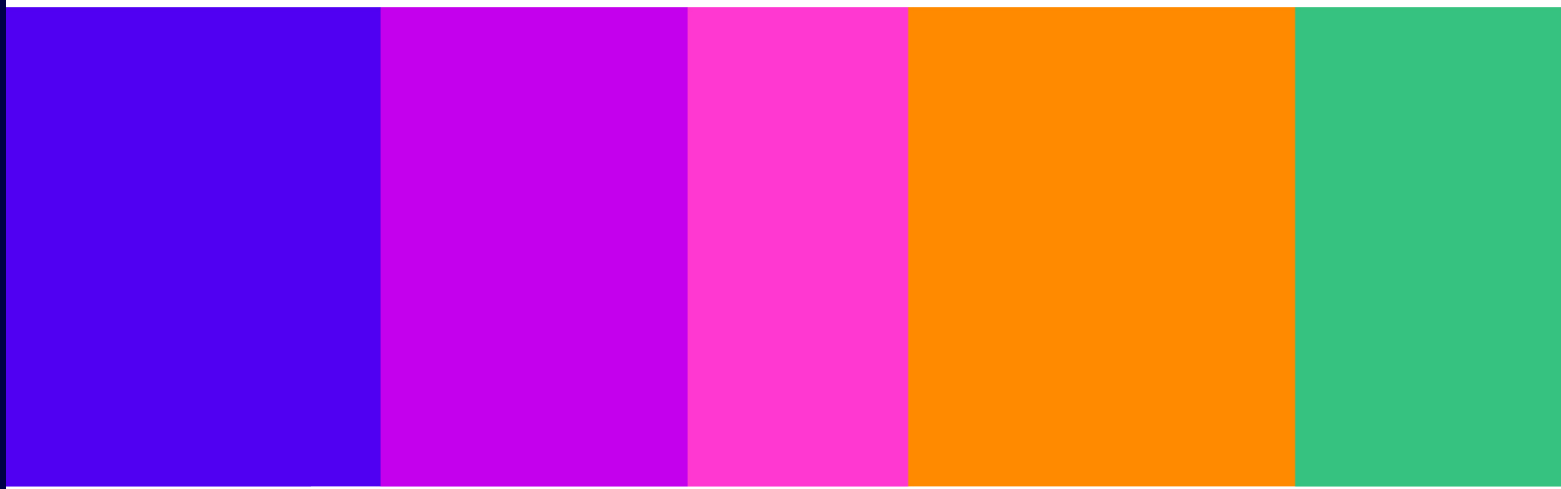
# The future regulation of phone-paid services

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Statement on Ofcom's Order under s122 of the Communications Act 2003 and changes to the Premium Rate Services Condition

**Statement**

Published 25 October 2024



# Contents

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## Section

1. Overview .....	3
2. Introduction and background .....	5
3. Key definitions .....	16
4. Registration .....	34
5. Due diligence, risk management and relevant security testing .....	52
6. Pre-contract information and consent .....	73
7. Charges and subscriptions .....	86
8. Age restrictions and children's services .....	96
9. Competition or voting services .....	105
10. Other consumer protection measures.....	113
11. Enforcement .....	132
12. Ofcom's fees, record keeping and information requests.....	149
13. Overall conclusions and next steps.....	168

## Annex

A1. Notification: Modifications to the PRS Condition .....	187
A2. Notification: Withdrawing Ofcom's approval of Code 15 .....	191
A3. Table of drafting changes to the PRS Order .....	194
A4. Annex for Enforcement Guidelines – PRS Order .....	205
A5. Annex for Enforcement Guidelines – PRS Condition (also for SMP apparatus conditions)	

# 1. Overview

- 1.1 People can access a range of interactive services via their landline and mobile phones, computers and digital TVs. Where these services are charged for via the customer's telephone bill, they are known as phone-paid services. Examples include charity donations by text, music streaming, TV and radio competitions, directory enquiries, voting on TV talent shows and in-app purchases. These services are also commonly referred to as premium rate services ("PRS").
- 1.2 Under the Communications Act 2003 ("the Act"), Ofcom is responsible for regulating a subset of PRS known as controlled PRS ("CPRS"). Under the current regulatory arrangements, Ofcom has designated the Phone-paid Services Authority ("PSA"), as the body to carry out day-to-day regulation of the PRS market. In that role, the PSA regulates the content, promotion and overall operation of CPRS by placing responsibilities and requirements on PRS providers.
- 1.3 In our role, Ofcom has statutory powers to address any failures by PRS providers to comply with directions given by the PSA.
- 1.4 The PSA has been an effective regulator for the PRS market for many years and has delivered significant benefits for people who use these services, with complaints significantly reducing over recent years following a number of positive interventions by the PSA. However, the PRS market has been undergoing significant change with legacy services in decline and the rapid growth of PRS provided by global tech platforms and a more compliant market.
- 1.5 To reflect this shift, in 2019, the PSA began a strategic review to make sure that its model of regulation remained fit for purpose in the changing market. As part of this review, the PSA also considered that, in order to ensure the long-term effectiveness of the PRS regulatory framework, it would be more appropriate for Ofcom to bring these functions in-house. On 24 May 2022, Ofcom announced that the Secretary of State for Digital, Culture, Media and Sport had given provisional approval for Ofcom to take over the PSA's responsibilities.<sup>1</sup>
- 1.6 In November 2023, we published our consultation setting out how we proposed to transfer the regulatory functions of the PSA to Ofcom, including associated proposed changes to the regulation of CPRS.<sup>2</sup> In our consultation, we also proposed to replace the PSA's current Code of Practice ("Code 15") with our own set of rules and set out our approach for ensuring compliance with these rules.
- 1.7 This statement sets out our final assessment and decision on how we intend to transfer PRS regulation from the PSA to Ofcom. On 1 February 2025, Ofcom will assume day-to-day responsibility as regulator and sole enforcer of PRS regulation.

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<sup>1</sup> <https://www.ofcom.org.uk/news-centre/2022/ofcom-to-take-on-responsibility-for-regulating-phone-paid-services>

<sup>2</sup> <https://www.ofcom.org.uk/phones-and-broadband/bills-and-charges/the-future-regulation-of-phone-paid-services>

## What we have decided – in brief

This statement confirms that, following consultation in November 2023, we have decided to:

- withdraw our approval of Code 15 and replace it with the Regulation of Premium Rate Services Order 2024 (PRS Order);
- modify the PRS Condition to require compliance with the PRS Order; and
- modify our Enforcement Guidelines to set out our enforcement approach for the PRS Order and PRS Condition respectively.

To implement a smooth regulatory transfer of PRS regulation from the PSA to Ofcom and after carefully considering the responses to our November 2023 consultation, we have decided to retain in the PRS Order most of the key principles and outcomes relating to PRS regulation that were in Code 15, including:

- consumer protection standards and, specifically, requirements relating to transparency, fairness, customer care, vulnerable consumers and prevention of harm and offence;
- organisational standards and, specifically, requirements relating to registration, due diligence and risk assessment and systems; and
- other responsibilities and obligations, including funding, information requirements and records retention.

We explain in this statement how Ofcom intends to approach any enforcement action we take under this new PRS regime.

1.8 The PRS Order will come into force on 1 February 2025.

## 2. Introduction and background

2.1 This section provides the background to PRS, explains the purpose of PRS regulation and describes how PRS are currently being regulated in the UK, including under Code 15. It also provides an overview of key consumer and market developments in the PRS market, and likely future consumer and market trends. We conclude this section by describing the legal framework and explaining the structure of the remainder of this statement.

### What PRS are

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2.2 The concept of PRS is broad. In general terms, PRS can be used by consumers as a convenient payment mechanism for buying relatively low expenditure content and services using their landline or mobile bill to pay for the services. Technically, they are services delivered via a telecommunications network. The consumer pays their communications provider for the use of its telecommunications service<sup>3</sup> and the PRS is provided to the consumer via that service.<sup>4</sup>

2.3 These services may be accessed by way of a conventional voice call or SMS, but increasingly they are accessed in other ways, such as computers, smartphones or interactive digital TV. Common forms of PRS include charity donations by text, music streaming, broadcast competitions, directory enquiries, chatlines, voting on TV talent shows and in-app purchases.

2.4 PRS vary in cost but they tend to cost more than a normal phone call or text message. They usually operate on numbers beginning with 084, 087, 090, 091, 098, 118 or on five- or six-digit mobile voice and text shortcodes usually beginning with '6', '7' or '8'. 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. Certain service charges are subject to price caps, for example, directory enquiry services (i.e. 118 numbers).<sup>5</sup> Additionally, since September 2023, Information, Connection and Signposting Services ("ICSS") are capped at a maximum of £40 for a single call<sup>6</sup> (see paragraphs 6.41 to 6.58 for more detail on ICSS).

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<sup>3</sup> For telecoms regulatory purposes, we often refer to this communications provider as the 'Originating Communications Provider' ("OCP"), since the telecoms service (such as a call) originates from the OCP's network. In contrast, the communication provider on whose network that call terminates to enable a consumer accessing a PRS is known as the 'Terminating Communications Provider' ("TCP").

<sup>4</sup> Under the Act, a telecommunications network is referred to as an 'electronic communications network' and a telecommunications service is referred to as an 'electronic communications service'. Those concepts are defined in section 32 of the Act.

<sup>5</sup> Ofcom imposed a price cap on the amounts DQ providers can charge of £3.65 (inclusive of VAT) per 90 seconds ([Statement: Directory Enquiries \(118\) Review \(ofcom.org.uk\)](#)).

<sup>6</sup> [Statement-following-consultation-on-ICSS-Code-15-amendments.ashx \(psauthority.org.uk\)](#)

## Background to PRS regulation

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- 2.5 There are some characteristics of PRS that give rise to the potential for consumer harm, including the risk of possible disconnection of the telecommunications service itself where the bill payer cannot afford to settle the phone bill.<sup>7</sup> Those characteristics may include:
- a) **Lack of information (transparency)** provided at point of purchase, for example, on price. This can lead to either consumers not using services because they expect the price to be higher than it is or, alternatively, financial harm where consumers make calls that they would not otherwise have made had accurate price information been available.
  - b) **Difficulty in getting redress** because the ability and incentive to seek redress are likely to be affected by the relatively limited value per transaction, and the bill-supply separation which make it hard to find out who the actual supplier was.
  - c) **Offensive or inappropriate content** to which consumers may be exposed.
- 2.6 A key rationale for PRS regulation is that certain services possess characteristics which cannot effectively be mitigated by existing general consumer protection laws. The regulatory framework, therefore, recognises that characteristics such as those mentioned above mean that PRS require specific (additional) regulatory provisions to target and prevent consumer harm, and that reliance on market forces and horizontal consumer legislation is insufficient.

## How Ofcom and the PSA currently work together

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- 2.7 Under existing regulatory arrangements, the PSA is an independent regulator responsible for the regulation of PRS. The PSA regulates through Code 15, which contains both the regulatory rules applicable to the sector and the institutional powers of the PSA. Code 15 is subject to approval by Ofcom under section 121 of the Act.
- 2.8 Ultimately, the PSA's regulatory role derives from Ofcom having exercised its statutory powers to give the PSA that role through our approval of its code. Ofcom maintains oversight for ensuring the sector is effectively regulated and, where necessary, enforces compliance with the PSA's enforcement directions given under the code by enforcing the PRS Condition under sections 123 and 124 of the Act.

## The PSA Code of Practice ("Code 15")

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- 2.9 Code 15 sets out the regulatory approach for the PSA and has three key aims: introduce standards in place of outcomes and thus making it easier for industry to implement; focus on prevention of harm rather than cure; and be simpler and easier to comply with.

## Standards and requirements

- 2.10 Code 15 contains a number of consumer-orientated, organisation-orientated and service-specific standards and requirements. The regulatory standards are summarised below:

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<sup>7</sup> In this PRS context, the use of a telecommunications service acts essentially as a billing mechanism or as a means of credit in circumstances where the person providing the PRS is normally different to the provider of the telecommunications service to the consumer.

- a) **Integrity:** Providers must act with integrity and not bring the PRS market into disrepute.
- b) **Transparency:** Consumers must receive clear, complete and timely information to enable them to make fully informed decisions when purchasing PRS.
- c) **Fairness:** Consumers must be treated fairly throughout their experience of PRS, including by being charged for PRS only where they have provided informed and explicit consent to such charges.
- d) **Customer care:** Consumers must receive excellent and timely customer care including the resolution of their complaints.
- e) **Vulnerable consumers:** Services must be promoted and provided in a way that ensures they are not likely to cause harm or detriment to consumers who are, or may be, vulnerable as a result of their particular circumstances, characteristics or needs.
- f) **Consumer privacy:** Consumer privacy must be respected and protected.
- g) **Prevention of harm and offence:** Promotions and services must be provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public.
- h) **Organisation and service registration:** Organisations and individuals involved in providing PRS must provide the PSA with timely, accurate and detailed information about themselves and the services they offer or intend to offer.
- i) **Due Diligence, Risk assessments and Controls (“DDRAC”):** Organisations and individuals must perform effective due diligence on any person or organisation with whom they contract in relation to PRS and must conduct a full and thorough assessment of potential risks arising from the provision, content, promotion, and marketing of PRS on an ongoing basis.
- j) **Systems:** All systems, including payment and consent verification platforms, used for the provision of and exit from PRS must be technically robust and secure.

2.11 In addition to these general standards, Code 15 also imposes specific requirements for certain services that it does not consider appropriate, or relevant, to apply more generally.<sup>8</sup>

## Supervision and verification

2.12 Code 15 provides an increased focus on supervision and verification. This is to help deliver the PSA’s goal of moving to a more proactive regulatory model to prevent harm in the first place rather than dealing with issues after the harm has occurred.

- a) **Supervision:** Code 15 includes a number of powers to enable the PSA to carry out supervisory activities which, among other things, enable it to assess a provider’s compliance with the code, to identify and resolve issues and, ultimately, to reduce the risk of actual or potential harm to consumers resulting from such non-compliance or other issues.
- b) **Verification:** Code 15 also includes a number of requirements relating to DDRAC. This requires providers to undertake more thorough verification of their contracted partners by setting clearer and more extensive DDRAC requirements.

## Engagement and enforcement

2.13 Code 15 provides a framework for both engagement and enforcement. This gives the PSA flexibility in terms of how it deals with any compliance concerns, including the opportunity

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<sup>8</sup> These include services such as society lottery services, competition or voting services and remote gambling services.

for more cases to be dealt with through informal resolution rather than formal enforcement action.

## Consumer and market context

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### The changing regulatory landscape for PRS

- 2.14 The PSA has been an effective regulator for the PRS market for many years and delivered significant benefits for consumers, with complaints significantly reducing over recent years following a number of positive interventions by the PSA. The PRS market is, however, now undergoing significant change with legacy services in decline and the rapid growth of PRS provided by global tech platforms and a more compliant market.
- 2.15 Where previously the market was characterised by a large number of relatively small providers containing a small minority of companies that caused consumer harm, the PSA estimate that over 80% of market revenue is now provided by larger organisations such as Apple, Global, ITV, Sony and Google, all of whom are now major participants in the market.
- 2.16 To reflect this shift, the PSA began a strategic review in 2019 to ensure that its model of regulation remained fit for purpose in the changing market, which resulted in Code 15. The approach taken by Code 15 brought the PSA's overall approach closer to the approach adopted by Ofcom, particularly in the telecoms markets.
- 2.17 As part of its strategic review, the PSA also considered that, in order to ensure the long-term effectiveness of the PRS regulatory framework, it would be more appropriate for Ofcom to bring these functions in-house. On 24 May 2022, Ofcom announced that the Secretary of State for Digital, Culture, Media and Sport, had given provisional approval for provisional approval for Ofcom to take over the PSA's responsibilities.<sup>9</sup>
- 2.18 In November 2023, we published our consultation setting out how we proposed to give effect to the regulatory transfer of PRS regulation from the PSA to Ofcom, alongside the consultation document we also published our draft PRS Order, which set out how we proposed to transpose most of the key principles of Code 15. We also proposed to modify our PRS Condition set under section 120 of the Act to secure compliance with the provisions of the draft PRS Order as well as any previous enforcement directions given by the PSA under its codes of practices.

### The PRS market

#### The wider communications market has changed

- 2.19 The telecoms market has undergone a significant transition over the past decade, from a market heavily characterised by voice-based services, to one which is more reliant on mobile data services, with consumers increasingly using smartphones to access the internet, and more purchases being made online. The most significant shift has been consumers using their mobile to make purchases. Mobile commerce in the UK is expected to grow at more than twice the rate of the overall e-commerce sector.

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<sup>9</sup> <https://www.ofcom.org.uk/news-centre/2022/ofcom-to-take-on-responsibility-for-regulating-phone-paid-services>



## The PRS market today

- 2.20 Similar changes in the PRS market have also manifested in both the composition of the market and the revenues which it generates. In particular:
- a) voice-based services are declining:
    - i) directory enquiries revenue has reduced significantly, with revenues dropping to £4.6 million in 2022/23.<sup>10</sup> This is as a result of both a decline in call volumes and a price cap in the cost of calls; and
    - ii) 087 and 09 (including ICSS) are also declining, with revenues falling by £17.9million between 2022/23 and 2023/24, as a result of new regulatory requirements placed on ICSS and as businesses continue to migrate services onto other number ranges and online, and consumers choose free or lower cost alternatives<sup>11</sup>;
  - b) mobile-based services account for over 90%<sup>12</sup> of consumer spend;
  - c) newer digital services, mainly delivered online, are thriving. In particular, games and entertainment services have been growing;
  - d) operator billing<sup>13</sup> continues to be the largest spending channel and in 2023/24 it accounted for 54.2%<sup>14</sup> of total consumer spend on PRS. Games, entertainment and betting, gambling and lotteries were the three largest service categories using operator billing; Games was the largest service category in the market in 2023/24 accounting for £175.6m of revenue<sup>15</sup> and
  - e) despite the growth of operator billing, Premium rate SMS (PSMS) continues to perform strongly driven largely by broadcast competitions. Broadcasters generated £174.4 million in 2021/22<sup>16</sup>.
- 2.21 Market composition has also changed significantly. Ten years ago, the market was largely comprised of small and medium-sized businesses. While some smaller merchants continue to operate in the market, it increasingly features larger, established organisations. The PSA currently estimates that the mobile PRS market is heavily and increasingly comprised of major organisations providing high-quality services with clear consumer demand (over 90%). These include app stores; major gaming and music streaming providers; TV and radio broadcasters and leading charities. 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.
- 2.22 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.
- 2.23 As a result, the PSA expects the market will further consolidate around the larger market segments and merchants, with consumer spending on TV and radio-based services, including broadcast competitions, expected to continue to account for a significant part of the market.

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<sup>10</sup> See page 54 of [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psa.gov.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>11</sup> See page 2 of the [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psa.gov.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>12</sup> See page 10 of [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psa.gov.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>13</sup> Operator billing is where a consumer uses a CPRS by means of a mobile phone service and a charge for that use is set out in the bill in respect of that mobile phone service.

<sup>14</sup> See page 10 of [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psa.gov.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>15</sup> See page 14 of the [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psa.gov.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>16</sup> See page 13 of [Annual Market Review 2022/23 \(psauthority.org.uk\)](https://psa.gov.uk/annual-market-review-2022-23)

2.24 The PSA’s assessment is that spending on games and entertainment, where larger providers of PRS like Microsoft, Apple, Google and Spotify feature prominently, is expected to continue to grow incrementally. Voice-based services are expected to continue to decline, as consumers’ usage declines in line with general trends in consumer behaviour.

**Who uses PRS?**

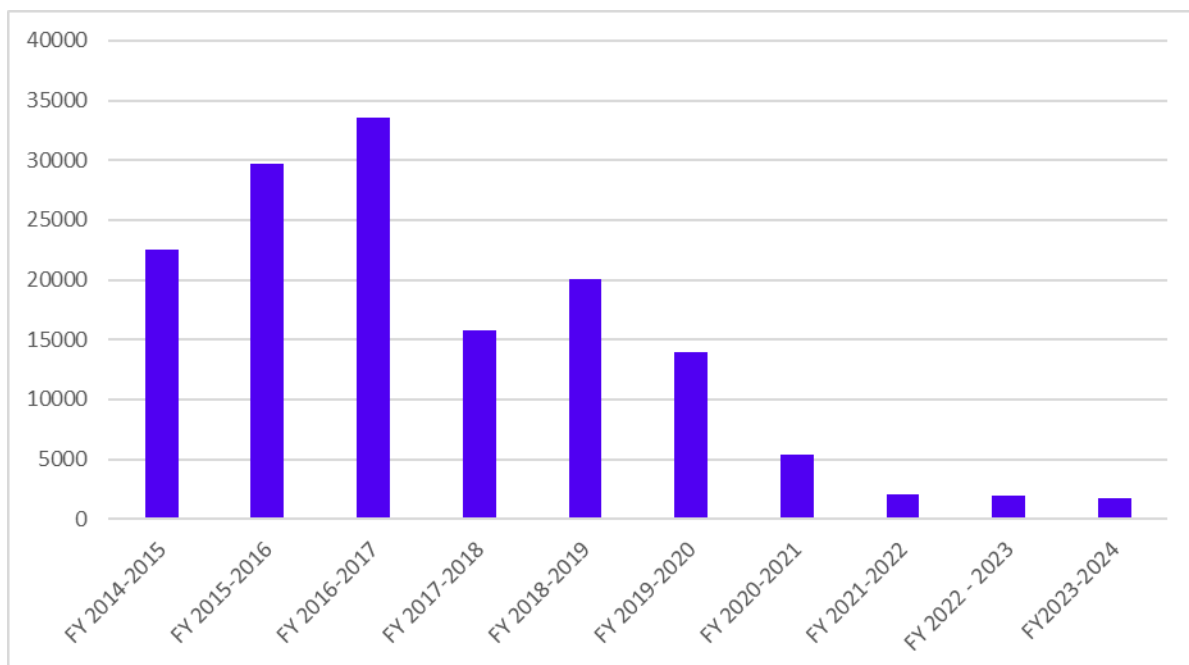
2.25 The PSA’s Annual Market Review<sup>17</sup> surveys 5,000 users of PRS every year and suggests that approximately 61% of the British population aged 16 or above used PRS in 2023/24.<sup>18</sup>

2.26 In particular, service penetration is the highest among those aged 21–30 and 31–40 (75%) and generally across the 18–50 age group. This is likely to be because many games and/or entertainment services appeal to a wide range of consumers across these age groups. As in previous years, the penetration of PRS was significantly below-average among respondents aged 61 and above (47%).<sup>19</sup>

2.27 The review also highlighted that consumer confidence and trust in PRS is relatively high, with industry recording low levels of complaints. Despite this, there continue to be a significant proportion of consumers who report experiencing problems. 25% of survey respondents reported encountering a problem when using a service, although this is significantly higher in particular (and relatively small) service types, including sexual entertainment, connection services and relationship services.

2.28 Also, and of relevance, as shown in Figure 1 below, complaints about PRS have declined dramatically in recent years, in line with a maturing market from a peak of over 33,610 in 2016/17 to 1,790 in 2023/24 and continue to fall in 2024/25.

**Figure 1: Consumer complaints about PRS made to the PSA (2014-2024)**



Source: Phone-paid Services Authority

<sup>17</sup> [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psauthority.org.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>18</sup> See page 35 of [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psauthority.org.uk/annual-market-review-for-phone-paid-services-2023-2024)

<sup>19</sup> See page 36 of [Annual market review for phone-paid services 2023–2024 \(psauthority.org.uk\)](https://psauthority.org.uk/annual-market-review-for-phone-paid-services-2023-2024)

- 2.29 The main issues reported to the PSA by consumers include:
- a) difficulties for a consumer to determine who to contact to receive a refund, difficulty accessing a refund once one has been agreed with a provider;
  - b) signing up to a service inadvertently and without clear consent from the consumer being given;
  - c) not realising they had called a premium rate number/the service came at a higher cost than expected;
  - d) bill shock;
  - e) the nature of services/ service being different to what was advertised; and
  - f) being unable to identify the service that had charged them from the information that was provided on their bill.

### Likely future consumer and market trends

- 2.30 In our view, the evidence presented above indicates that PRS as a sector is increasingly compliant with regulatory obligations, with low levels of complaints and a wide range of services which consumers recognise and enjoy. Based on the PSA's own analysis and assessment, its expectations are that the following trends will continue to apply<sup>20</sup>:
- a) more engagement from larger and well-established organisations based on continued growth of app store purchases, including the possibility of new players entering the market;
  - b) financial growth in the mobile market, through continued growth of operator billing and some PSMS services (such as broadcast competitions) – offset by expected continued decline in some other services, such as voice-based services;
  - c) consumers will continue to engage with PRS – driven by convenience, impulse purchasing and price, and that increased and ongoing engagement of larger and well-established organisations will drive up consumer trust and confidence; and
  - d) potential for the PRS market to grow as awareness and trust of the payment mechanism grows, particularly as a result of larger and well-established, organisations offering phone-payment as an option and, in some cases, as the default payment option on mobile.
- 2.31 The PSA expects that games and entertainment services will continue to drive growth. They also anticipate that betting and gambling services, as well as TV and radio engagement delivered through PSMS will continue to grow.

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<sup>20</sup> This largely reflects the AMR's forecast (see page 30 of [Annual market review for phone-paid services 2023–2024 \(psaauthority.org.uk\)](https://psa.gov.uk/annual-market-review-for-phone-paid-services-2023-2024))

## Legal framework

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2.32 We describe below our powers and duties that are relevant to the decisions discussed in this statement.

### Our general duties

2.33 Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.<sup>21</sup>

2.34 In performing our duties, we are required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as any other principles appearing to us to represent best regulatory practice.<sup>22</sup>

2.35 We must also have regard, when performing our duties, to a number of matters, including:

- a) the desirability of promoting competition in relevant markets;
- b) the desirability of encouraging investment and innovation in relevant markets;
- c) the needs of persons with disabilities, of the elderly and of those on low incomes;
- d) the desirability of preventing crime and disorder;
- e) the opinions of consumers in relevant markets and of members of the public generally;
- f) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and urban areas.<sup>23</sup>

2.36 In addition, section 3(5) of the Act requires that, when performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

### UK Government's Statement of Strategic Priorities

2.37 We must also have regard to the UK Government's Statement of Strategic Priorities ("SSP") for telecommunications, management of radio spectrum and postal services.<sup>24</sup> The SSP sets out the Government's strategic priorities for current and future telecoms consumers, including to:

- a) tackle harmful industry practices and improve the support available to vulnerable consumers; and
- b) address the difficulties that customers experience in navigating the communications market by giving them the right data, information, and support to boost their engagement.

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<sup>21</sup> Section 3(1) of the Act. 'Consumer' is defined in section 405(5) of the Act and includes people acting in their personal capacity or for the purposes of, or in connection with, a business.

<sup>22</sup> Section 3(3) of the Act.

<sup>23</sup> Section 3(4) of the Act. We must also act in accordance with the six requirements set out in section 4 of the Act in taking the decisions covered by this statement.

<sup>24</sup> See section 2B(2)(a) of the Act; A copy of the current SSPs can be accessed here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952627/SSP - as designated by S of S V2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952627/SSP_-_as_designated_by_S_of_S_V2.pdf)

- 2.38 The SSP also states that Ofcom should continue to take all opportunities to improve the consumer experience in the telecoms sector, particularly for vulnerable consumers, including those with disabilities.

## **Powers and duties in relation to regulation of PRS**

- 2.39 The Act provides a framework for the regulation of PRS at sections 120 to 124. Section 120 of the Act provides Ofcom with the power to set conditions for the purposes of regulating the provision, content promotion and marketing of PRS, and that these conditions may be applied to every person who provides PRS.
- 2.40 In accordance with this power, Ofcom has set a condition (the PRS Condition) that requires PRS providers to comply with directions given by the “Enforcement Authority” in accordance with an “Approved Code”. The PRS Condition applies only to certain PRS, known as CPRS. Section 47 of the Act sets out the test that we must apply when setting or modifying the PRS Condition.
- 2.41 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.<sup>25</sup> Code 15 was approved by Ofcom in October 2021.<sup>26</sup> The PRS Condition requires relevant providers (i.e. CPRS providers) to comply with any directions made by the PSA for the purposes of enforcing the Code. If a provider fails to do so, Ofcom can take enforcement action for breaching the PRS Condition.
- 2.42 Section 121(6)(b) of the Act states that Ofcom can withdraw its approval from an approved code at any time. Where we do so, s.121(7) of the Act states that we are required to publish a notification to this effect so that it is brought to the attention of affected persons.

## **Ofcom may regulate PRS directly by way of an Order**

- 2.43 Section 122 of the Act gives Ofcom the power to make an order where we consider that there is no code in force to which we think it would be appropriate to give, or continue to give, our approval under section 121 of the Act.
- 2.44 More specifically, under section 122(2), Ofcom may make an order with such of the following provisions as Ofcom think fit:
- a) provision imposing requirements with respect to the provision and contents of PRS, and with respect to the facilities made available in the provision of such services (including provision about pricing);
  - b) provision imposing requirements with respect to the arrangements made by providers of PRS for the promotion and marketing of those services;

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<sup>25</sup> Section 121(2) of the Act states that Ofcom is not to approve a code unless we are satisfied:

- (a) that there is a person who, under the code, has the function of administering and enforcing it; and
- (b) that that person is sufficiently independent of the providers of premium rate services;
- (c) that adequate arrangements are in force for funding the activities of that person in relation to the code;
- (d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;
- (e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
- (f) that those provisions are proportionate to what they are intended to achieve; and
- (g) that, in relation to what those provisions are intended to achieve, they are transparent.

<sup>26</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf)

- c) provision for the enforcement of requirements imposed by virtue of paragraph (a) or (b); and
  - d) provision making other arrangements for the purposes of those requirements).
- 2.45 Section 122(3) gives examples of what provisions we may make under above-mentioned general powers. Section 122(4) also contains an express power for us to impose, in effect, administrative charges to recover our regulatory costs, specifically our expenditure incurred in connection with the establishment and maintenance, in accordance with such an order, of any body corporate or procedure; or the making of other arrangements for the purposes of the requirements of such an order.
- 2.46 The consent of the Secretary of State is required for Ofcom to make such an order.<sup>27</sup>
- 2.47 The Act explains that such an order is to take the form of a statutory instrument and provides for certain procedural requirements to be met, including that we must give a notice of our proposals to those who will be affected by its implementation and consider any representations received.<sup>28</sup> We gave such a notice of the draft PRS Order in annex 5 to our consultation document.
- 2.48 Once any order is made by Ofcom, it must be sent to the Secretary of State and then laid before Parliament under the so-called negative resolution procedure. This procedure essentially means that the order becomes law once it is made by Ofcom and it automatically remains law unless a motion – or ‘prayer’ – to reject it is agreed by either House within 40 sitting days. However, even where it becomes law, the law as laid down in the order only becomes operative when its provisions are brought into force. This commencement is the date when the law in the order comes into force. We have decided to bring the PRS Order into force on 1 February 2025.

## Structure of this statement

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- 2.49 The remainder of this statement is structured as follows:
- Section 3 - Key definitions
  - Section 4 - Registration
  - Section 5 - Due diligence, risk management and relevant security testing
  - Section 6 - Pre-contract information and consent
  - Section 7 - Charges and subscriptions
  - Section 8 - Age restrictions and children’s services
  - Section 9 - Competition or voting services
  - Section 10 - Other consumer protection measures
  - Section 11 - Enforcement
  - Section 12 - Ofcom's fees, record keeping and information requests
  - Section 13 – Overall conclusions and next steps

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<sup>27</sup> Section 122(6) of the Act.

<sup>28</sup> Sections 122(7) and 403 of the Act.

2.50 The annexes are set out as follows:

- Annex 1 - Notification of modifications to the PRS Condition
- Annex 2 - Notification of withdrawal of Ofcom's approval of Code 15
- Annex 3 - Table of changes
- Annex 4 - Annex for Enforcement Guidelines – PRS Order
- Annex 5 - Annex for Enforcement Guidelines – PRS Condition

## 3. Key definitions

- 3.1 This section sets out our decisions in respect of key definitions used throughout the PRS Order. Other definitions used in the PRS Order are discussed in later sections alongside relevant obligations (see paragraphs 3.107 to 3.109 below for a list of where these can be found in this statement).
- 3.2 As discussed below, we have decided to proceed with the key definitions substantially as proposed in the consultation albeit we have made various drafting improvements and clarificatory changes to a number of these definitions as explained below.

### General interpretation (article 2)

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#### Consultation proposals

- 3.3 Article 2 of the draft PRS Order listed definitions that we used in various provisions throughout the Order, such as “the Act”; “the 2005 Act”; “call”; “electronic communication”; “SMS” (“short message service”); “VAT” and “working day”.

#### Stakeholder comments

- 3.4 We did not receive any responses on the definitions in article 2.

#### Our decision

- 3.5 In the main, we have decided to adopt these defined expressions in our final drafting of the PRS Order, with a minor amendment to “working day”. We have also amended the definition of “SMS” to “SMS message”, aligning with the definition at section 55(12) of the Online Safety Act 2023. We consider that this amendment achieves the same policy objective while aligning with existing legislation.
- 3.6 Other defined terms such as “Code 15” and “mobile phone service” have been moved to this article in the PRS Order and we have included a new definition for “charity” in article 2 to reflect that this is now referred to a number of times in the PRS Order.

### Meaning of controlled PRS (article 3)

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#### Consultation proposals

- 3.7 We explained in our consultation that the concept of PRS is broad (as reflected by the statutory definition in section 120 of the Act). Code 15 imposed requirements that applied expressly to PRS which met the definition set out at section 120 of the Act.<sup>29</sup>
- 3.8 In contrast, Ofcom’s PRS Condition applies to a much narrower group of PRS, called Controlled Premium Rate Services (“CPRS”). Paragraphs 1.2.1 and 1.2.2 of Code 15 recognised that the PRS Condition refers only to a subset of PRS as compared to the statutory definition in section 120(7).

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<sup>29</sup> See paragraph D.1.1.1 of Code 15



- 3.9 We proposed to define “controlled PRS” to largely reflect the definition of “Controlled Premium Rate Service” in the PRS Condition.<sup>30</sup> In addition, we stated that we would make some changes in carrying over this definition to the PRS Order including clarifying the range of telephone numbers that would qualify as a “premium rate number”, removing services using internet dialler software, and replacing the reference to “calls” with “electronic communication” to ensure that our definition of CPRS catches all means by which consumers can use PRS.

## Stakeholder comments

### 084/087 and 098 numbers

- 3.10 aimm, BT, Mobile UK, TalkTalk and VMO2 expressed concern that adding 084 to the definition of a PRS number would expand the scope of regulation, noting that not all 084 numbers are PRS, but many are local rate numbers used for customer service by organisations and businesses. aimm also noted that the definitions at article 3 also seem to state that 087 will be in scope of the draft PRS Order and asked for clarity.
- 3.11 A number of stakeholders also sought clarity as to why 098 is being added specifically to the definition of a PRS number.
- 3.12 aimm, BT, Mobile UK and VMO2 said that 09 numbers are already regulated by PSA and, therefore, were not clear why 098 is being specifically added to the definition of a “PRS number”.
- 3.13 The BBC supported the requirement to include 098 in the definition of PRS number. It said this is good housekeeping, following on from the definition included in the PRS Condition and matches the BBC’s understanding of in-scope numbers under PSA.
- 3.14 MCP Insight Ltd supported aimm's request for clarity.

### Fixed price amounts used in the PRS Order

- 3.15 aimm and Donr Ltd noted that the price threshold is stated as an explicit amount in the draft PRS Order. They argued that, given the inflexibility of the PRS Order, it would be better to include a mechanism to allow this to be reviewed and adjusted annually, for example, to account for inflation. MCP Insight Ltd supported aimm’s request for clarity.

### Shortcodes

- 3.16 aimm asked whether voice shortcodes of 5.833 pence (excluding VAT) are considered CPRS. MCP Insight Ltd supported aimm's request for clarity.

### Access charges and standard network rates

- 3.17 A number of stakeholders sought clarity that only the premium service element continues to be regulated under the PRS Order.
- 3.18 aimm, BT, Channel 4, BBC Children in Need, Fonix Mobile plc (Fonix), Global Media Services Limited (Global), ITV and VMO2 argued that it is not clear that only the PRS would be regulated under the PRS order. They asked whether the “access charge” and “standard network rate” would be regulated under the PRS Order too. MCP Insight Ltd supported aimm's request for clarity.

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<sup>30</sup> See paragraph 2(e) of the PRS Condition ([statement-review-of-the-premium-rate-services-condition.pdf](https://www.ofcom.org.uk/statement-review-of-the-premium-rate-services-condition.pdf) ([ofcom.org.uk](https://www.ofcom.org.uk)))

- 3.19 The BBC said it appeared, taking a reasonable interpretive approach, that standard rate text messages would be excluded from being a “threshold service” as they are not PRS as defined by the Act. It asked for confirmation of that interpretation.
- 3.20 aimm and Channel 4 suggested the following wording which they said would give greater clarity:
- “(2) A premium rate service falls within this paragraph if—*
- (a) the use of a premium rate number is required to use the service, and*
- (b) the premium charge for the provision of the service is—*
- (i) a single charge of 5.833 pence or more, or*
- (ii) calculated by reference to a rate of 5.833 pence or more for each minute of the duration of the electronic communication”*
- 3.21 In addition, ITV noted the current PRS Condition refers to a “service” charge and that Ofcom should consider either “premium” or “service” to preface “charge”.

### Own portal services

- 3.22 BT, Mobile UK, Telecom2 Ltd and VMO2 requested confirmation that our proposed definition of CPRS would not bring “own portal services” within the scope of regulation. They noted that the draft PRS Order states that a PRS would be exempt if it is provided by “*an electronic communications service which is being provided by the same person providing the premium rate service*” but welcomed confirmation.
- 3.23 BT and Mobile UK also talked about current “own portal” services and asked Ofcom to confirm that these would also be excluded from regulation. This was because the examples of own portal services that were given by Ofcom in 2012<sup>31</sup> are different to the types of own portal services offered by the market today.

### Public ECNs and ECSs

- 3.24 TÜV SÜD Limited noted that the terms “electronic communications service” (“ECS”) and “electronic communications network” (“ECN”) are used in the proposed definitions in articles 3 to 8 of Part 1 of the draft PRS Order. However, it also noted that at articles 3(8)(c) and 5(1)(a), these terms have been preceded by the word public. It was concerned that this inconsistency may cause some confusion.

### Out of date definitions

- 3.25 Mobile UK and VMO2 said that they were concerned that some of the definitions and concepts in our consultation did not present an accurate, up to date, portrayal of the current PRS market. In particular, they noted the focus on voice services (for example, the reference to access charges). They also noted references to revenue share payments regarding originating communications providers (“OCPs”) and terminating communications

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<sup>31</sup> This refers to Ofcom’s decision in 2012 to exclude “own portal services” from regulation under the PRS Condition and therefore also from regulation under (what is now) Code 15- see <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/uncategorised/8168-review-premium-rate-services/associated-documents/statement.pdf>. In this decision Ofcom said “*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.*”

providers (“TCPs”) which does not represent the value chain in the majority of services in today's market outside telephony.

## Our decision

3.26 We have decided to adopt key aspects of our proposed definition of “controlled PRS” except for minor drafting changes, as well as making changes to the definition of “premium rate number” in light of stakeholder responses on our proposed inclusion of 084 and 098. We otherwise consider that our “controlled PRS” definition as proposed is appropriate to ensure that the same types of services that are regulated by the PSA under Code 15 will continue to be regulated by Ofcom under the PRS Order.

3.27 We address specific stakeholder comments below.

### 084/087 and 098 numbers

3.28 We are grateful for stakeholder responses drawing our attention to the fact that our proposal to add 084 and 098 to our proposed definition of “premium rate number” in the draft PRS Order would have the effect of expanding the scope of regulation.

3.29 By proposing to add 084 to the definition, we accept that this would have the effect of bringing within the scope of regulation a service that (a) uses this number, and (b) meets the 5.833p threshold in article 3(2). This would be a departure from Code 15 and was an oversight on our behalf since we intended to simply carry over the existing position under the PRS Condition (which is that 084 numbers would only be in scope where they meet the higher threshold of 10p in article 3(3)). We have therefore decided to remove 084 from the ‘premium rate number’ definition in article 3(8) of the PRS Order. However, an exception to this is where an 084 number is used by ICSS. In that case, such services will be regulated as a CPRS regardless of the charging thresholds. This can be seen by the inclusion of 084 within the definition of an ICSS at article 7 of the PRS Order. This also reflects the present position under the PRS Condition.

3.30 As regards stakeholder comments on 098, we note that these numbers are already designated under the Ofcom Numbering Plan<sup>32</sup> as a number for Sexual Entertainment Services. Accordingly, services on 098 numbers would be regulated as “sexual content services” within the meaning of article 6 of the PRS Order irrespective of the charging thresholds. Therefore, we agree with stakeholder comments that it is not necessary to include them within the definition of “premium rate number”. We have therefore decided to also remove reference to 098 from the ‘premium rate number’ definition.

3.31 In response to aimm’s request for clarity relating to “087” numbers, again, we are not making any changes to how 087 numbers are regulated as these are within scope of PRS as defined under section 120(7) of the Act and are currently included in the definition of “PRS Number” in the PRS Condition.<sup>33</sup>

### Fixed price amounts used in the PRS Order

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<sup>32</sup> See page 10 of <https://www.ofcom.org.uk/siteassets/resources/documents/phones-telecoms-and-internet/information-for-industry/numbering/other/national-numbering-plan.pdf?v=382830>.

<sup>33</sup> See paragraph 2(t) of the PRS Condition ([statement-review-of-the-premium-rate-services-condition.pdf](https://www.ofcom.org.uk/consult/condocs/prs/prs-condition-statement-review-of-the-premium-rate-services-condition.pdf) ([ofcom.org.uk](https://www.ofcom.org.uk))).

- 3.32 We do not agree that it is necessary to include an adjustment mechanism in relation to fixed price amounts. In particular, we note this would represent a material change to how PRS are currently regulated.
- 3.33 The current price thresholds have been in place since our review of Non-Geographic Call Services (“NGCS”) in 2013 and they were established following our detailed and careful assessment of the evidence of harm arising from consumers purchasing PRS using NGCS (which includes PRS). Our assessment was that consumer harm and, in particular, the potential for bill shock, was linked to the price of the service. We established the current price thresholds on this basis. We consider that these thresholds remain appropriate albeit we will monitor the current price thresholds and carry out a further review should this become necessary. Accordingly, we are not persuaded that we should change our established approach to consumer protection in this area by moving from fixed price amounts to an adjustment mechanism.

### Shortcodes

- 3.34 PRS provided by means of voice shortcodes would be caught by article 3(3) of the PRS Order and not article 3(2). This is because they are “*provided by means of an electronic communications service, other than by using a premium rate number*”. As such, voice shortcodes would need to satisfy the charging thresholds set out at article 3(3)(b) of the PRS Order, namely that the charge by means of which the service is obtained is charged at, or calculated by reference to a rate of, 10 pence or more per minute inclusive of VAT.

### Access charges and standard network rates

- 3.35 We consider that article 3 of the draft PRS Order was clear that only the premium service element of any charge would be regulated under the draft PRS Order. This is because the thresholds in article 3(2)(b) and (3)(b) refer only to the charge for the provision of the service in question. In that context, the “service” refers back to the concept of a “premium rate service” as defined in section 120(7) of the Act. That definition captures a charge for the provision of a service falling within section 120(8), which service is either the contents or facility provided by means of the electronic communications service.
- 3.36 We therefore consider it unnecessary to add the word “premium” or “service” before the word “charge” in article 3(2)(b) and 3(3)(b), as some stakeholders suggested.

### Own portal services

- 3.37 We confirm that our intention in drafting article 3(5)(b) of the PRS Order is to continue to exempt “own portal services” that we described in our 2012 statement<sup>34</sup> as being exempt from being a CPRS (as referred to by VM02 in its response): see article 3(1)(b) of the PRS Order read together with article 3(5)(b). We consider that the wording in article 3(5)(b) of the PRS Order is the same in material respects as the wording that we included in our 2012 statement to amend the PRS Condition to achieve that result. Therefore, we do not consider that any amendment to the proposed wording is necessary.
- 3.38 As regards the points made by BT and Mobile UK, it is important to note firstly the description of “own portal services” that Ofcom adopted and within the scope of our review in 2012. In particular, our decision in 2012 described the relevant services as follows:

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<sup>34</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/uncategorised/8168-review-premium-rate-services/associated-documents/statement.pdf?v=321953>

*“4.2 Portal services can be offered by mobile and fixed providers. Despite convergence in this area we consider it is helpful in the first instance to describe fixed and mobile portals separately and identify differences between the two types of portal services. Our focus is on the OCPs’ own portal services, excluding third parties’ portal services.*

*4.3 As explained in detail in the July 2011 Consultation, for the purpose of this review we have used the following definition for mobile portal content services: “Mobile portal content services are digital content services that can be purchased by the MCP’s<sup>35</sup> customer through “browse and click”, where the MCP carries out all retail activities regarding the content itself, including the promotion, delivery, billing and customer care and where the transaction is charged to the MCP’s customer’s bill or pay as you go credit.”*

*4.4 As also explained in detail in the July 2011 Consultation, we have used the following definition of fixed portal content services in the review: “Fixed portal content services are digital content services offered by fixed communication providers which can be accessed “on demand” by a provider’s customer over an ECS (typically a broadband connection), where the provider carries out all retail activities regarding the content itself, the promotion, delivery, billing and customer care and where the transaction is charged to the customer’s communication provider’s bill”.*

- 3.39 Secondly, in light of those descriptions, it is also important to note that Ofcom responded in 2012 to a point raised by Action 4 Limited that appears relevant to the points now raised by BT and Mobile UK, namely:

*“6.129 Action 4 questioned whether the proposed drafting intended to exclude own portal services would cover fixed portal services where consumers pay one provider via a telephone bill for services delivered to them by another. Ofcom considers that it does not and should not: such services would not necessarily possess the characteristics on the basis of which Ofcom considers own portal services should be excluded from regulation (for example, the provider of the ECS and the provider of the PRS delivered by means of the ECS would not be the same).*

*6.130 We have, however, further considered the scope of the exclusion, and amended the way it is drafted, in light of Action4’s response. It now makes clear that any own portal service (as defined in the July 2011 Consultation and this statement) delivered by ECS and provided by the ECS provider is excluded from regulation. PRS provided by someone other than the ECS provider, but charged to the customer by the ECS provider, which otherwise fall within the definition of CPRS, will continue to be regulated. There is no basis to exclude them, nor reason to amend the Condition further to cover them.”*

- 3.40 Accordingly, to the extent that BT and Mobile UK are now referring to current “own portal” services similar to those mentioned by Action 4 Limited in 2012, we confirm that such services would be exempt under article 3(5)(b) of the PRS Order for the reasons we gave in 2012, namely that there are important differences between own portal services and more conventional PRS whose characteristics have in the past given rise to consumer harm and that, therefore, there is more limited risk of consumer harm arising.

## **Public ECNs and ECSs**

- 3.41 “Public electronic communications network” and “public electronic communications service” are used in the PRS Order where it is important to reflect that electronic

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<sup>35</sup> Mobile Communications Providers.

communications networks and electronic communications services are being provided to the public.

- 3.42 “Public electronic communications network” is used in the definition of “relevant telephone number” in article 3(8) of the PRS Order. “Relevant telephone number” forms part of the “premium rate number” definition at article 3(8) of the PRS Order.
- 3.43 As mentioned at paragraph 3.28 above, the definition of a “premium rate number” in article 3(8) seeks to reflect, as a starting point, the use of the expression “PRS Number” in the definition of CPRS in the existing PRS Condition. That definition states that these numbers are non-geographic, with the PRS Condition also stating that “Non-Geographic Number” has the meaning ascribed to it in the National Telephone Numbering Plan (“the NTNP”). The NTNP in the PRS Condition is defined as a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act.
- 3.44 We are unable to replicate the PRS Condition definitions for non-geographic number and the NTNP in the PRS Order as statutory drafting requires precision. This means we cannot refer to the NTNP as being published “from time to time” as the meaning will change each time the NTNP is published. To incorporate the PRS Condition definition would therefore be unlawful sub-delegation in the PRS Order. Furthermore, the preferred approach with statutory drafting is to avoid unnecessary referential drafting.
- 3.45 Therefore, to satisfy statutory drafting rules, we are using the concept of a “relevant telephone number” as defined at article 3(8) to reflect the non-geographic nature of premium rate numbers. Under the most recent NTNP of 11 October 2024<sup>36</sup>, it is clear from Part A that an essential element of a non-geographic number is that the NTNP has determined the telephone number is one for use on a public electronic communications network.<sup>37</sup>
- 3.46 In that regard, the use of “public electronic communications network” (as opposed to just “electronic communications network”) is necessary and reflective of the existing position under the PRS Condition, rather than an inconsistent drafting point.
- 3.47 “Public electronic communications service”<sup>38</sup> is no longer used in article 5 of the PRS Order because we have simplified the drafting so it now says “immediately before making the call”. It is therefore not necessary to talk about “*prior to any connection by means of a public electronic communications service being established between them.*”

### Out of date definitions

- 3.48 We note the points raised by Mobile UK relating to how we have described particular terms in our consultation document rather than our draft PRS Order. We do not agree that terms such as “access charge” and “revenue-share” are predominantly focused on voice. These are fundamental concepts in terms of how regulation applies in this sector, irrespective of the technology used.

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<sup>36</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/phones-telecoms-and-internet/information-for-industry/numbering/other/national-numbering-plan.pdf?v=382830>

<sup>37</sup> Section 151(1) of the Act defines this as “an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public...”

<sup>38</sup> Section 151(1) of the Act defines this as “any electronic communications service that is provided so as to be available for use by members of the public”.



## Meaning of threshold service, chatline service, sexual content service and information, connection or signposting service (articles 4 – 7)

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### Consultation proposals

- 3.49 We proposed a new definition of “threshold service” to bring into scope of regulation any PRS which are not a chatline service, a sexual content service, an ICSS, or exempt under article 3(5), but still fall within the number and charging thresholds of a CPRS.
- 3.50 We amended the definition of chatline service from the definition in the PRS Condition<sup>39</sup> to mirror the language used to describe PRS in the Act. We also stated that we would amend the definition to exclude certain other types of CPRS to avoid definitional overlaps between other CPRS and chatline services.
- 3.51 We redefined sexual content services from how they were defined in Code 15 to base the definition more closely on Ofcom’s PRS Condition and the Act. In the consultation we stated that the definition describes a sexual content service as one containing content where it is reasonable to assume that it was produced solely or principally for the purposes of stimulating the sexual interests or desires of the consumer who is using the service. We said this would also align the definition of these services more closely with the way services providing similar content are described in the Online Safety Act 2023.
- 3.52 We also said we were proposing to simplify the existing definition of ICSS, focusing it on the key components of the service and that this would not change the types of services which were captured under this definition in Code 15.

### Stakeholder comments

- 3.53 We did not receive any substantive comments from stakeholders in respect of the proposed definitions for chatline services, sexual content services or ICSS.
- 3.54 Action 4 Limited requested a clear definition of “threshold services”.
- 3.55 CCL, in their response to the pre-contractual requirements on merchants for ICSS, commented that Ofcom has “*not explained satisfactorily why it is right and fair that DQ providers [directory enquiry providers] are excluded from the FMF [first minute free] requirement*”.<sup>40</sup>

### Our decision

- 3.56 We have decided to proceed with the definitions of threshold service, chatline service, sexual content service and ICSS as proposed in our consultation except for minor amendments to make these definitions clearer, amendments to address definitional overlaps as discussed in paragraphs 3.103 to 3.106 and minor drafting changes to reflect that certain services will be exempt under paragraph (2) of the relevant articles for chatline services, sexual content services and ICSS where they are provided by means of a call which

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<sup>39</sup> See paragraph 2(d) of the PRS Condition ([statement-review-of-the-premium-rate-services-condition.pdf](https://www.ofcom.org.uk/statement-review-of-the-premium-rate-services-condition.pdf) ([ofcom.org.uk](https://www.ofcom.org.uk)))

<sup>40</sup> We deal with this point at paragraphs 6.41 to 6.58 of this statement.

terminates on an electronic communications network outside of the UK or where they are an “own portal service” as explained above.

- 3.57 In relation to Action 4 Limited’s request for a threshold service definition, there is a definition of threshold service at article 4 of the PRS Order. The purpose of that definition is to identify CPRS, other than those named at articles 5 to 8 of the PRS Order, which meet the fixed price amounts in article 3(2) and (3) and are not exempt under article 3(5).
- 3.58 By using this definition, the PRS Order sets out other CPRS in respect of which there are specific requirements under the Order. For example, the concept of a threshold service is used in article 41 of the PRS Order to define what a competition or voting service is, and what requirements this service has to comply with. To that end, we consider that the definition of a “threshold service” is clear and we have decided to include it in the PRS Order.
- 3.59 Given we are not making material changes to these definitions and, therefore, the types of services which were regulated under Code 15, we consider there would be minimal impact on PRS providers.

## Meaning of subscription service (article 8)

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### Consultation proposals

- 3.60 We proposed to expand the definition of subscription service compared to that set out at paragraph D.2.72 of Code 15 to make clear the different types of contracts for CPRS, where they are not provided by means of a call and are also defined as a type of service in the PRS Order, that can come within scope of such a service. For example, to include children’s services or professional advice services.

### Stakeholder comments

- 3.61 aimm and Donr Ltd expressed concerns that our proposal did not appear to allow for a society lottery to operate as a subscription service. They noted that the draft PRS Order appears to consider society lottery services as either a standalone product or as part of a gambling service. They argued it would be better to explicitly reference society lottery services and gambling services as two separate propositions and include them under the provisions of a subscription service.
- 3.62 Infomedia Services Limited (Infomedia) were concerned that the definitions in the draft PRS Order appear to omit a large category of PRS service, namely subscription or one-off payment services which do not fall into the categories set out in draft article 8. It said it is unclear whether this is intentional and noted that paragraph 4.13 of the consultation document said our intention was to regulate a narrower group of PRS. It also said the types of services which it is referring to, and which are currently regulated by the PSA, are paid for in the same ways as CPRS but are not “provided by means of an electronic communications service” (article 3(3)(b)). This includes *“in-app purchases of access to digital content e.g. music, videos, or the provision of an app or web service itself, such as a video streaming service.”*



## Our decision

- 3.63 We have decided to adopt the definition of subscription services largely as we proposed, with some changes to drafting to improve clarity (see Annex 3 – Table of Changes) and a change to include society lottery services on the list of CPRS that come within scope of the article. We have also removed the reference to a consumer’s right to terminate the contract because article 33 confers such a right on the consumer.
- 3.64 The reference to a “relevant threshold service” in article 8(1)(a)(iv) of the draft PRS Order sought to capture threshold services like society lottery services operating as a subscription service. However, in order to be consistent with other services which are defined in the PRS Order and separately listed in article 8 as being capable of subscription services, we have now expressly included in article 8(2)(e) a reference to a society lottery service to remove any doubt that such services may fall within the meaning of a subscription service.
- 3.65 We do not agree, however, that our proposed definition of “subscription services” omits subscription or one-off payment services which do not fall under the categories set out in article 8 of the PRS Order. In particular, we note that the concept of a “threshold service” captures a broad range of service, including subscription or one-off payment services.
- 3.66 We also note that Infomedia referenced paragraph 4.13 of the consultation document as setting out an intention to regulate a narrower group of PRS. Paragraph 4.13 explains that the PRS Condition applies to a narrower group of PRS called CPRS, with paragraph 4.14 explaining that the existing requirements in Code 15 only apply to CPRS under the PRS Condition. In this case, this is not a new intention but rather setting out that CPRS are regulated under the PRS Condition (and which will continue to be regulated under the PRS Order).
- 3.67 As regards Infomedia’s comment regarding “in-app purchases” and the reference in article 3(3)(a) of the draft PRS Order to “electronic communications service”, we note that the threshold detailed in this article seeks to reflect the definition of CPRS under the PRS Condition<sup>41</sup> where it refers to a 10 pence threshold. That definition also references the service being obtained by a call other than through a PRS Number, or otherwise delivered by means of an electronic communications service. Therefore, we disagree with Infomedia as we consider that the “in-app purchases” to which it refers would be caught by that definition in the PRS Condition and we consider it would also be caught by article 3(3)(a). We have chosen not to limit this article to “call” but have referenced “electronic communication” to ensure they are within scope.

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<sup>41</sup> The definition at 2(e) states: “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories: ...

(ii) the service is obtained other than through a PRS Number, and the charge for the call by means of which the service is obtained or the rate **according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);**”

## Meaning of PRS provider and regulated activity etc. (article 9)

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### Consultation proposals

- 3.68 In our consultation, we said that we intended to continue to regulate the same types of PRS providers as under Code 15. However, we proposed to use different definitions in order to reflect the Act, in particular sections 120(9) and 151, which set out when a person is providing a PRS.
- 3.69 We proposed to preserve the approach of the PSA in regulating the different parties in the value chain of PRS: network operators, intermediaries and merchants. While we proposed to use different definitions for these parties, we noted that the substantive requirements which we proposed to put in place on each of those PRS providers would remain broadly consistent with Code 15.
- 3.70 In particular, we proposed that:
- a) the expression of an “intermediary” would be defined to align with the provisions in s120(9)(c) and (d) of the Act;
  - b) the expression of a “merchant” would be defined to align with the provision in s120(9)(a) of the Act; and
  - c) the expression of a “network operator” would be defined to align with the provisions in s120(10) and 120(11) of the Act.
- 3.71 We also stated that we would narrow the application of section 120(13) by focusing article 9(8) and 9(9) of the draft PRS Order on intermediaries and merchants. We said we considered that, in practice, only these providers will be involved with other persons in the supply chain for a CPRS.
- 3.72 We also proposed to include a definition of “regulated activity” which would set out the types of activities undertaken by PRS providers in relation to CPRS which would be within scope of the PRS Order. We said that this was to align these definitions with the statutory language.
- 3.73 In particular, we proposed “regulated activity” would include circumstances where:
- a) a merchant is providing a CPRS to a consumer;
  - b) an intermediary is providing a service which falls under article 9(2) of the draft PRS Order; and
  - c) a network operator makes available an electronic communications service, or an electronic communications network, in a way that meets the definitions in article 9(6)(a) or 9(7)(a) of the draft PRS Order. We said that it would include promotion and marketing of CPRS.

## Stakeholder comments

### “Merchant” definition

- 3.74 The BBC said that the draft PRS Order does not carry across all elements of the PRS definition in s120 of the Act. Specifically, it commented that s.120(9)(b)<sup>42</sup> is not seen expressly in any part of the draft PRS Order, despite being in the Act and repeated in the PRS Condition (at 2(g)(ii)).
- 3.75 The BBC went on to explain that editorial control is an important part of their role as a PRS provider and were concerned that our proposed definition of “merchant” would mean it would end up being out of scope and in conflict with its own Editorial Guidelines. It also commented that as one of Ofcom's desired outcomes is to regulate offensive or inappropriate content (consultation section 2.6(c)), retaining the editorial control element of the “provides” definition from the Act would help in achieving this. This links to its query, discussed below at paragraph 3.76, about how the draft PRS Order would apply to two merchants in the same value chain.
- 3.76 The BBC also sought clarification over the definition of “provides” to ensure that it was caught by the merchant definition in article 9(4) of the draft PRS Order. To that end, the BBC suggested a revision to the proposed definition of “provides” set out in article 9(10) of the draft PRS Order, suggesting that the article is redrafted to include the following in underline:
- “9(10) “Provides”, in relation to a premium rate service, is to be construed as meaning (and only so far as)-*
- a. in the case of an intermediary, the person provides the service described in paragraph (2),*
  - b. in the case of a merchant, the person has editorial control over the content of the controlled PRS or who provides the controlled PRS as described in paragraph (4), and*
  - c. in the case of a network operator, the person provides the service or network for use as described in paragraph (6)(a) or (7)(a) (as the case may be), and cognate expressions are to be construed accordingly.”*
- 3.77 Action 4 Limited and TalkTalk also provided comments about lack of clarity about who is the responsible provider within the value chain.
- 3.78 The BBC and BBC Children in Need also asked what happens where there are two merchants in a value chain.
- 3.79 Donr Ltd also queried the merchant definition, asking what was meant by “*providing a controlled PRS*”.

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<sup>42</sup> Section 120(9)(b) of the Act sets out that a person is providing a PRS if they exercise editorial control over the contents of the PRS. Paragraph 2(g)(ii) of the PRS Condition reflects this as one of the elements making up the definition for a “Controlled Premium Rate Service Provider”.

## App stores

- 3.80 Apple were concerned the draft PRS Order could be read as implying that app stores broadly act as intermediaries, when this is not the case for Apple Distribution International Limited (“ADIL”), a subsidiary of Apple Inc., which is the merchant for digital content purchased through the App Store. It, therefore, welcomed clarification that providers have flexibility to assess the role they play in the eco-system based on their own business models, and take proportionate measures to meet the objective of the draft PRS Order of addressing consumer harm.
- 3.81 BT, Mobile UK, VMO2 and Vodafone expressed concern that our proposed definitions of “regulated providers” are restricted to merchants, intermediaries and networks and do not clearly define what constitutes an “app store”.
- 3.82 BT flagged that it thought app stores should be added to the “PRS definition”, as a large proportion of the market is now driven by app stores. We understand this to mean that BT are of the view, shared by several other respondents (noted below), that app stores should be added as another category of PRS provider. This is because BT maintain that app stores should be directly regulated by Ofcom, rather than what it saw as indirectly via their relationship with other PRS providers within the value chain.
- 3.83 It recommended that we seek to close this gap by adding a clearer description and definition of “app stores” in this article to specifically include only those providers who share the same characteristics as the intended organisations referred to as “app stores”. Mobile UK suggested adding a clearer description of app stores to the PRS providers article, possibly referencing the geographical reach, number of global network connections, financial turnover or other descriptors that app stores are required to have to come within scope of the draft PRS order. VMO2 also said that the draft PRS Order should confirm what role Ofcom will play in respect of app stores.
- 3.84 Vodafone also commented that whilst the definitions for merchants, intermediaries and network operators had been suitably captured in the PRS providers article, there was a gap in relation to app stores which should be bridged by Ofcom “*clearly identifying what it considers to constitute an app store and to explicitly state that this includes the app stores of the largest global players.*” Vodafone went on to comment that if Ofcom did not do this, there were likely to be inadvertent consequences regarding the registration exemption (article 11 of the draft PRS Order) and due diligence and risk requirements (Part 4 of the draft PRS Order). Their comments in relation to these are discussed in the respective sections for these topics.

## Charity donations

- 3.85 aimm, the BBC, BBC Children in Need and MCP Insight Ltd said that the term merchant” is a carry-over from Code 15 and does not particularly support the use of charity donations. They considered that the term “provider” is a more inclusive term which could be adopted to better capture the full spectrum of premium rate use cases. In addition, BBC Children in Need asked for clarity on how the “merchant” definition would apply in a charity context and what defines a PRS.

## Our decision

- 3.86 We have decided to proceed with the definitions of PRS provider and regulated activity as proposed in our consultation.

## Merchant definition

- 3.87 The “merchant” definition as proposed in the draft PRS Order (and now at article 9(5) of the PRS Order) states that a “merchant” means a “person who provides a controlled PRS to a consumer”. This definition is based on s.120(9) of the Act, which sets out the activities that will constitute a person providing a PRS. This includes, at s120(9)(a), providing the contents of a PRS. The definition of a “merchant provider” in paragraph D.1.9 of Code 15 also states: *“A merchant provider is the person who controls or is responsible for the operation, content and promotion of the relevant PRS and/or the use of any facility within the PRS.”* The reference to “content” in paragraph D.1.9 appears to relate to s.120(9)(a), so that a merchant provides the contents, either by his own “responsibility” or under his “control” (by virtue of s.120(13) of the Act). We, therefore, consider that there is clarity in relation to the role of merchants which responds to comments raised by Action 4 Limited and TalkTalk about who is the responsible provider within the value chain.
- 3.88 We have also carefully considered the BBC’s comments relating to editorial control. We do not consider that it is necessary to include a reference to editorial control (reflecting s120(9)(b) of the Act) within the definition of a “merchant” in the PRS Order (or elsewhere). This is because we are seeking to have clarity and simplicity in how the requirements under the PRS Order apply to the supply chain. Our view is that those who provide CPRS to consumers should be regulated as merchants and where they employ or engage other parties as part of that provision they should remain liable to consumers.
- 3.89 As such, our view is that, where other parties are solely exercising editorial control, they are not providing the service to the consumer.
- 3.90 In terms of the BBC’s comments, we do not consider that the fact that the PRS Order does not reflect s.120(9)(b) of the Act leads to any conflict with the BBC Editorial Guidelines. In addition, we are not clear how the PRS Order would interfere with the BBC’s high-level rules and processes which are set out in the BBC’s Editorial Guidelines.
- 3.91 In relation to “provides” as suggested by the BBC, and also queried by Donr Ltd, we consider that the explanation of what is meant by the provision of a service at article 9(11) of the PRS Order is sufficiently clear about when each provider is providing a controlled PRS and therefore no further amendments to the PRS Order are needed.
- 3.92 We also note that the BBC and BBC Children in Need questioned what happens where there are two merchants in a value chain. This will need to be assessed on a case-by-case basis, taking into account whether or not one of those persons is “employed or engaged under the direction of the other” under article 9(6) of the PRS Order which says:  
*“Where one or more persons are employed or engaged under the direction of another to provide a controlled PRS to a consumer, only that other person is to be treated as the merchant that provides the controlled PRS to the consumer.”*

## App stores

- 3.93 We have considered Apple’s comments, including their request for flexibility for providers to assess the role they play in the eco-system based on their own business models. As we have explained, we have sought to align our definition of PRS providers more closely with the definitions set out at s120(9) of the Act and, as such, it is for PRS providers themselves to seek their own legal advice as to whether their activities relating to the provision of CPRS would be caught by this definition or not.

- 3.94 We consider that app stores would be caught by the intermediary definition where they undertake the relevant activities mentioned in article 9(2) of the PRS Order. As regards creating a separate category of PRS provider for app stores, we are ultimately bound by the statutory meaning of a person providing a PRS in section 120(9) of the Act.
- 3.95 We note, however, that an app store is expressly referred to in article 11 where it is an intermediary who satisfies the conditions in this article. In that context, we define an app store at article 11(10) of the PRS Order, as follows:
- ““app store” means an online facility<sup>43</sup> by means of which a consumer can -  
browse applications online, or  
download an application onto an electronic device”*
- 3.96 We note that this definition is aligned with how the concept of app stores is set out in the Department for Science, Innovation and Technology’s voluntary Code of Practice for app store operators and app developers. The Code was updated in October 2023 and operators and developers were given until June 2024 to adhere to the Code.<sup>44</sup> The document defines an app store as:
- “A digital marketplace that allows users to download apps created by developers, including developers other than the app store’s developers. App stores do not only host apps, as they also serve as storefronts that allow users to browse for apps, such as via search functionality.”*
- 3.97 We consider that our proposed definition of app store in the PRS Order is clear and aligns with how the concept is widely understood in the PRS industry as well as wider industries.

## Charity donations

- 3.98 Stakeholders were not clear as to why the term “merchant” does not support the use of charity donations.
- 3.99 The definition of “merchant”, which we have used at article 9(5) of the PRS Order, reflecting the language of the Act, defines a “merchant” as the party who is providing the CPRS to a consumer. This is in keeping with our approach to continue to regulate the same types of PRS providers as under Code 15 but using different definitions to reflect the statutory definitions in the Act.
- 3.100 We consider that using the term “merchant” has the benefit of being a label that is already used and understood by the PRS industry. It appears the implication raised by these respondents is that “merchant” in its natural sense involves profit, which is at odds with a charity context. However, our “merchant” definition does not reference profit but instead focuses on the fact that a person will be a “merchant” where they are providing the CPRS. On that basis, we think this definition works in relation to charities as well.
- 3.101 We also do not agree that changing the terms to “provider” or “service provider” would be more inclusive as, in our view, it is far too broad and would potentially lead to a lack of

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<sup>43</sup> “Online facility” is also defined in article 11 of the PRS Order to mean a “website, or any other means by which information is made available over the internet, which facilitates the supply of applications or other data which are produced and supplied in digital form through the website or other means by persons other than the operator (whether or not the operator also supplies those things through the facility”.

<sup>44</sup> [Code of practice for app store operators and app developers \(updated\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/121111/code_of_practice_for_app_store_operators_and_app_developers_updated.pdf)

clarity in terms of regulatory responsibilities given that the terms “PRS provider” is used throughout the PRS Order to describe the value chain.

- 3.102 In regard to the question from BBC Children in Need about what defines a PRS, this is a term which is defined under the Act and, specifically, section 120(7) of the Act.

## Definitional overlaps

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- 3.103 We have noted from consultation responses that, in some cases, the way in which we proposed to deal with when one service should be treated as falling within a particular definition and, as a consequence, how that defined service should then be treated under various provisions, may cause unnecessary complexity. Such complexity appears to arise in particular from various definitions in the draft PRS Order where services are defined as “consisting in” or “having the principal feature” of something – for example, sexual content.
- 3.104 We have therefore reviewed all such definitions together with the provisions in which they are used. Our general approach has been to replace such language with the word “includes” in most cases. For example, in relation to a sexual content service, the policy intention is that services providing any such content must be classed as this type of service so as to protect against children from accessing it. We think that the word “includes” makes this clear.
- 3.105 In making these changes, we note that it is possible for a particular service to also satisfy the definitions of other services. We consider that this raises no practical issues in terms of clarity of requirements under the PRS Order. The policy intention is that the following scenarios will apply in these cases:
- a) services will be subject to the same rules under the PRS Order such that it does not matter which definition of the two services applies. For example, chatline, sexual content and live entertainment services are all subject to articles 25, 46, 47 and 48 of the PRS Order; or
  - b) services will be subject to different rules under the PRS Order but having to comply with both sets of rules will not lead to any practical issues. This is because the rules are compatible – for example, see article 50 of the PRS Order, where the policy intention is that an ICSS provided to a child will have to comply with the lower charging cap in article 49 rather than article 50. Article 50 therefore contains an appropriate exclusion for ICSS provided to a child. A second example is that a competition or voting service that is aimed at, or could reasonably appeal to a child, will need to comply with article 23 of the PRS Order, as well as with the competition or voting rules in chapter 6 of Part 6 of the PRS Order.
- 3.106 There are three exceptions where we have decided not to take the approach above. They concern “live entertainment services” (article 25(4)), “society lottery services” (article 53(4)) and “betting tipster services” (article 52(4)). Please see section 8 of this statement for a full explanation as to the approach taken in relation to the definition of “live entertainment service”. In relation to “society lottery services” and “betting tipster services”, these definitions are used to exclude the services from relevant rules. We have, therefore, used the language of “solely” (as opposed to “includes”) to draw the necessary boundary.



## Other definitions

3.107 We set out below a list of all other CPRS definitions used in the PRS Order (which are not discussed above) and a cross reference to the places they are discussed in this document.

<i>Term</i>	<i>Where you can find the definition in the PRS Order</i>	<i>Where the definition is discussed in the statement</i>
<i>CPRS definitions (other than chatline, sexual content, ICSS and subscriptions):</i>		
<b>betting tipster service</b>	<i>article 52(4)</i>	<i>10.94 – 10.101</i>
<b>children’s service</b>	<i>article 23(2)</i>	<i>8.39 – 8.49</i>
<b>competition or voting service</b>	<i>article 41(1)</i>	<i>9.4 – 9.13</i>
<b>live entertainment service</b>	<i>article 25(4)</i>	<i>8.4 – 8.9</i>
<b>professional advice service</b>	<i>article 51(3)</i>	<i>10.90 – 10.93</i>
<b>recurring donation service</b>	<i>article 28(6)</i>	<i>6.32 – 6.40</i>
<b>remote gambling service</b>	<i>article 52(4)</i>	<i>10.94 – 10.101</i>
<b>society lottery service</b>	<i>article 53(4)</i>	<i>3.106</i>
<b>virtual chat service</b>	<i>article 31(5)</i>	<i>7.4 – 7.13</i>

3.108 It should be noted that we use other terms in the PRS Order, such as “senior management”, where the definitions of such terms are set out in the articles themselves.

3.109 The table below explains terms defined in the Act the statutory meanings of which will carry across into the PRS Order where those terms appear, due to section 11 of the Interpretation Act 1978. The table is provided for information and does not form part of the PRS Order.

<i>Defined term</i>	<i>Where you can find the definition in the Act</i>
<b>adoption</b>	<i>s.151(1)</i>
<b>allocation</b>	<i>s.151(1)</i>
<b>consumers</b>	<i>s.405(5)</i>
<b>communications provider</b>	<i>s.405(1)</i>
<b>customer</b>	<i>s.405(1)</i>
<b>electronic communications network</b>	<i>s.32</i>
<b>electronic communications service</b>	<i>s.32</i>
<b>facility</b>	<i>s.120(14)</i>
<b>information</b>	<i>s.405(1)</i>
<b>internet access service</b>	<i>s.32(2B)</i>
<b>National Telephone Numbering Plan</b>	<i>s.56(1)</i>
<b>OFCOM</b>	<i>s.405(1)</i>



<i>Defined term</i>	<i>Where you can find the definition in the Act</i>
<b><i>premium rate service</i></b>	<i>s.120(7)</i>
<b><i>public communications provider</i></b>	<i>s.151(1)</i>
<b><i>public electronic communications network</i></b>	<i>s.151(1)</i>
<b><i>public electronic communications service</i></b>	<i>s.151(1)</i>
<b><i>telephone number</i></b>	<i>s.151(1)</i>

## 4. Registration

- 4.1 This section sets out our decisions regarding requirements about registration contained in Part 2 of the PRS Order, with supplementary details set out in Schedules 1 and 2.
- 4.2 In summary, we have decided to:
- a) proceed with a mandatory registration scheme, including requirements on providers to:
    - i) give Ofcom specified information about themselves and, in the case of merchants, their services;
    - ii) appoint a “generally authorised person” in a senior management role and give Ofcom details about that person; and
    - iii) update the information provided within five working days of any change (see paragraphs 4.4 – 4.52).
  - b) proceed with our proposal to exempt merchants that operate via a single intermediary or an app store from registration, provided that “qualifying intermediary”:
    - i) is itself registered as a PRS provider and keeps its registration up to date; and
    - ii) has given a general undertaking to Ofcom that it will meet the necessary conditions, including retaining relevant records of any exempted merchants and providing these records to Ofcom upon request (see paragraphs 4.53 – 4.92);
  - c) proceed with our proposal that Ofcom must establish and maintain a register of providers (see paragraphs 4.93 – 4.103); and
  - d) proceed with our proposal that PRS providers who were previously registered with the PSA may follow a different registration process requiring less initial information than would be required for new registrations and, instead, partially relying on information transferred from the PSA to Ofcom (see paragraphs 4.104 – 4.112).
- 4.3 We have also made various drafting improvements and clarificatory changes: see Annex 3 – Table of Changes for a comparison of the draft and final versions of each article and paragraphs 3.103 – 3.106 for changes to definitions made throughout the PRS Order.

### Requirements before carrying out a regulated activity (Article 10)

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#### Consultation proposals

- 4.4 We proposed to retain a mandatory registration scheme for the PRS industry. This included a requirement that all PRS providers must register with Ofcom at least five working days before carrying out regulated activity unless they are exempt from registration requirements. These proposed requirements were broadly similar to requirements under paragraph 3.8 of Code 15.
- 4.5 Our proposed requirements for registration included that PRS providers must:
- a) give Ofcom specific pieces of information before carrying out any regulated activity (the information required was set out in Schedule 1 in the case of a new PRS provider, and in Schedule 2 in the case of a PRS provider who was registered with the PSA before the PRS Order comes into force);

- b) appoint a person in senior management (a “generally authorised person”) that has overall responsibility and accountability for specific requirements imposed under the PRS Order; and
  - c) where information provided under these requirements is no longer accurate, update Ofcom within five working days of any changes.
- 4.6 We proposed that the information which PRS providers would be required to give under a) above would be simplified relative to that currently required under Code 15. Specifically, we proposed that we would not collect information on:
- a) the fee classification which is no longer relevant given our proposal to remove the requirement for a registration fee to be paid by PRS providers;
  - b) service start and end dates;
  - c) service delivery method; other service terms and conditions; service delivery domain;
  - d) country of service provision and customer service information;
  - e) brand images;
  - f) information currently required under service type and payment and consumer bill details; and
  - g) promotion start and end dates.
- 4.7 In relation to “service type”, we proposed instead to ask for “a brief description of the service”.
- 4.8 In relation to PRS providers who were previously registered with the PSA, we proposed to rely on some existing information collected by the PSA from PRS providers prior to commencement of the PRS Order, in addition to the information requested at Schedule 2 of the draft PRS Order.
- 4.9 In addition, we proposed that there would be no requirement for annual registration, as is currently required under paragraph 3.8.7 of Code 15 and that we would not require any separate registration fee or registration renewal fee to cover Ofcom's costs in dealing with registration. Instead, we proposed to recover our costs as part of our administrative charges.

## Stakeholder responses

### Registration information

- 4.10 British Red Cross said it was largely happy with our proposals and specifically referenced our removal of requirements around promotion details, branding and service dates, which it said was “helpful” to them as a charity which often sets up PRS when fundraising.
- 4.11 BT and Channel 5 were interested in our rationale for streamlining the amount of information requested from PRS providers in comparison to what is currently required under Code 15. BT, in particular, were concerned that this “*possibly undermines the levels of assurance around providers*”.
- 4.12 Infomedia said that it had no comments on the general requirements for registration so long as the administration is not overly onerous for when details need to be changed. It also noted that many providers will provide PRS and CPRS services, but not necessarily at the same time or consistently and that, therefore “*an abundance of caution would suggest all PRS providers would want to register with OFCOM in any event, eliminating any envisioned reduction in administrative resource*”.

- 4.13 Mobile UK noted that the proposed registration process would be new but that the simplification of information required is unlikely to have a negative impact on the day-to-day operation of the market.
- 4.14 Mobile UK and VMO2 queried whether it was Ofcom’s intention to remove the requirement to register customer service information, as described in our consultation.
- 4.15 Telecom2 Ltd said that it welcomed our proposal to remove some requirements for registration, in particular, the need for annual registration. It noted that the requirement to promptly notify the regulator of any changes makes repeated registration unnecessary.

### Generally authorised person

- 4.16 Action 4 Limited, aimm, BBC Children in Need, Channel 4, Channel 5, Donr Ltd and Global were concerned that the “generally authorised person” had to be a person in “senior management.” In particular, they said that the person, or persons, with day-to-day responsibility for PRS activity are not always going to hold senior management positions given the complex and niche nature of the industry. As such, they requested clarity on whether “senior management” meant someone at board-level or someone responsible for signing contracts lower down. MCP Insight Ltd supported and agreed with aimm’s comments.
- 4.17 A number of alternative suggestions were also made for defining the person with the responsibilities of the “generally authorised person”. Action 4 Limited suggested we should specify that a “*PRS provider must have a responsible, nominated or identified person in charge of compliance*”. Donr Ltd also argued that a “responsible person” is a better fit than referring to “senior management.” It said: “*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.*” Channel 5 said responsibility should be attributed to the “generally authorised person” rather than someone in “senior management.”
- 4.18 In addition, Infomedia argued that the responsibility for “processing and payment of invoices” should be separated from the authorised person role. It said, “*In most businesses, these finance functions are deliberately kept distinct from other areas of the business, and it would be unusual to find a single person with responsibility for processing and paying invoices who also has responsibility for the other three areas, except for perhaps the CEO or MD in a very general sense*”. It suggested that we replace the proposed wording with the following: “**approving** the receipt, processing and payment...” (emphasis added).

### Affiliate marketers

- 4.19 Telecom2 Ltd asked for affiliate marketers to be brought into scope of the PRS Order as they were often the cause of breaches relating to Code 15 and merchants are not aware of an affiliate’s action until the harm has been caused.

### Commencement of a service

- 4.20 Donr Ltd questioned the need for PRS providers to wait five working days between registering and then commencing a service. It noted that no such delay existed under Code 15 and believed that the requirement should be removed as it creates unnecessary time constraints.

## Changes in circumstances

- 4.21 aimm queried the rationale for the proposed requirement for PRS providers to notify Ofcom five days in advance of any change to information provided on registration. It said that Code 15 allows providers to notify the PSA of any changes to registration information up to five working days after the changes have been made. It also said that article 10(2) of the draft PRS Order means that rather than having a five-day grace period in which to notify Ofcom of any changes to information (as the PSA currently permits) providers will now have to notify Ofcom five days in advance of any changes, *“meaning that there is a proposed ten-day difference”*. It also said that *“given that the current model is working without consumer harm, members would ask that the current model is retained, which is more flexible and considerably more workable for the value chain”*. MCP Insight supported and agreed with aimm’s comments.
- 4.22 Donr Ltd acknowledged that this position in the draft PRS Order reflected what Code 15 achieved by stating: *“we acknowledge clause 10(3) does mirror the 5 working days requirement to update any changes (3.8.4(d) in Code 15)”*.
- 4.23 Donr Ltd also said that it felt that our proposal regarding changes to a PRS provider’s circumstances was clear in that the responsibility for keeping the provider’s records up to date sits with the provider. It said it would be beneficial to clarify the role an intermediary or network operator takes in this approach and, in particular, their role in ensuring the registration has been correctly completed.

## Registration fees

- 4.24 Action 4 Limited asked why industry should have to pay registration fees up until the point that the PRS Order comes into force.

## De-registration

- 4.25 Mobile UK and VMO2 commented that there should be a requirement to de-register to ensure that Ofcom has an accurate view of the market. They argued this should specifically be the last date that a payment transaction occurred. They also argued that 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.
- 4.26 In addition, they also sought clarification as to whether PSA registration information would be retained for future risk assessment purposes as well as how information would be retained about de-registered entities.

## Other comments

- 4.27 We also received a number of comments from stakeholders relating to the status of the PSA service checker, the PSA registration tool and PSA compliance advice following the transfer of regulation from the PSA to Ofcom. These more general issues are addressed in section 13 of this statement.

## Our decision

- 4.28 We have decided to broadly proceed with the proposals on which we consulted. We have, however, made some amendments in light of stakeholder responses. We have also made some minor textual changes: see Annex 3 – Table of changes for details of those changes.

## Registration information

- 4.29 We have decided to proceed with our proposal relating to the amount of information required for the purposes of registration with one exception. We are not proceeding with the requirement for a specimen signature of the “generally authorised person”. This has been removed from article 11, Schedule 1 and Schedule 2 of the PRS Order. On reflection, taking account of stakeholder comments, we agree that this specimen signature is not necessary for our regulatory purposes.
- 4.30 We note the majority of respondents were supportive of our proposal to simplify the information required. However, some stakeholders sought clarification on our rationale for this simplification. The main reason is because we do not consider that we need all of the information which is required under Code 15 and we have sought to only retain information which, in our assessment, is critical for the purposes of registration.
- 4.31 In response to Mobile UK’s and VMO2’s comments relating to customer service information to be provided as part of registration information, we did not propose to remove this requirement completely for all PRS providers. To clarify, we proposed (and have now decided) to only require merchants to provide customer service information as we believe this requirement is only relevant to them since they are providing the CPRS to consumers. This differs from Code 15 where customer service information has been required from all PRS providers, including network operators and intermediaries. As such, we have included a requirement at paragraph 9(d) of Schedule 1 of the PRS Order requiring that merchants must provide *“the telephone number or email address to be used by consumers for making any complaints or enquiries”*.
- 4.32 We note that several stakeholders also sought clarification in relation to the availability of information on a service checker, similar to the PSA service checker. We have addressed these comments in section 13 (see paragraphs 13.90 and 13.91).

## Generally authorised person

- 4.33 We have decided to broadly proceed with our proposed approach relating to the definition of a “generally authorised person”, apart from making some changes in light of stakeholder responses.
- 4.34 We particularly note that stakeholders were concerned that the reference to a person in senior management may be overly restrictive. In that regard, our intention is to ensure that a person with sufficient authority in the organisation oversees and is responsible for regulated activities. However, we do not consider that this person must necessarily be someone who is, for example, at director level in a corporate entity. In our view, it is sufficient for the person to be in a position of authority in making decisions, managing or organising the activities referred to in our definition of “senior management” at article 10(6) of the PRS Order, which states that “senior management” means:
- “persons having a significant role in—*
- (a) the making of decisions about how the whole or a substantial part of the PRS provider’s activities are managed or organised, or*
- (b) the actual managing or organising of the whole or a substantial part of those activities.”*

- 4.35 We do not consider that this requirement will be restrictive, as there is nothing to prevent that person being supported by other persons with day-to-day experience or expertise in PRS so long as the requirements at article 10(5) and 10(6) of the PRS Order are satisfied.<sup>45</sup>
- 4.36 We have also had regard to Infomedia’s response relating to draft article 10(1)(b) being interpreted as requiring a single person to carry out the purposes associated with a “generally authorised person” – including the processing and payment of invoices. This was not our intention. Accordingly, we have amended the provision at article 10(1)(b) of the PRS Order to clarify that “one or more” persons in senior management can be appointed for the purposes in article 10(5) of the PRS Order. We have removed the requirement for the person being required to have authority to act on behalf of the PRS provider for “all purposes” relating to the requirements imposed by the PRS Order and in addition to the reference in article 10(2)(a) to that person being appointed for “all” purposes, we have included an option in article 10(2)(b) for more than one person to be appointed for one or more of the purposes, so that there is no longer any requirement that one “generally authorised person” must be responsible for each of the purposes. It is worth noting that we have removed “*the receipt, processing and payment of invoices relating to Ofcom’s charges under Part 3 of the Order*” as one of the purposes which was listed at article 10(4)(a)(i) of the draft PRS Order as, on reflection, taking into account consultation responses, we considered that this was not a necessary function of the “generally authorised person”.
- 4.37 We have also removed the requirement for an e-mail address for the generally authorised person “in relation to which that person is willing to receive notifications and documents transmitted by OFCOM in electronic form in accordance with section 395(5)” from paragraph 9 from Schedule 1 and paragraph 7 from Schedule 2 of the draft PRS Order. This is because we consider this requirement is already covered in schedules 1 and 2 of the PRS Order (in paragraph 7 from Schedule 1 and paragraph 5 from Schedule 2) and, therefore, this additional requirement is unnecessary.

### **Affiliate marketers**

- 4.38 We have no powers under the Act to impose obligations on, or enforce against, persons who do not satisfy the statutory definition of a person providing a PRS in section 120(9) of the Act. Therefore, we cannot impose obligations under the PRS Order on affiliate marketers where they are not a regulated provider as defined in the PRS Order. This was also the position under Code 15 which also did not seek to regulate affiliate marketers.
- 4.39 We consider that PRS providers are responsible for the promotion and marketing of their services. If a PRS provider contracts with affiliate marketers who breach requirements under the PRS Order, then that PRS provider is ultimately responsible. For this reason, we would expect that regulated providers should have contractual arrangements in place with non-regulated parties that enable them to fulfil their responsibilities under the PRS Order.

### **Commencement of a service**

- 4.40 We have decided to proceed with our proposed approach in relation to the time period of five working days, specified at article 10(3)(b) of the PRS Order.
- 4.41 We recognise that this is a change from Code 15 which only requires registration in advance of the service being made available whereas article 10(3)(b) requires registration five working days in advance. For the purposes of the PRS Order, we believe it is important that

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<sup>45</sup> This issue of “generally authorised person” is discussed in more detail in paragraphs 5.123-5.126.



we provide specificity in terms of the amount of time required between registration and the commencement of the service. Our view remains that five working days is a reasonable amount of time to process registrations, and, in practice, this would only result in a very limited number of extra days in the launch of a service, and it is unlikely to be particularly burdensome for industry.

### Changes in circumstances

- 4.42 We have decided to proceed with our proposed approach to require PRS providers to notify Ofcom of any changes to information within five working days of any changes.
- 4.43 In response to aimm’s concern, we note that changes to registration information previously given to Ofcom are caught by article 10(4) of the PRS Order (previously article 10(3) in the draft PRS Order). This allows for a five working day grace period for notifying Ofcom of any changes to information already notified, starting with the day on which a reasonable provider in like circumstances would have been aware of the inaccuracy of the information previously provided. We consider that this reflects current Code 15 requirements and should have a minimal impact on PRS providers.
- 4.44 It is worth noting that article 10(2) in the draft PRS Order that aimm refers to deals with the requirements for ‘new’ PRS providers who were not previously registered with the PSA prior to the PRS Order coming into force. It should be noted that changes to registration information previously given to Ofcom are caught by article 10(4) of the PRS Order (previously article 10(3) in the draft PRS Order). We consider that this reflects what Code 15 achieves and note that Donr Ltd acknowledged this in its response on this issue by stating: *“we acknowledge clause 10(3) [of the draft PRS Order] does mirror the 5 working days requirement to update any changes (3.8.4(d) in Code 15)”*.
- 4.45 However, importantly, providers who were previously registered with the PSA prior to the PRS Order coming into force must comply with the provisions of article 13 (and Schedule 2). Article 13 is discussed below at paragraphs 4.104 – 4.112. In relation to this issue raised by aimm, article 13(6) of the PRS Order, sets out existing providers’ obligations to review the information in Ofcom’s register no later than four months after commencement of the PRS Order (by 2 June 2025) and, where there are any inaccuracies in that information, to *“update OFCOM accordingly in the manner specified by OFCOM on their website, within five working days (beginning with the day on which a reasonable provider in like circumstances would have become aware of the inaccuracy)”*. Again, this provides for a four-month followed by a five-day grace period for any changes to existing registration to be notified. As a result, having considered these comments, we do not consider that it is necessary to make any changes to the requirements as we have already carefully thought about requirements for providers who were previously registered with the PSA and reflected these cases in the requirements for registration in the PRS Order.
- 4.46 In relation to Donr Ltd’s point regarding whose responsibility it is to keep registration information updated, it is our policy intention that it is each PRS provider’s responsibility to notify us of the required information accurately and on time, so that we can reflect that in the register. If, however, another provider would spot any inaccuracies of a different provider’s registered information, we should be grateful if this is drawn to Ofcom’s attention.

### Registration fees

- 4.47 In relation to Action 4 Limited’s comment on the need to continue to pay registration fees until the point at which the PRS Order comes into force, this is a matter for the PSA and not



Ofcom. However, we note that the PSA recently consulted on the registration fee as part of its 2024/25 business plan and budget consultation.<sup>46</sup>

- 4.48 Following approval of the PSA business plan and budget, the registration scheme was made free of charge from 1 April 2024.<sup>47</sup> This makes the process of registering simpler and brings the PSA's regulatory approach in relation to registration fees into line with Ofcom's plans.

## De-registration

- 4.49 We consider that we do not require a specific de-registration requirement in order to enable us to have a comprehensive view of the active market. We note that Code 15 contains a specific provision regarding de-registration at 3.8.14. We consider that, where a PRS provider exits the market, this would be classified as a change in circumstances under article 10(4) of the PRS Order, and so we would have to be notified of this change in any case in order for them to be removed from our register, as explained at paragraph 4.36(c) of our consultation.
- 4.50 In response to Mobile UK's comments suggesting that requirements should be imposed on de-registered entities to maintain a customer contact and after sales service, we will not have any basis to impose such requirements for de-registered entities as they will no longer be a regulated provider under the PRS Order.
- 4.51 In relation to retaining information relating to providers who no longer provide CPRS, we will retain information after PRS providers leave the market as such information will be necessary in order to enable us to exercise our functions, particularly with any enforcement activities relating to the PRS providers while they were active in the market. We will manage any personal data which is held as part of these records in line with applicable data protection laws and our records and information management policy.<sup>48</sup>
- 4.52 Similarly, we will also retain PSA registration information which is necessary to support any future compliance monitoring of PRS providers' future risk assessments, in line with applicable data protection laws and our records and information management policy.

## Exemption for certain merchants (Article 11)

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### Consultation proposals

- 4.53 We proposed to retain some of the existing registration requirements under Code 15 to enable merchants in defined circumstances to be exempt from registration. In particular, we proposed to retain the following registration exemptions:
- a) exemption from registration for merchants who are operating services exclusively through a single intermediary (sole intermediary exemption); or
  - b) exemption from registration for merchants who are operating services through an intermediary provider app store (app store exemption).
- 4.54 However, we did not propose to retain the exemption for merchants operating PRS numbers starting with 087 and voice shortcodes costing 20p or less for the reasons explained in paragraphs 4.43 – 4.46 of the consultation.

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<sup>46</sup> [Business-Plan-and-Budget-2024-2025-consultation-statement.ashx \(psauthority.org.uk\)](https://psaauthority.org.uk/business-plan-and-budget-2024-2025-consultation-statement.ashx)

<sup>47</sup> [Registration scheme now free of charge \(psauthority.org.uk\)](https://psaauthority.org.uk/registration-scheme-now-free-of-charge)

<sup>48</sup> [Records and information management policy - Ofcom](#)

- 4.55 In terms of the proposed exemption requirements, we proposed that all intermediaries who want to enable their eligible merchants to be exempted from registration requirements will need to:
- i) retain relevant records for those merchants;
  - ii) administer a process for dealing with consumer complaints in relation to the exempted merchant; and
  - iii) notify Ofcom in relation to these matters.
- 4.56 We noted this was different to the current PSA exemption requirements. In particular, under the PSA’s current app store exemption, there is no requirement for the intermediary app store to notify the PSA about which merchants are benefitting from the exemption.<sup>49</sup> This contrasts with the PSA’s sole intermediary exemption, where the intermediary must provide the PSA with a list of merchants who benefit from the exemption.<sup>50</sup>
- 4.57 Our proposals also included a new definition of “app store”, which is not contained in Code 15, and associated definitions of “online facility” and “operator” in relation to the app store definition.
- 4.58 In addition, we proposed that intermediaries who submit a notification to establish exemptions for their merchants would need to do this at least five working days before the CPRS is provided, except in the case of a merchant which was previously exempt from the requirement to provide information for the purposes of registration. In the latter case, we proposed that the intermediaries would be expected to notify Ofcom within one month beginning with the commencement of the Order.

## Stakeholder responses

### Exploitation of exemptions

- 4.59 Several stakeholders were concerned that the registration exemptions we had proposed could be exploited.
- 4.60 aimm, BT, Fonix, Global, Telecom2 Ltd and VMO2 said the sole intermediary exemption may create inadvertent loopholes and be exploited by bad actors. They were concerned that it could result in registration being the exception rather than the rule as “*the majority of merchants are running services through a sole intermediary*”. They said this exemption would make it more difficult for consumers, and OCP service teams, to identify merchants if any issues arise. This is because intermediaries’ link to services would not be visible to OCPs or consumers. Telecom2 Ltd said “*we note that Intermediaries are required to make Merchants’ contact details available on their website but consumers won’t know where to look*”. Fonix said that under the PSA the use of this exemption was a specific application process and that should remain. Global said that it believed this exemption had been “*misinterpreted from Code 15*” and that “*it has huge potential to cause consumer harm*”. In addition, aimm and Global raised concerns about exempted merchants being excluded from number checker type functions. MCP Insight Ltd supported and agreed with aimm’s comments.

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<sup>49</sup> <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/For-business/Does-my-service-benefit-from-an-exemption/Code-15-exemptions/App-Store-Exemption-16-02-2022.ashx>

<sup>50</sup> <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/For-business/Does-my-service-benefit-from-an-exemption/Code-15-exemptions/Registration-Exemption-16-02-2022.ashx>

- 4.61 aimm, Mobile UK, VMO2 and Vodafone said that the lack of a clear definition of app store creates an incentive for PRS providers to designate themselves as an app store in order to claim a blanket exemption. They could then benefit from a lower level of regulatory burden for their merchant or app developers. MCP Insight Ltd supported and agreed with aimm’s comments. Mobile UK said that while it was not clear that providers with malicious intent would seek this route, the absence of a clear definition “*facilitates the use of this device by players who may have malicious intent and less regard for consumers*”. It requested that the definition be amended 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*”.

### Future-proofing

- 4.62 aimm and Donr Ltd ask how similar businesses could gain exemptions in the future and felt that the lack of a documented process for exemptions was anti-competitive. Donr Ltd said, “*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*”. MCP Insight Ltd supported and agreed with aimm’s comments.
- 4.63 Action 4 Limited said that there should be no exemptions or differences in registration for the different players involved in this industry. It argued that regulation works best with a level playing field for all.

### Record of exempted merchants

- 4.64 Action 4 Limited, Donr Ltd and Google Play (“Google”) said that it was unnecessary to require a specimen signature for the merchant’s “generally authorised person” to be collected as part of the record for exempted merchants. In particular, Google asked if there were any other forms of identification or information that app stores could keep instead of a specimen signature.
- 4.65 Google noted that collecting some of the information in article 11(4)(h) of the draft PRS Order would be a “significant challenge” for large app stores like Google and would require “*changes to their global onboarding flows solely for the purposes of compliance with this provision*”. It asked whether it would be sufficient for app stores to collect and retain the details of a merchant’s chosen individual representative for their relevant app store account (who is responsible for managing that account) rather than from that merchant’s “generally authorised person” as set out in our proposed exemption requirements. It said collecting the information listed for each merchant’s “generally authorised person” would be difficult as the individuals that merchants use to create and manage their merchant accounts on app stores may not necessarily be their “generally authorised person”.

### 087 numbers and voice shortcodes costing 20p or less

- 4.66 Telecom2 Ltd considered that “*bringing 087 numbers within scope of the new code will cause significant amounts of extra work*”. It said that “*the quantity of 087 numbers in use is huge and registering them will be a massive job for merchants and Ofcom*”.

### Clarity on paragraph 4.51 of the consultation document

- 4.67 aimm requested clarification relating to paragraph 4.51 of the consultation document. In particular, it noted we said the following: “*We are simply requiring intermediaries to collect and retain in this information*” (emphasis added). As such, it requested confirmation as to

whether this is an additional unnecessary word or if there is a certain format that records should be retained in. MCP Insight Ltd supported and agreed with aimm's comments.

## Our decision

- 4.68 We have decided to broadly proceed with our proposal relating to exemptions for merchants operating via sole intermediaries and app store intermediaries. However, we have amended article 11 so that qualifying intermediaries need to provide Ofcom with a general undertaking rather than notifications in respect of each merchant who wishes to rely on the exemption. This slightly revised approach will allow the intermediary to provide the undertaking on behalf of all merchants who may wish to be exempt in future, provided that intermediary complies in all respects with the requirements in article 11.
- 4.69 Under article 11 of the PRS Order, a merchant is exempt from registration where it provides a CPRS:
- a) for which the charges to consumers are facilitated by a single qualifying intermediary (sole intermediary exemption); or,
  - b) which is made available via an app store provided by a qualifying intermediary (app store exemption).
- 4.70 In both cases, the requirements are that a "qualifying intermediary" must:
- a) be registered as a PRS provider itself and keep its registration information up-to-date;
  - b) provide an undertaking to Ofcom to only offer its services to the exempted merchants where it carries out the activities in c) and d) below and notifies Ofcom of such an undertaking in the manner specified on Ofcom's website;
  - c) for every exempted merchant, make and keep an up to date a record of:
    - i) the name and address of the merchant;
    - ii) the brand name (if any) of the service provided by the merchant;
    - iii) the name, job title, telephone number, and email address of the merchant's generally authorised person (or persons); and
  - d) administer a process for handling complaints in relation to exempted merchants including, in particular, making available contact details for the merchants on its website.
- 4.71 It should be noted that the above is a summary of the obligations under the PRS Order and the PRS Order should be referred to for the full detail and specificity of these obligations.
- 4.72 Article 11(7) also specifies that five working days must have elapsed from the day the qualifying intermediary gives its notification of the undertaking to Ofcom before the registration exemption will apply to the merchant.
- 4.73 Where a qualifying intermediary becomes aware of changes such that it is, or will be, unable to continue to give its undertaking to Ofcom, article 11(9) states that intermediary must notify exempted merchants whose exemption is affected by such a change immediately and Ofcom, in the manner specified on Ofcom's website, within five working days.
- 4.74 Where a merchant was exempted by the PSA from the requirement to provide information for the purposes of complying with paragraph 3.8.1 of Code 15 (i.e. exempt from registration requirements only), it will continue to be an exempted merchant until 3 March 2025. This is a grace period following the commencement of the PRS Order during which

any previously exempted merchant will either need to comply with the requirements in article 10 or assure itself that the requirements of article 11 have been complied with by a qualifying intermediary.

- 4.75 The qualifying intermediary is required to provide an undertaking to Ofcom that it will meet the necessary conditions in article 11, as opposed to being required to provide Ofcom with individual notifications in respect of each exempted merchant. This means that the exemption will only apply where the intermediary has provided such an undertaking. Where the intermediary does not provide such an undertaking the merchant in question is not exempt and will need to register.
- 4.76 We consider it to be necessary to deliver our regulatory function that qualifying intermediaries make and keep a record of the exempted merchants). This requirement is necessary to enable key information about exempt merchants to be known to Ofcom should complaints be made about the service in question, including the brand name of the CPRS (if any) and the key address and registration information set out in the definition of “relevant record” relating to the merchant. We may also require information relating to the merchant and the merchant’s generally authorised person (or persons) in order to serve notifications and other legal documents on merchants in accordance with sections 394 and 395 of the Act. Requiring intermediaries to collect this information enables us to request this information from the qualifying intermediary under our information gathering powers (see section 12 of this statement) in appropriate circumstances.

### Exploitation of exemptions

- 4.77 We do not believe that the registration exemptions in the PRS Order are open to exploitation in the way described by stakeholders nor that we have misinterpreted the registration exemptions under Code 15. In particular, we note that article 11(2) of the PRS Order specifies that the intermediary can only be a “qualifying intermediary” to the extent it satisfies the conditions at 11(3), (4), (6) and (7), including notifying Ofcom. The key difference between the current PSA approach and our approach in the PRS Order is how much information is provided to the regulator up front. Specifically, in terms of the sole intermediary exemption, under Code 15, a list of merchants is provided to the PSA and kept up to date, whereas under the PRS Order, the qualifying intermediary must maintain a relevant record and provide it to Ofcom on request. In terms of the potential for exploitation, it is also important to note that the exemptions in article 11 of the PRS Order only exempt those merchants from the requirement to register with Ofcom, but those merchants must still comply with the rest of the PRS Order.
- 4.78 Accordingly, we consider that we are increasing oversight and control of the use of exemptions and registrations in comparison to the PSA’s practice under Code 15. This is particularly the case in relation to the app store exemption. Under Code 15 there is currently no requirement for the intermediary app store to notify the PSA about which merchants are benefitting from the exemption. Therefore, it is possible there is no record of those exempt merchants operating on that app store. In contrast, under the PRS Order, app stores (and sole intermediaries) will have to keep a record of all the merchants using the exemption. As a consequence, Ofcom will be able to access information contained in the “relevant record” about these merchants (which a qualifying intermediary is required to keep under the PRS Order) should it need to.
- 4.79 As regards the concerns raised relating to “*registration [becoming] the exception*” under the PRS Order, we note that the respondents say that the majority of merchants are running

services through a sole intermediary. In that regard, we consider it appropriate to maintain the PSA's approach to registration requirements in relying on the sole intermediary exemption. On Telecom2's point regarding consumer difficulties in finding the merchant details on the qualifying intermediary's website, it should firstly be noted that the merchant will only be exempt from providing information to Ofcom for our registration purposes. Moreover, merchants themselves will still be required to provide information about themselves directly to consumers under requirements in the PRS Order, namely, the pre-contract information which mandates the provision of information about the merchant, such as trading name and name and contact details of the person responsible for dealing with consumer enquiries and complaints on the merchant's behalf. Additionally, we note that consumers will be entitled to receive details of merchants under the General Conditions.<sup>51</sup>

- 4.80 Also, we consider that due diligence and risk assessment requirements should prevent problems arising as, for example, intermediaries should be checking that merchants are registered, or exempted from registration, and they will need to ensure that they themselves have met the conditions in article 11 in order to be a "qualifying intermediary". Merchants will need to ensure the intermediary is a qualifying intermediary for the purposes of being exempt from the need to register. The PRS Order does not specify what the merchant must do in order to satisfy themselves that the intermediary has complied with the conditions in article 11, including providing an undertaking to Ofcom. However, it is possible, for example, for the contractual arrangements between merchants and intermediaries to deal with this matter.
- 4.81 In relation to app store exemptions, we note that the PRS Order has a clear definition of an app store at article 11(10) (see also the connected definitions of 'online facility' and 'operator' at article 11(10) of the PRS Order). Our view is that app stores will themselves be subject to requirements (including registration) under the PRS Order, where they meet the definition of a PRS Provider in article 9 of the PRS Order, and so will the exempt merchants. Although those merchants will not be required to register, they will still need to comply with the requirements under the PRS Order.

### Future-proofing

- 4.82 We explained in our consultation that it was not possible to create an equivalent model to the current exemptions regime under Code 15 whereby the PSA are able to grant exemptions for certain categories of service from time to time (referred to under Code 15 as "permissions"). This is because the PRS Order is not as flexible, nor as easily amended, as Code 15. Any new exemptions could only be introduced by amending the PRS Order in accordance with the parliamentary process.
- 4.83 We do not want to introduce unnecessary regulatory burdens for certain categories of services where we consider it is possible to meet the outcomes of the proposed requirements by alternative means. For this reason, we have introduced specific exemptions in the PRS Order, reflecting the requirements of Code 15 where we consider that it is necessary to do so. We do not intend to provide for further exemptions from registration in the future.

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<sup>51</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/phones-telecoms-and-internet/information-for-industry/general-authorisation-regime/general-conditions-of-entitlement-unofficial-consolidated-version-1-oct-24.pdf?v=381623>.



- 4.84 We do not consider that the registration exemptions are anti-competitive. We note that Donr Ltd's comment related to the definition of 'previously exempted merchant' at article 11(4)(e) of the draft PRS Order (this remains at article 11(10) of the PRS Order). This definition creates a transitional provision for merchants who had the benefit of the PSA's registration (sole intermediary) exemption and the app store exemption. This provision makes allowance for any merchants who were previously exempted by the PSA under the two PSA exemptions carried across into article 11.
- 4.85 As explained in the consultation, the PRS Order does not carry across the PSA's 'prior permissions' scheme which made allowances in certain cases for providers to comply with Code 15 rules in different ways.<sup>52</sup> This is because these are specific to how the PSA regulates PRS under Code 15, which enables discretion in certain cases as to how PRS providers comply with Code 15 requirements.
- 4.86 We do not agree with Action 4 Limited's comments in relation to the need to ensure there are no exemptions or differences in registration or regulation for the different players involved in this industry. We consider our approach of limited and clearly defined exemptions to be a proportionate means of achieving the protection of consumers that regulation is trying to achieve whilst minimising the burden on providers where possible.

### Records of exempted merchants

- 4.87 In relation to Google's comments, we consider it to be essential that a qualifying intermediary records the details of the merchant's generally authorised person as defined at article 10(1)(b) of the PRS Order. We have considered Google's suggestion to instead permit them to record the details of individuals that merchants use to create and manage their merchant accounts on their app store and do not consider this suggestion to be viable given that we have defined the generally authorised person to provide the necessary level of oversight and assurance which we consider is required in relation to CPRS. We have sought to ensure that the definition is broadly drafted, and we do not consider that it should be unduly burdensome for merchants to appoint such an individual and provide their details as part of a relevant record collected by qualifying intermediaries. This does not mean the day-to-day handling of a merchant's app store account cannot be done by their chosen individual. While we acknowledge Google's comments that this is likely to create some burden for qualifying intermediaries who may need to change their onboarding processes as a result of this requirement, we consider that burden is small and proportionate to the aim we are seeking to achieve in imposing this requirement while balancing the need for merchants to continue their current commercial dealings with app stores. As discussed above, a relevant record is necessary to ensure key information about exempt merchants can be drawn upon by Ofcom, should complaints be made about the service in question.
- 4.88 However, as discussed at paragraph 4.28, we have decided to remove the requirement for a specimen signature from the generally authorised person from Schedules 1 and 2 of the PRS Order. For the same reasons we have decided to remove the similar requirement from article 11.

### 087 numbers and voice shortcodes costing 20p or less

- 4.89 We are proceeding with our proposed approach in relation to the removal of registration exemptions for merchants operating PRS numbers starting with 087 and voice shortcodes

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<sup>52</sup> Paragraphs 4.41 and 4.6 of the consultation.

costing 20p or less. We do not agree that bringing 087 within scope of the PRS Order will cause significant amounts of extra work.

- 4.90 As explained at paragraphs 4.67-4.75, we are making changes to how the exemptions process will work under the PRS Order in order to increase oversight over merchants who are using the exemptions. We are removing the requirement to pay a separate registration fee and imposing a requirement on those who are exempt for information broadly equivalent to registration information to be given in order for any exemptions to apply. Therefore, for the purposes of the PRS Order, our assessment is that there is little practical difference in terms of whether 087 providers are required to register or are exempt from registration requirements.
- 4.91 When reaching this decision, we have taken into account evidence that the number of merchants affected by this change is likely to be small. We do not have data on the precise number of affected merchants. However, the PSA have estimated that around 50 organisations may be using 087 numbers. We also note that the 087 exemption from registration did not apply to 087 PRS numbers used for ICSS, professional advice services and live entertainment services, and according to the PSA these are PRS which predominantly use the 087 number range.<sup>53</sup>

#### Clarity on paragraph 4.51 of the consultation document

- 4.92 In relation to aimm's request for clarification relating to paragraph 4.51 of the consultation document, we can confirm that the inclusion of "in" was an error and can be ignored. The sentence should read "we are simply requiring intermediaries to collect and retain this information".

## Ofcom's duty to establish and maintain a register (Article 12)

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### Consultation proposals

- 4.93 We proposed that Ofcom must establish and maintain a register for the purposes of carrying out our functions under the PRS Order. We included the information which we proposed should be recorded in the register at article 12(2) of the draft PRS Order. This sought to largely replicate the PSA's current approach to publication of information as set out in paragraph 3.8.4 (a) and (c) of Code 15. It also sought to broadly replicate the PSA's commitment to maintaining a register (see paragraphs 3.8.2 and D.2.53 of Code 15).

### Stakeholder responses

- 4.94 A2B Telecoms Ltd, aimm, Channel 4 and Telecom2 Ltd expressed concern about the proposed requirement to provide "the name of any other person contracted with respect to the service, including for the promotion and marketing of that service" as part of the registration process under article 10 and Schedule 1 of the draft PRS Order. They said that this was commercially confidential information and should not be made available to competitors. Channel 4 also said that this requirement could be interpreted more broadly than it is intended and could be overly onerous. They proposed an amendment to this

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<sup>53</sup> See section 3 (paragraphs 3.28 – 3.30) which also address stakeholder comments relating to how 087 numbers are regulated.



paragraph to require that such information would be held in confidence by Ofcom. MCP Insight Ltd supported and agreed with aimm's comments.

- 4.95 Channel 4 and Telecom2 Ltd also stated that they believe this information would be obtained as part of the due diligence and risk assessment procedures.
- 4.96 Cancer Research UK and ITV raised similar concerns but in relation to the identical requirement contained in paragraph 9(b) of Schedule 2 of the draft PRS Order about registration for transitional cases. They both argued that this represents an unnecessary and disproportionate administrative burden. Also, and similarly to concerns raised above, they argued that if it is deemed necessary to provide this information, it should be treated in confidence.
- 4.97 Donr Ltd expressed concerns that there were no incentives on Ofcom to ensure it takes the responsibility of operating the service seriously. It argued that there should be repercussions for Ofcom should it not be fit for purpose or where the register contains false or missing records.

## Our decision

- 4.98 We have decided to proceed with our proposed approach regarding our duty to establish and maintain a register, subject to minor drafting changes, including to set out that the register will include every direction or decision given under Schedule 4 by virtue of article 66. This is because these directions and decisions are referenced in article 16 of the PRS Order (prohibition on dealing with persons on whom a relevant direction, decision or sanction has been imposed) and therefore we consider it necessary that PRS providers are able to access the relevant information in Ofcom's register in order to comply with that provision. We do not consider this has any impact in relation to the policy objectives of article 12.
- 4.99 We have also decided to proceed with our proposal to require information on sub-contractors involved in the provision and/or promotion of the service (see paragraph 9(f) of Schedule 1 of the PRS Order).
- 4.100 We note that some stakeholders have raised objections to this information being provided for registration purposes on the basis it is commercially confidential information and, therefore, should not be published. The requirement is that only the name of the sub-contractor is to be published, as opposed to information such as contractual terms and conditions. We do not consider that publication of the name itself is commercially confidential information.
- 4.101 We consider that it is necessary to publish this information to enable consumer awareness of the people involved in the provision and/or promotion of the service they have used or been affected by. This approach differs from the current position under Code 15, where the PSA is entitled to collect this information but does not publish it in its Service Checker. We consider it necessary for the reasons above and therefore, we have retained the requirement for this information (the name of other persons contracted) to be published on Ofcom's register under article 12 of the PRS Order.
- 4.102 We note that Channel 4 and Telecom2 Ltd both noted that information relating to sub-contractors would be obtained as part of the due diligence and risk assessment procedures. We would agree with this and, in particular, note that article 17(3)(d) requires PRS providers to take account of public information about any sub-contractors which it uses.

- 4.103 In response to Donr Ltd’s comments, Ofcom is under a duty in law to establish and maintain a register under the PRS Order. Ofcom takes all of its statutory duties very seriously.

## Registration for transitional cases (Article 13)

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### Consultation proposals

- 4.104 We proposed to have different registration requirements for existing PRS providers in order to minimise the impact of our registration requirements on providers who previously registered with the PSA.
- 4.105 Specifically, we proposed that PRS providers who were previously registered with the PSA must give Ofcom specified information under Schedule 2 no later than three months from the commencement of the draft PRS Order. If the three-month deadline elapses and any of the required information has not been provided, the person will cease to be treated as a PRS provider. They must also ensure that information is kept up to date. The information specified is intended to capture information that PRS providers are not currently required to provide to the PSA, but which Ofcom considers is necessary for the purposes of its regulation.
- 4.106 We also said that we would use information which the PSA has collected in relation to these providers, so we needed to ensure it was accurate. We therefore proposed to require existing providers to check Ofcom's register in respect of information about them that is published and notify Ofcom where that information is not accurate.

### Stakeholder responses

- 4.107 British Red Cross said it welcomed the transitional arrangements which Ofcom proposed for existing providers and said it appreciated the steps taken to avoid needing to provide information again. However, it asked for clarification on timeframes that existing PRS providers would need to adhere to when registering new CPRS. It said its understanding from the consultation was that it would need to register these new CPRS with Ofcom *“within five working days of their going live - unlike new PRS providers, who need to register new PRS five working days in advance of their going live”*. It said that it would be *“very difficult”* for them to register all CPRS five working days *“in advance of their going live”* due to the nature of the CPRS provided.
- 4.108 VMO2 asked whether Ofcom could provide clarification regarding the registration process. In particular, it asked if it is necessary for MNOs to register in addition to existing registration.
- 4.109 Mobile UK and VMO2 both requested clarification on the point at which services need to be compliant with the new regulations and whether this is upon registration or when services first went live. Mobile UK said that their assumption was that Ofcom will require full compliance with the new rules from 2 January 2025 (based on the original dates in the draft PRS Order) at which time all registration requirements should have been met. VMO2 asked for Ofcom to provide a steer as to when MNOs need to review the relevant registration information.

### Our decision

- 4.110 We have decided to proceed with our proposed approach in relation to registration for transitional cases subject to some minor drafting amendments to improve clarity. This includes adding exact dates for when certain requirements will apply and moving definitions of terms such as Code 15 to article 2 of the PRS Order.
- 4.111 Regarding British Red Cross' response, article 13(6) of the PRS Order sets out existing providers' obligations to review the information in Ofcom's register no later than 4 months after commencement of the PRS Order (i.e. by 2 June 2025) and, where there are any inaccuracies in that information, to *"update OFCOM accordingly in the manner specified by OFCOM on their website, within five-working days (beginning with the day on which a reasonable provider in like circumstances would have become aware of the inaccuracy)"*. Again, this provides for a four-month review period from the date of commencement of the PRS Order followed by a five-day grace period for any changes to existing registration to be notified. In relation to VMO2's request for clarification, we understand that by existing registration VMO2 means the PSA's registration requirement. Our consultation explained the requirements for registration once the PRS Order commences.<sup>54</sup>
- 4.112 In relation to Mobile UK and VMO2's comment, we believe article 13 and Schedule 2 of the PRS Order explain clearly that they apply to providers who are already registered with the PSA before the commencement of the PRS Order on 1 February 2025. This means that VMO2, or any other MNO, would be required to comply with article 13 and Schedule 2 if they were already registered with the PSA beforehand. Article 13 now sets out the specific dates by which certain steps must be taken, in order to provide additional clarity. This includes, in response to VMO2's query, the date by which information in the register must be reviewed by those providers (see article 13(6)). If the provider was not registered before the commencement of the PRS Order, it must instead comply with articles 10 or 11.

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<sup>54</sup> See paragraphs 4.56 and 4.57.

# 5. Due diligence, risk management and relevant security testing

5.1 This section deals with the requirements in the PRS Order concerning how providers manage risk to consumers in the provision of their services by setting out the steps to be taken before entering into arrangements in relation to CPRS/regulated activity<sup>55</sup>, as well as steps to be taken once arrangements with other PRS providers are in place. This section also sets out the security testing requirements in the PRS Order that will apply to intermediaries and network operators.

5.2 In particular, this section sets out our decisions on:

- a) prohibitions on dealing with unregistered PRS providers and persons on whom a relevant direction, decision or sanction has been imposed (articles 15 and 16 of Part 4 of the PRS Order, see paragraphs 5.5 – 5.21);
- b) risks assessments (article 17 of Part 4 of the PRS Order, see paragraphs 5.22 – 5.79);
- c) requirements on network operators and intermediaries to suspend arrangements in certain circumstances (articles 18 and 19 of Part 4 of the PRS Order, see paragraphs 5.80 – 5.86);
- d) deemed compliance for arrangements that PRS providers entered into before the PRS Order comes into force (article 20 of Part 4 of the PRS Order, see paragraphs 5.87 – 5.91); and,
- e) relevant security testing (Part 5 of the PRS Order, see paragraphs 5.92 – 5.123).

5.3 Broadly, we have decided to proceed with our proposals set out in our consultation. However, we have made various drafting improvements and clarificatory changes to the draft versions of the articles. See Annex 3 – Table of Changes for a comparison of the draft and final versions of each article and section 3 of the statement for explanations of changes to key CPRS definitions made throughout the PRS Order.

5.4 In addition, we have made substantive changes in relation to six of our proposed articles, either as a result of stakeholder comments, or where we have reconsidered that article more generally. Specifically, we have:

- a) narrowed the scope of article 16 so that it only applies where the arrangement would cause the person to contravene the relevant previous direction, decision or sanction. This is narrower in scope than what was proposed in the draft PRS Order (which prohibited PRS providers from working with a person subject to a sanction/direction regardless of whether that would lead to a breach of the sanction or decision). We consider this amendment is necessary to align with the position in Code 15 (see paragraphs 5.18 – 5.19);
- b) amended article 17 to also require PRS providers to have regard to the provision, content and promotion and marketing of the CPRS that is the subject of the

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<sup>55</sup> As defined in article 9(12) of the PRS Order.

- arrangement in respect of which they are conducting a risk assessment (see paragraph 5.51);
- c) amended article 17 to clarify that in relation to the use of sub-contractors when conducting risk assessments under that article, PRS providers only need to consider “registered information” for such sub-contractors. “Registered information” has been defined to set out the precise information that will need to be taken into account (see paragraph 5.49(c));
  - d) extended the scope of article 18 so that network operators will have to suspend any arrangements with a merchant where they have reasonable grounds for suspecting that there is a security compromise (or risk of this) in the merchant’s systems, or where the merchant is contravening, or has contravened, a requirement imposed on it under the PRS Order. The requirement in the draft PRS Order had only proposed this apply in relation to network operators in respect of their arrangements with intermediaries (see paragraph 5.84);
  - e) amended article 21 (in Part 5 of the PRS Order) to specify that the relevant security testing must be approved by the generally authorised person the intermediary is required to appoint under article 10, rather than by another person in senior management as originally proposed (see paragraphs 5.116 – 5.118); and
  - f) changed our approach in article 21 so that intermediaries conducting security testing are required to share the results of this with network operators. Under the PRS Order, intermediaries will be required to share their relevant security testing results with relevant network operators as soon as reasonably practical after completing the relevant security tests, rather than just when requested to do so by the network operator (as originally proposed in the draft PRS Order), (see paragraphs 5.119 – 5.120).

## Prohibition on dealing with unregistered PRS providers (Article 15)

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### Consultation proposals

- 5.5 We proposed to prohibit a PRS provider from entering into arrangements with another PRS provider unless that PRS provider is registered with Ofcom (unless exempt). This sought to replicate paragraph 3.9.4 of Code 15 which says that PRS providers must only enter contracts relating to PRS with other PRS providers that are registered with the PSA, unless exempted.

### Stakeholder comments

- 5.6 We only received one response, from Infomedia, who expressed concern that PRS providers would naturally want to enter into contracts or arrangements covering multiple territories. It said that it would be unreasonable for businesses to need to register for the provision of PRS in the UK where they are not intending to operate in the UK or simply want to explore opportunities in the market.
- 5.7 It also suggested that this requirement should be amended to clarify that registration with Ofcom is required in advance of an arrangement “to commence” regulated activity, and not merely in “respect of regulated activity” which, in their view, is overly broad.

## Our decision

- 5.8 We have decided to proceed with this requirement as proposed, except for drafting improvements made for the purposes of clarification. This includes an amendment to article 15 in the PRS Order to make clear that PRS providers must consider the information in Ofcom’s register when checking whether another PRS provider is registered or exempt from registering.
- 5.9 We consider this requirement is an important check on ensuring that any unregistered PRS providers are prevented from operating in the market. We believe there will be minimal impact on PRS providers, including on their contractual arrangements, as they are already required to be checking and doing this under Code 15.
- 5.10 We note that this requirement is not about when a PRS provider is required to register. This is addressed by article 10 of the PRS Order (see paragraphs 4.4 – 4.51). This article simply seeks to deter unregistered PRS providers from operating in the market as other PRS providers are prohibited from doing business with them, and will be in breach of the PRS Order where they are found to be doing so. However, this requirement does not prevent a PRS provider from being able to explore opportunities with other businesses prior to concluding a contract. Neither does it prevent PRS providers from entering into contracts with businesses that provide services exclusively outside of the UK.
- 5.11 The reference in article 15 to “in respect of a regulated activity” is included to make clear that the article applies to contracts between PRS providers as it is only PRS providers who engage in regulated activity. The term “regulated activity” is defined at article 9(12) of the PRS Order to mean the provision of a service or network within the meaning of the PRS provider definitions, or arrangements made for the promotion and marketing of a controlled PRS. To that end, we consider that the reference to “in respect of a regulated activity” is not broad but rather specific in referring to activities that can only be done by PRS providers as defined under the PRS Order.

## Prohibition on dealing with persons on whom a relevant direction, decision or sanction has been imposed (Article 16)

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### Consultation proposals

- 5.12 We proposed to prohibit a PRS provider from contracting, in respect of a regulated activity, with another person where that person is the subject of directions by Ofcom, or sanctions by the PSA that are still in force. We also set out what the relevant directions and sanctions would be in the draft PRS Order.
- 5.13 These proposals sought to retain the prohibition from paragraph 3.1.4 of Code 15 and extend its scope to cover specific directions that may be given by Ofcom under the PRS Order.

### Stakeholder comments

- 5.14 aimm, BBC Children in Need and Fonix queried whether there will be guidance issued by Ofcom about how a PRS provider can determine that a person they are looking to contract

with has a relevant sanction imposed on them. They also asked whether Ofcom would provide a list of companies who are under investigation and who have received sanctions in order to ensure that PRS providers could comply with our proposed requirements. MCP Insight Ltd supported and agreed with aimm's comments.

- 5.15 Telecom2 Ltd made a similar point and requested that Ofcom's directions are displayed prominently on the Ofcom website.
- 5.16 Donr Ltd noted the need for Ofcom to fulfil its obligations to ensure the register is complete, accurate and that data is added to it in a timely way. It also said that Ofcom should provide an email alert notifying PRS providers of all changes to the register.

## Our decision

- 5.17 We have decided to proceed with this requirement broadly as proposed, except for a change to the scope of the article to more accurately reflect our policy intention. We have also made some clarificatory changes to the drafting.
- 5.18 The substantive change to the scope of the article is at article 16(1) of the PRS Order, where we now say that a PRS provider is prohibited from entering into an arrangement with another person where that arrangement would lead to a contravention of any specified decision, direction or sanction which the person is subject to. This is different to the version proposed at consultation, where we note that our proposals would have prohibited PRS providers from working with a person subject to a direction, decision or sanction specified in article 16, regardless of whether that arrangement would lead to a contravention of the direction, decision or sanction imposed on that person. If we proceeded with our proposed approach, this would have meant that any person with a sanction or direction would be prohibited from working with a PRS provider, even if the arrangement would be unrelated to the direction, decision or sanction that they are subject to. We consider that this is broader than the policy intention, which is to reflect 3.1.4 of Code 15 (while amending to refer to Ofcom and relevant regulatory directions/decisions that Ofcom will make). Therefore, we have amended article 16 to be narrower in scope, so that it only applies where the arrangement will cause the person to contravene the direction, decision or sanction that they are subject to.
- 5.19 We do not consider that there should be any impact on PRS providers as a result of this change, as this article reflects current requirements under Code 15 (albeit with the additional requirements in relation to Ofcom's directions and decisions), which we do not expect would increase regulatory burden.
- 5.20 Other minor drafting changes to the article include clarifying the specific Ofcom directions and decisions that the article applies in respect of, and also stating that a sanction is one that is published on the PSA's website.
- 5.21 In relation to the consultation responses that have been made on this article, the Ofcom directions and decisions mentioned in this article will be published by Ofcom in its register to be established and maintained under article 12. We recognise the importance of ensuring the register is easily accessible, accurate and updated on a regular basis in order to assist PRS providers to comply with the PRS Order. Therefore, we propose to broadly follow the PSA approach to publication of relevant information and once PRS providers have registered their organisations, they will be able to access the Number Checker services and relevant due diligence information, including in respect of the information required under



schedules 1 and 2. In regard to the sanctions by the PSA and its predecessors, these will still be available via the PSA website once the PRS Order comes into force. All legacy PSA enforcement cases will be archived on the PSA website and be easily accessible from Ofcom's website so that there is a clear distinction between legacy PSA cases and future Ofcom cases.

## Risk assessment requirements (Article 17)

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### Consultation proposals

- 5.22 We proposed to broadly retain the Code 15 requirements relating to due diligence, and risk assessment but streamlined these requirements and focused on what we considered to be the key issues which PRS providers need to address when looking to enter into arrangements with other PRS providers and third parties. We proposed that no PRS provider may enter into an arrangement in respect of a controlled PRS unless it has carried out a risk assessment in respect of that arrangement. It was proposed that the assessment must consider the risks to consumers that may arise, having regard to the purpose and nature of the arrangement, and the parties to the arrangement. In considering risk, we proposed that PRS providers must consider information they can reasonably access about the party they are seeking to enter into the arrangement with, including that party's ability to pay its debts, as well as its legal and compliance history. PRS providers were also to take appropriate and proportionate measures where they identify risks to consumers, for the purposes of preventing adverse effects arising from such risks.
- 5.23 We proposed merging the requirement in paragraph 3.9.1 of Code 15 to perform effective due diligence with the more general requirement to undertake risk assessments in paragraph 3.9.2 of Code 15. We also merged the majority of the remaining due diligence and risk assessment requirements from Code 15 so that the draft PRS Order set out:
- a) the first risk assessment that must be done before entering into arrangements with another person (the contracting party) – this broadly reflects the due diligence measure required by paragraph 3.9.1 of Code 15; and
  - b) how this risk assessment is then to be reviewed and updated throughout the life of the arrangement - this broadly reflects the risk assessment requirement in paragraph 3.9.2 of Code 15.

### Consultation responses

#### Scope of risk assessments and definition of risk

- 5.24 A2B Telecoms Ltd, aimm, Donr Ltd, Mobile UK and VMO2 sought clarification around the definition of risk. In particular, they asked whether a risk refers to a complaint, fraud or criminal activity. MCP Insight Ltd supported and agreed with aimm's comments. VMO2 asked whether each MNO can still seek to define what risk means for them, noting that risk management processes can vary amongst the MNOs. Additionally, Mobile UK queried who would determine that there was a risk.
- 5.25 Strategic Brief was concerned that our proposed requirements in article 17 of the draft PRS Order only related to the corporate arrangements of the parties and that there was no express requirement to consider the service itself. It suggested providers should also be required to consider *"the nature, configuration and format of the controlled PRS."* It argued



this would help industry address the risks of new services that may appear compliant but that an intermediary or MNO may consider to be too risky to accept.

- 5.26 TalkTalk said that the consumer protection requirements in Part 6 of the draft PRS Order may introduce *“increased subjectivity on the part of PRS providers (including network operators) in risk assessment requirements and whether specific consumer information could be deemed to be misleading.”* TalkTalk went on to say *“we therefore anticipate increasing challenges between supply chain companies (network operators, intermediaries and merchants) as what is deemed compliant which in turn may require further involvement by Ofcom in the form of compliance advice (as that currently operated by the PSA)”*.
- 5.27 Telecom2 Ltd asked whether we intended that due diligence should be carried out on all suppliers who are used to promote and provide a CPRS. It noted that, if this was the case, search engine operators would be inundated with requests to provide information. It also queried how merchants can perform due diligence on themselves.
- 5.28 Telecom2 Ltd also said that a recent PSA case suggested that where a provider acting as a network operator hosts another provider on their network it should perform DDRAC<sup>56</sup> processes on the hosted provider because that provider would be classed as an intermediary. It believed that, provided the networks are fully partitioned, it would be anti-competitive for a network operator to have sight of another network operators’ services and customers. It requested clarification on how the requirements would apply in these circumstances.

### Application of risk assessment requirements to app stores

- 5.29 We received a number of responses from stakeholders in relation to how the regulatory framework applies to app stores.<sup>57</sup>
- 5.30 aimm queried how easy it would be to carry out due diligence on, for example, Google advertising services. It argued that if app stores were directly regulated by Ofcom, then promotional services provided by app stores would be captured by the regulation. MCP Insight Ltd supported and agreed with aimm’s comments.
- 5.31 Mobile UK expressed concerns that app stores are not clearly defined and are exempted from detailed regulatory oversight by either Ofcom or the MNOs. Mobile UK said that the MNOs do not seek to damage the participation of the app stores but wanted to raise a concern relating to the reluctance of some app stores to subordinate their DDRAC processes to scrutiny by the MNOs.
- 5.32 Vodafone also raised concerns relating to app stores and, specifically, that their commercial scale represents a high level of risk to Vodafone’s regulatory compliance with regards to DDRAC. It said that conferring existing DDRAC expectations on them requires that Vodafone knows which services are operating on its network and applies appropriate risk and control measures to these services and that, for global players, this is impractical. It also flagged a concern that an app store with poor DDRAC expectations may be protected from any regulatory repercussions caused by a merchant acting in bad faith due to a registration

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<sup>56</sup> Due diligence, risk assessment and control, as used in Code 15. As explained at paragraph 4.86(d) of the consultation on the draft PRS Order, we have not retained in the PRS Order the contractual control requirements in Code 15.

<sup>57</sup> The issue of app stores also came up in section 3 on definitions (see paragraphs 3.93 – 3.97) and section 4 on registration (see paragraphs 4.77 – 4.81).

exemption, and that the same merchant could bring Vodafone into non-compliance with its DDRAC obligations.

### **Scope of parties in relation to which due diligence and risk assessments must be undertaken**

- 5.33 Apple noted the draft PRS Order proposed new due diligence measures that providers will be expected to implement. They believed that such due diligence measures should be:
- a) supported by an Impact Assessment (“IA”);
  - b) proportionate; and
  - c) implemented based on the role a provider plays in the ecosystem.

### **Ability of party to pay debts**

- 5.34 Action 4 Limited questioned whether some of the requirements in our proposals would be compatible with English company law. It asked who determines whether a company can pay its debts. It also suggested that we should reword our requirements along the lines of *“as reasonably expected to be able to settle its debts upon commencement of services.”*
- 5.35 A2B Telecoms Ltd, aimm and BBC Children in Need were concerned about being required to assess whether a PRS provider would be unable to pay its debts or be likely to be unable to pay its debts as they fall due. They said that in many cases this would be impossible to know ahead of time. MCP Insight Ltd supported and agreed with aimm’s comments.
- 5.36 Donr Ltd commented that our proposal appears to rely on information that is based on anticipating the future and that PRS providers may not be able to estimate another provider’s financial status for future years. Donr Ltd suggested instead adopting an approach whereby the party is required to self-certify that they are financially solvent.

### **Legal proceedings and compliance history**

- 5.37 A2B Telecom Ltd, aimm, the BBC, BBC Children in Need, BT, Cancer Research UK, Channel 4, Donr Ltd, ITV and Telecom2 Ltd argued that risk assessments should be limited to considering legal proceedings which only concern CPRS, rather than all legal proceedings that the party has been involved with. They said that the proposed requirement was disproportionate, with BT commenting that this was too broad and, in many cases, would involve disclosing proceedings that would not be relevant to the risk assessment. MCP Insight Ltd supported and agreed with aimm’s comments.
- 5.38 Similarly to their comments on the ability of parties to pay debts, Donr Ltd said that the provision related to legal proceedings relied on information based on anticipating the future and that a PRS provider would not be able to accurately estimate another party’s legal status. Again, they suggested that the other party should self-certify that they have no pending litigation against them.
- 5.39 Donr Ltd and Infomedia noted the requirement to consider compliance history would be reliant on Ofcom maintaining a register so that PRS providers can find previous decisions.

### **Measures to mitigate and manage risk**

- 5.40 Donr Ltd queried the use of the term “appropriate and proportionate” when describing the measures PRS providers must take to prevent adverse effects arising from the risks identified from their risk assessments. It said that this was subjective and needed to be better defined to provide clearer guidance on what was expected.
- 5.41 ITV suggested minor amendments to this requirement so that the requirement would only apply where there were material risks to consumers, allowing operators to assess and

evaluate potential consumer harm and have appropriate discretion about whether to mitigate or accept any risks in line with consumer expectation. It also requested that we remove our proposal that PRS providers should not enter into arrangements where they cannot take such measures. It felt this was unnecessary given that material risks are required to be mitigated and therefore this proposed requirement would be going beyond what is needed to meet the objectives of the regulation.

- 5.42 Mobile UK and VMO2 were concerned that Ofcom was not carrying over into the draft PRS Order the requirement to control risk from Code 15. VMO2 said that risk management will differ between the different MNOs. They said some would develop appropriate mitigations to manage particular risks whilst others would deem similar risks as too complex or unsuitable for their organisation. VMO2 requested clarification that this was acceptable and that the removal of the “control” terminology is not intended to inhibit current risk management processes. Mobile UK noted that *“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.”*

### Reviewing risk assessments

- 5.43 Donr Ltd said that the frequency for reviewing assessments should be directly specified in the relevant clause of the PRS Order. It thought that the proposed drafting that referred to an “appropriate interval”, that was then defined later in the article as 12 months, was unclear and ambiguous.
- 5.44 Mobile UK requested clarification in relation to ongoing risk assessments once a CPRS has gone live. It assumed 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.

## Our decision

- 5.45 Having carefully considered stakeholder responses, we have decided to proceed broadly with our proposals for article 17, with some amendments to our proposals in order to improve clarity and to ensure better alignment with our policy objectives and aims.

### Scope of risk assessment and definition of “risk”

- 5.46 We agree with stakeholders that providing a definition of “risk” would aid clarity in terms of what PRS providers should be assessing. Therefore, we have added a definition of risk to article 17 of the PRS Order.
- 5.47 Article 17(12) of the PRS Order now defines risk as:  
*“...any reasonably identifiable circumstance or event having a potential adverse effect on consumers using the controlled PRS to which the arrangement mentioned in paragraph (1) [i.e. the arrangement that is the subject of the risk assessment] relates...”*
- 5.48 We consider that this definition clarifies that, as part of their risk assessment, PRS providers must look at things that will have potential adverse effects on the consumers who will be using the relevant CPRS. The word “reasonably” seeks to import an objective test and judgement of the likelihood of an identifiable circumstance or event having such potential adverse effects.

- 5.49 In light of stakeholder comments, we have also made the following changes in relation to the scope of the risk assessment that must be conducted under article 17 of the PRS Order:
- a) we have considered and agree with the comments from Strategic Brief and have therefore added a new requirement (article 17(2)(c) of the PRS Order) to clarify that PRS providers need to also take account of the CPRS itself and not just arrangements related to corporate matters;
  - b) we have added a reference (in article 17(3) of the PRS Order) to clarify that PRS providers only have to take account of information which is reasonably accessible “from public sources”. “Public sources” is defined at article 17(12) as sources that contain information that is available to members of the public in the UK. This is a proportionate requirement and should provide clarity to providers in terms of the information they will need have to have regard to as part of their risk assessments;
  - c) we have also amended the requirement at article 17(3)(d) to clarify that PRS providers only need to take account of “registered information” about sub-contractors, with a definition for “registered information” in article 17(12) setting out the specific information that needs to be taken into account. This includes the sub-contractor’s name and address. We consider that by acquiring this information, PRS providers then have a useful starting point, combined with other sources at their disposal, to ascertain how reputable the sub-contractor is, including any associated risks.
- 5.50 Our understanding of TalkTalk’s comments is that it was concerned that, as a result of the PRS Order, PRS providers will have differing views as to what is required in the risk assessment process in order to be compliant. We consider that article 17 of the PRS Order is sufficiently clear about the risks that PRS providers need to look for before entering into arrangements, what type of information is required in order to do this, and what steps the providers will then need to take when a risk is identified (see paragraphs 5.46 to 5.45 for discussion on the requirement to take measures to mitigate and manage risks that are appropriate and proportionate).
- 5.51 We have also had regard to Telecom2 Ltd’s responses. In relation to the scope of the requirements, we confirm that the requirements to conduct risk assessments in article 17 of the PRS Order will apply where a PRS provider wishes to enter into arrangements with a search engine in respect of a CPRS/regulated activity e.g., a contract for the search engine to promote their particular CPRS. This may lead to search engines being asked to provide certain information in order to ensure compliance with article 17, although it should be noted that article 17(3) of the PRS Order has been amended to clarify that the information which is to be gathered in respect of the other party to the arrangement (such as the search engine) can be taken from publicly available sources. This should mean that search engines are not inundated with requests as PRS providers are able to carry out their own research in order to obtain the relevant information. We note that the requirement to carry out risk assessments in respect of search engines would not be a different position from Code 15, which required at 3.9.2 that PRS providers continually assess potential risks posed by any person with whom they contract in respect of the provision, content, promotion and marketing of CPRS. That requirement would have applied to PRS providers contracting with search engines in respect of CPRS/regulated activity and that position has been maintained under the PRS Order.
- 5.52 We believe Telecom2 Ltd’s response querying how merchants can carry out due diligence on themselves come from paragraph 4.74 of the consultation document, where we proposed that all PRS providers will be subject to the requirements in article 17, including

the due diligence measure in the form of undertaking the first risk assessment. This is slightly different to paragraph 3.9.1 of Code 15 which requires due diligence to be carried out by network operators and intermediaries only. In regard to Telecom2 Ltd's response, we consider that article 17 of the PRS Order (along with the other requirements under Part 4 of the PRS Order) is clear that it only applies where the PRS provider is looking to enter into arrangements with another party (either another PRS provider or a third party, depending on the article). Therefore, under the PRS Order, merchants will not be required to conduct due diligence on themselves.

- 5.53 We also understand Telecom2's concerns that under the risk assessment requirement as proposed in the consultation, it would be anti-competitive for network operators to have sight of each other's services and customers. Our policy intent was not to require the disclosure of commercially sensitive information from one PRS provider to another. Rather, what we intended was for intermediaries to consider information in the public domain relating to the things at article 17(3) of the draft PRS Order (e.g., use of subcontractors).
- 5.54 We have therefore amended article 17(3) in the PRS Order and clarified a few aspects. Firstly, we have made it clear that the information to be considered when carrying out a risk assessment is information that can be reasonably accessed from public sources. Regarding sub-contractors themselves, as explained at paragraph 5.52, we have clarified that this only needs to be registered information (and therefore should not be details that will be commercially sensitive). This also applies to the other information required under article 17(3) e.g., information about legal proceedings.
- 5.55 We also note that it should not necessarily be assumed that, where a network operator is hosting another network operator on its network, both will meet the definition of network operator under article 9(7) to (9) of the PRS Order - this will need to be determined on a case-by-case basis.

### **Application of risk assessments to app stores**

- 5.56 We have noted comments in relation to the challenges with regards to conducting risk assessments with app stores.
- 5.57 In response to Mobile UK, it is important to clarify that app stores are directly regulated under the PRS Order to the extent they meet the definition of a PRS provider (i.e. merchant, intermediary or network operator) under article 9 of the PRS Order. Where this is the case, those app stores will be required to comply with Part 4 of the PRS Order where they are looking to enter arrangements relating to CPRS/regulated activity. See paragraphs 3.93 – 3.97 for more discussion on the definition of app stores and how they will be regulated under the PRS Order.
- 5.58 In relation to the comments raised by aimm, Vodafone and Mobile UK, we note that these generally concern the perceived power of the larger app stores and the potential difficulties for PRS providers in carrying out due diligence and risk assessments in relation to these app stores. To this end, it is important to note that the app store exemption in article 11 of the PRS Order only exempts merchants from the requirement to register with Ofcom, not from the requirement to comply with the rest of the PRS Order. Additionally, as part of that exemption, app stores that are "qualifying intermediaries" are required to collect and retain certain information about these merchants, as well as have a process in place for handling complaints in respect of these merchants. This is information that app stores should be able to share readily with other PRS providers that they are looking to contract with as part of the due diligence and risk assessment requirements under the PRS Order. In any event, we

have drafted the requirement at article 17(3) of the PRS Order so that the required information to be obtained about the app store is information that the PRS Provider may reasonably access from public sources. We believe this is proportionate and deals with Vodafone's concerns about their ability to comply with Part 4 of the PRS Order being potentially hindered by app stores.

### **Scope of parties in relation to which due diligence and risk assessment must be undertaken**

- 5.59 We have considered Apple's comments relating to the proportionality of due diligence. We note, in particular, that Apple's concerns are primarily based on the fact that it considers that ADIL is not acting as the agent or intermediary of app store developers when it is, in fact, the merchant and, as such, cannot require developers to comply with these requirements.
- 5.60 Again, as highlighted above, it is important to note that these requirements only apply to the extent that parties meet the definition of a PRS provider (i.e. merchant, intermediary or network operator) under article 9 of the PRS Order. To the extent that they meet this definition, then we would expect them to comply with these requirements (whether they are a merchant, intermediary or network operator). However, while this is slightly different to paragraph 3.9.1 of Code 15 which requires due diligence to be carried out by network operators and intermediaries only, we note that the requirement to undertake risk assessments in paragraph 3.9.2 of Code 15 applies to all PRS providers and, therefore, we expect that merchants would already be carrying out similar activities under Code 15.
- 5.61 We also note that Apple argued that due diligence measures should be supported by an IA. As we explain in section 13 (see paragraphs 13.45 to 13.49), the analysis which we present in this statement constitutes an IA on our decisions to absorb the regulatory functions of the PSA into Ofcom. This analysis also supplements the assessment of impacts contained in the Explanatory Memorandum accompanying the publication of the PRS Order. In terms of DDRAC, we note that we have streamlined requirements relating to DDRAC, including removing the requirement for network operators and intermediaries to have written DDRAC policies and procedures in place and removing the requirement for network operators and intermediaries to have in place contractual control requirements. We recognise that savings will not be large as network operators and intermediaries already have written policies in place to comply with Code 15. However, our view is that there will be savings to providers, including ongoing costs to providers through not having to update written policies and not having to control the actions of downstream partners, and could save some setup costs for potential new entrants.
- 5.62 In terms of Apple's comments relating to the requirement for risk assessments to be reviewed annually, or following a material change, we consider that this is proportionate. In particular, we note this broadly follows Code 15 in terms of paragraph 2.2 of Annex 2 of Code 15 which states that information listed under paragraph 2.3 (relating to due diligence) must be reviewed on an annual basis and updated promptly where any such information has changed.
- 5.63 We would also note that we have streamlined the factors which PRS providers are required to take into account under the PRS Order and have focused on those factors which we consider to be critical to determining the suitability of the contracting party for the purposes of providing CPRS. In our view, therefore, this should be comparatively less onerous for PRS providers to carry out than is the case under Code 15.



## Ability of party to pay its debts

- 5.64 We have decided to proceed with our proposal to require PRS providers to take account of whether there are reasonable grounds for suspecting that the other party to the arrangement is unable, or likely to be unable, to pay its debts as they become due (article 17(3)(b) of the PRS Order). While, this is similar to the requirement under Annex 2 of Code 15, which requires PRS providers to obtain this information in relation to intermediary providers and merchant providers, we are extending the requirement to obtain information in relation to all parties to the arrangement.<sup>58</sup> However, we do not consider that this will be unduly burdensome and, in particular, consider that PRS providers will be able to carry out simple searches to ascertain if there is a potential (future) risk of insolvency or bankruptcy (which is what the language used in this provision describes) relating to companies they are looking to enter into contractual arrangements with. We also consider that it is an important part of a PRS provider's risk assessment to know about the financial health of a business they are looking to enter into arrangements with. Additionally, the requirement has been amended so that PRS providers are required to take into account such information that they can reasonably access from public sources, which we consider adds to the proportionality of the requirement in terms of it being more straightforward to comply with.
- 5.65 Additionally, the language in article 17(3)(b) seeks to refer to risks of insolvency or bankruptcy. However, those words do not have any technical meanings in law, but rather they simply refer to situations when a person is incapable of paying its debts. The language we have used in article 17(3)(b) is commonly used in other legislation to describe insolvency or bankruptcy, so we consider that there is clarity and certainty about the meaning in this context.

## Legal proceedings and compliance history

- 5.66 We have decided to proceed with our proposals to require under article 17(3)(c) and (e) of the PRS Order that PRS providers are required to take into account information they can reasonably access from public sources about a party's involvement in any legal proceedings, as well as the party's relevant compliance history respectively. Annex 2 of Code 15 requires PRS providers to obtain this information about legal proceedings in relation to intermediary providers and merchant providers.<sup>59</sup> In our view it is important that a party's history in relation to all legal proceedings are taken into account by PRS providers, as it enables them to be clear about the conduct of businesses with whom they are contracting and, by extension, the probability of risk of consumer harm. It should also act as an indicator of wider patterns of behaviour which is likely to be helpful to PRS providers when performing their risk assessments (e.g. if the party has been sued for breach of contract this may indicate to the PRS provider that they may repeat this in the contract for CPRS).
- 5.67 In relation to Donr Ltd's comment, we understand the concern that PRS providers will not be able to confirm future legal proceedings. Article 17(3)( of the PRS Order is clear that the requirement is for information about previous or ongoing legal proceedings – the PRS provider is not required to anticipate or find out about any future proceedings that may be brought against the other party.

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<sup>58</sup> See paragraph 2.3(g) of Annex 2 to Code 15.

<sup>59</sup> See paragraph 2.3(g) of Annex to Code 15.

5.68 In relation to the responses from Donr Ltd and Infomedia on how the Ofcom register maintained under article 12 of the PRS Order will need to be kept up to date in terms of recording relevant compliance history, we agree and, consistent with this duty, we will maintain a register so that it is accurate and up to date in respect of the relevant information required under schedules 1 and 2 (including general details of the PRS provider and specific information required from merchants), Ofcom decisions and directions i.e. decisions and directions made under the PRS Order. For other decisions, either by Ofcom, or by another regulatory body, the PRS provider should check the relevant websites for this information.

### **Risk assessment requirements regarding sub-contractors**

5.69 We did not receive specific comments directly on article 17(3)(d) of the draft PRS Order which was a requirement to take into account the use of sub-contractors.<sup>60</sup> However, we revisited this provision more generally and decided to amend this requirement so that under article 17(3)(d) of the PRS Order, PRS providers are now required to take into account registered information (if any) of any sub-contractors used, or to be used, by the party the PRS provider is looking to contract with.

5.70 “Registered information” is defined at article 17(12) of the PRS Order as meaning:

- a) for company registered in the UK, the registered name, number, address and any trading name;
- b) for any other company, firm, unincorporated body or association that is a legal person, the particulars of their legal form under the law by which it is governed, any register in which it is entered and its registered name, number, address and any trading name; and
- c) for all other cases, the name (including any trading name) and last known address of that person.

5.71 We consider that, by setting out the various information in article 17(12) of the PRS Order that is required depending on the sub-contractor’s legal form, we are providing clarity for PRS providers as to what precise information needs to be obtained in respect of sub-contractors (including any that may be based outside of the UK). Again, as this will only apply to registered information that the PRS provider can reasonably access from public sources, we consider this to be a proportionate requirement. We also consider that PRS providers can then use this as the basis of more detailed checks into the sub-contractors should they wish to do so.

### **Measures to mitigate and manage risk**

5.72 We have decided to proceed with our proposed approach relating to measures to mitigate and manage risk albeit with some clarifications. This is at article 17(5) of the PRS Order. In particular, we are retaining reference to “appropriate and proportionate” as we consider that, in practice, each provider will face a different set of factual circumstances and this will, therefore, provide PRS providers with some flexibility in determining what actions are necessary to mitigate and manage any identified risks based on their own circumstances. If

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<sup>60</sup> Channel 4 and Telecom2 Ltd, whilst commenting on registration, raised a concern with publishing sub-contractor information in the register maintained under article 12 of the PRS Order, and that they thought this information would be obtained as part of the due diligence and risk assessment procedures. However, we did not receive any comments from Channel 4 or Telecom2 Ltd in relation to our sub-contractor provisions specifically in article 17 (instead it seems to be a general comments), and so we do not deal with them in this section. Instead, see paragraphs (4.93 – 4.96 and 4.97 – 4.103) for discussion on their comments in registration.



there is a suspected breach of the PRS Order, Ofcom will also, when investigating, look at the provider's specific factual circumstances and seek explanations about why, in light of those circumstances, the PRS provider considered it appropriate and proportionate to take the measures that it did. This means therefore that, in relation to enforcing the requirement, Ofcom will be looking at compliance with this requirement objectively.

- 5.73 In response to ITV's suggested changes in order to allow appropriate discretion, we consider that article 17(5) of the PRS Order as drafted allows each PRS provider to take such steps as needed on a case-by-case basis.
- 5.74 We would also highlight that the requirement for "appropriate and proportionate" measures to be taken in article 17(5) is used in other legislation in comparable circumstances, including section 105A of the Act which requires the provider of a public electronic communications network or a public electronic communications service to take such measures as are appropriate and proportionate for the purposes of—
- a) identifying the risks of security compromises occurring;
  - b) reducing the risks of security compromises occurring; and
  - c) preparing for the occurrence of security compromises.
- 5.75 We have also decided not to remove the prohibition on entering into arrangements where mitigation or management measures cannot be taken, as requested by ITV. This prohibition is at article 17(6) of the PRS Order. We consider this requirement is important as it is not sufficient for PRS providers to simply carry out a risk assessment and then take no action based on relevant findings. We, therefore, consider it is necessary to set out in the PRS Order that where the risk assessment has thrown up risks that cannot be mitigated or managed, the PRS provider must not enter into the arrangement. This requirement does now have minor drafting changes from the version proposed at consultation following our review of article 17 more generally. These changes were made for clarificatory reasons.
- 5.76 In terms of requirements to control risks that are identified in the risk assessment, we can confirm that we have not removed these. Specifically, we note that article 17(5) of the PRS Order is clear that where there are such risks, PRS providers must take appropriate and proportionate measures to mitigate and manage any risks identified. The same can be said for article 17(8) of the PRS Order, which requires PRS providers to take "appropriate and proportionate" measures where they carry out a review of the risk assessment (once the arrangement has been entered into) which identifies either materially changed risks or new risks. We consider these provisions to act as a means of control, allowing PRS providers to decide what action is best suited to their particular circumstance.

### Reviewing risk assessments

- 5.77 We have decided to proceed with our proposed approach relating to reviewing risk assessments and, in particular, "appropriate intervals" as we consider that it is clearer to refer to article 17(12) of the PRS Order to see what is meant by the "appropriate interval" definition rather than incorporating the definition into the provision at article 17(7).
- 5.78 In relation to Mobile UK's comments about ongoing risk assessments, we consider that article 17(7) of the PRS Order is clear that any risk assessments which are carried out must be reviewed and updated whilst the arrangement is ongoing in order to spot emerging risks. We also note that our definition of "appropriate intervals" (at article 17(12)) requires these reviews to be carried out at 12-month intervals, but that this does not prevent PRS providers from carrying more regular reviews should they consider it necessary to do so.

- 5.79 A minor amendment to flag is that we have amended article 17(7) to be clearer that the requirement is to both review and update the risk assessment. This was the policy intention in the proposed version of article 17 in the draft PRS Order, however in that version we only referred to the requirement to review (which we considered broad enough to also include a requirement to update). To avoid any doubt, we have amended article 17(7) of the PRS Order to specifically refer to updating the risk assessment as well. This change came out of our general review of the article.

## Suspension of arrangements by network operators (Article 18) and intermediaries (Article 19)

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### Consultation proposals

- 5.80 We proposed that:
- a) network operators must suspend arrangements with an intermediary where they have reasonable grounds for suspecting that there is a security compromise (or risk of this) in the intermediary's systems, or where the intermediary is contravening, or has contravened, a requirement imposed on it under the PRS Order; and
  - b) intermediaries must suspend arrangements with merchants where they have reasonable grounds for suspecting that there is a security compromise (or risk of this) in the merchant's systems, or where the merchant is contravening, or has contravened, a requirement imposed on it under the PRS Order.
- 5.81 These proposals largely reflected paragraphs 3.9.8, 3.9.9, 3.10.8 and 3.10.9 of Code 15 with a few key differences based on our own policy intentions and the nature of the draft PRS Order. These included:
- a) requiring network operators and intermediaries to suspend arrangements with contracted parties where certain conditions are met (as set out above), rather than framing this as a contractual term they needed to ensure they had (as it is framed in Code 15); and
  - b) removing references to third-party consent verification providers, given our amended approach to consent requirements (see paragraph 4.81 of our consultation).

### Stakeholder responses

- 5.82 aimm and Telecom2 Ltd asked for confirmation that the same requirements are applicable between network operators and merchants. MCP Insight Ltd supported and agreed with aimm's comment.
- 5.83 Mobile UK was concerned about the lack of clarity around the grounds for suspension of a service, particularly whether the intermediary or the MNO should be suspending the arrangement.

### Our decision

- 5.84 We have decided to proceed broadly with our proposals for articles 18 and 19. However, in light of stakeholder comments, we are extending the scope of article 18 in the PRS Order so that it also applies where network operators have arrangements with merchants, as well as intermediaries. Having considered stakeholder comments, we accept there may be

circumstances where networks contract directly with merchants and, therefore, it is important that the PRS Order captures these arrangements also.

5.85 Furthermore, we consider that both articles are clear as to the circumstances when these arrangements will need to be suspended.

5.86 We have also made minor drafting changes to both articles to improve the clarity, including tailoring the definitions of security compromises and systems in the context of these articles.

## Arrangements entered into before 1 February 2025 (Article 20)

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### Consultation proposals

5.87 We proposed that, in respect of CPRS arrangements entered into before the final PRS Order comes into force, PRS providers will be considered to be in compliance with the PRS Order where they have already complied with all the of the relevant requirements in paragraphs 3.9.1 to 3.9.15, 3.10.8 and 3.10.9 of Code 15.

### Stakeholder responses

5.88 The BBC queried when “*the clock would begin*” in terms of deemed compliance under our proposals. It said that it assumed compliance will be deemed from the date the PRS Order comes into force.

### Our decision

5.89 We have decided to proceed with our proposed approach, save for minor drafting changes aimed at clarifying the precise effect of this article in relation to article 17 (i.e. making clear which provisions of article 17 of the PRS Order would be deemed to have been complied with and which would still require ongoing compliance) as well as changes to the dates initially proposed.

5.90 We consider this is an important requirement because it ensures that any PRS providers who have already complied with certain DDRAC requirements under Code 15 prior to the PRS Order coming into force will be deemed to have complied with the relevant provisions under the PRS Order in respect of those existing contracts. This will ensure that any existing contracts are not compromised by Part 4 of the PRS Order where the appropriate due diligence and risk measures have already been taken.

5.91 In terms of BBC’s comments, we can confirm that deemed compliance occurs from the date the PRS Order comes into force 1 February 2025 where a PRS provider meets the stated requirements under article 20(1).

## Requirements relating to relevant security testing (Article 21)

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### Consultation proposals

- 5.92 We proposed to largely mirror the requirements in relation to Code 15 paragraph 3.10. However, we proposed streamlining most of the requirements into one article which focuses on a security testing requirement rather than on having several requirements in relation to systems and platforms more broadly. This is because we considered this is a more straightforward and targeted approach which will achieve broadly the same outcomes as Code 15.

### Stakeholder comments

#### Requirement for relevant security testing

- 5.93 aimm and Children in Need said that relevant security testing should be carried out as necessary in response to emerging risks in the interim periods between annual security tests. To that end, they requested the PRS Order contains a schedule to address testing in response to emerging risks. MCP Insight Ltd supported and agreed with aimm's comment.
- 5.94 Mobile UK and VMO2 said they were pleased to see the continuation of security testing requirements for operator billing platforms. However, VMO2 flagged a concern that the wording of article 21 as proposed was not sufficient to ensure the obligation that the *"Partner carries out the testing irrespective of whether request is made by the MNO"*.
- 5.95 aimm and BT requested clarification on whether relevant security testing is required for other platforms such as PSMS platforms. VMO2 also noted that there is an exemption for voice services but no explicit reference to the requirements for PSMS within the operator billing definition.

#### Definition of relevant security testing and security compromise

- 5.96 Donr Ltd said that the term "security testing" had not been appropriately defined in the draft PRS Order because the term "security compromise" does not sufficiently cover the range of operational risks to PRS. aimm and Donr Ltd suggested a better approach would be to require providers to meet a common standard of testing, with Donr Ltd suggesting the PRS providers become accredited or meet the standard of ISO27001<sup>61</sup> in line with the Gambling Commission security approach that is updated with the latest best practices and would better fit the requirements of this clause in future years. MCP Insight Ltd supported and agreed with aimm's comment.

#### Requirements for approving relevant security testing

- 5.97 Action 4 Limited, BT, Mobile UK and VMO2 questioned the requirement for relevant security testing to be signed off by a person in senior management rather than suitably qualified or experienced persons as described in Code 15.
- 5.98 Action 4 Limited questioned why we had not said a responsible or qualified appointed person must be in in charge of security for all PRS providers. It also queried who would be

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<sup>61</sup> An international standard for information security management systems developed by the International Organization for Standardization (ISO). See: <https://www.iso.org/standard/27001>.

at fault where a system turned out to be faulty (i.e. would it be the manufacturer or the head of security?).

- 5.99 BT, Mobile UK and VMO2 said that a strong burden of proof is required for intermediaries and network operators to stop supporting regulated activity, and that a reduction in testing sign off by a suitably qualified person to a senior manager might compromise this activity. On that basis, they requested Ofcom review and reconsider the approach set out in paragraphs 4.95 and 4.98 of the consultation.
- 5.100 Mobile UK and VMO2 had concerns regarding the current wording and intended responsibilities surrounding the appointed person required to approve the security testing in article 21 as proposed in the consultation. VMO2 asked whether Ofcom’s approach is similar to the senior management regime currently operated by the Financial Conduct Authority, which they described as being that a senior leader has ultimately responsibility but the day-to-day point of contact is different.
- 5.101 Action 4 Limited, Mobile UK and VMO2 also raised concerns about how the requirement would be implemented by smaller organisations that may not have a senior management team or a person with the necessary skills.

### Requirements for sharing security test results

- 5.102 aimm, BT and Mobile UK suggested that it should be an obligation for intermediaries to provide relevant security testing results when they are completed, instead of “on request” as described in the draft PRS Order, as the results will be critical to ensure that their systems are robust. MCP Insight Ltd supported and agreed with aimm’s comment.
- 5.103 Mobile UK said that there was not sufficient compulsion on app stores to provide full security testing results under the draft PRS Order. Consequently, it requested that we amend the proposed requirements so that MNOs are more explicitly entitled to demand this.
- 5.104 VMO2 said the that wording in the provisions describing relevant security testing requirements was insufficient to ensure that a partner carries out relevant security testing irrespective of whether a request is made by an MNO.

### Application of security testing to app stores

- 5.105 Apple argued that, as a leading technology platform, the App Store is designed to provide maximum security for end users regardless of whether or not a PRS is being provided. It noted that its billing platform has achieved accreditation under the highest industry standards, and such accreditations require regular testing. Accordingly, its view was that that the PRS Order should provide principles for security testing instead of prescribing how security testing should be conducted.

## Our decision

- 5.106 We have decided to proceed with this requirement in the PRS Order broadly as proposed in the consultation, except for the changes which are set out below, along with some minor clarificatory changes to the drafting.

### Requirement for relevant security testing

- 5.107 We have considered VMO2’s concern that the article was not sufficient to ensure that the “partner” carries out the relevant security testing irrespective of whether a request is made by the MNO. We assume that the reference here to “partner” is referring to an

intermediary and that the reference to “MNO” is referring to a network operator working with that intermediary. On that basis, we consider that article 21(1) in the PRS Order is clear that an intermediary cannot carry out regulated activity unless it completes the security testing and continues to do this at annual intervals, regardless of whether this is requested by a network operator or not.

- 5.108 We have decided not to add any further requirement in relation to emerging risks. The relevant security testing that is required by article 21 in the PRS Order is the minimum that is required but if an intermediary considers that there are circumstances necessitating relevant security testing a few months after the last testing, it is free to do this. This may be something it deems necessary as a result of an emerging risk and, therefore, do not consider that the article needs to be amended to specifically deal with this scenario.
- 5.109 Additionally, we consider that other provisions in the PRS Order will also allow PRS providers more generally to deal with emerging risks. In particular, article 17(7) of the PRS Order requires PRS providers to review and update their risk assessments and consider whether any new risks have arisen, which can cover emerging risks.
- 5.110 In response to queries about whether it is only operator billing platforms that are subject to the requirement to carry out relevant security testing, we confirm this is correct.
- 5.111 We also considered the responses seeking clarification about whether the requirement to carry out relevant security testing applied to premium SMS platforms. Having done so, we have decided to amend our definition of “operator billing” as proposed in the draft PRS Order. Instead, in article 21(8) of the PRS Order, we have an amended definition of “operator billing” and a new definition of “relevant operator billing” which, read together, clarify that by “operator billing” we only mean where a consumer is buying CPRS by means of an “internet access service”, rather than by means of a call or a text.
- 5.112 We do not think it is necessary to define in the PRS Order what an “internet access service” means, as the definition of the same in section 32(2B) of the Act will apply.<sup>62</sup>

### **Definition of security testing and security compromise**

- 5.113 We have also considered stakeholder comments regarding alternative standards for security testing and our definitions of “relevant security testing” and “security compromises”. We have decided to maintain the definitions as proposed (save for minor clarificatory drafting changes).
- 5.114 We consider that the definition for “security compromise” as defined in article 21(8) of the PRS Order is broad enough to cover the range of operational risks that can arise in relation to CPRS, and also is based in part on an existing definition of “security compromise” in section 105A of the Act.
- 5.115 We also note aimm’s and Donr Ltd’s suggestion that we refer to international standards as part of the requirements on security testing. One of the key requirements in article 21 of the PRS Order is to undertake relevant security testing, which involves determining, in principle, whether there is a risk of security compromises. In doing so, intermediaries will have some discretion as to how they go about determining this risk as the PRS Order is not mandating a specific standard to be followed over another. Whatever steps intermediaries

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<sup>62</sup> Under section 11 of the Interpretation Act 1978, where there is a power to make secondary legislation (such as the PRS Order), expressions used in that legislation will have, unless the contrary intention appears, the meaning which they bear in the Act.

choose to take in order to comply with article 21, they will need to ensure it allows them to determine whether there is a risk of security compromises and, in assessing compliance with this, Ofcom will look at practices in relation to this more generally. Therefore, we think the requirement in the PRS Order is clear.

### **Requirements for approving relevant security testing**

- 5.116 We have decided to proceed with our proposal that a person in an intermediary's senior management must approve the relevant security testing that is carried out, albeit this has now been amended in the PRS Order to be a requirement to have the "generally authorised person" (appointed under article 10(1)(b)) to approve. This is slightly different to the proposed requirement in the article 21(2) and (3) of the draft PRS Order, which did not specify that it had to be the generally authorised person, but rather an individual in senior management. We have made this change to reflect the policy intention that a "generally authorised person" can have oversight of the relevant security testing and there does not need to be a separate individual appointed purely this purpose. As discussed in paragraph 4.35, it is possible for a PRS provider to appoint more than one "generally authorised person" and so we consider that an intermediary can, and may want to, appoint a "generally authorised person" who has specific responsibility for relevant security testing.
- 5.117 We acknowledge the responses detailed above as to why the person approving relevant security testing should be someone who is qualified, responsible or experienced in relation to relevant security testing, rather than someone who is a senior manager. Our regulatory aim is to ensure that a person with authority in senior management is accountable for decisions in relation to relevant security testing and any risks of security compromises that this testing may identify. Whether that person has particular expertise in relation to security testing more generally is a different question. We expect the "generally authorised person", as with most senior persons in organisations, to be acting and making decisions on the basis of specialist advice/input from other employees. Therefore, it is open to intermediaries to have processes in place to ensure that the "generally authorised person" is appropriately briefed by more qualified colleagues before making the decision to sign off.
- 5.118 Regardless of the size or corporate structure of the intermediary, all intermediaries will be able to select one of their senior managers to perform this function. They can choose to put in place any processes they consider necessary to support the senior manager in fulfilling their role such as making sure they are appropriately briefed by relevant experts as appropriate before making the decision to sign off.

### **Requirements for sharing security test results**

- 5.119 Taking account of stakeholder comments, we have decided to change our approach to the sharing of relevant security testing results from what we proposed in the consultation. The PRS Order now require intermediaries to share their security test results with network operators "as soon as reasonably practical after completing" the relevant security tests (see article 21(5)). This would apply to any app store who meets the definition of intermediary set out in article 9 of the PRS Order.
- 5.120 Whilst we considered that our proposed approach would be more desirable to stakeholders on the basis that it would reduce the administrative task of sharing results to only when requested, we acknowledge the comments made in support of mandating that the results be shared regardless of whether this is requested. We agree that sharing relevant security test results is important because it allows network operators to assess whether consumers



are being adequately protected from the risk of security compromises when using the intermediary's payment platform for operator billing.

### Application of security testing to app stores

- 5.121 We have also considered Apple's comments in relation to security testing requirements. In doing so, we note that Apple have argued that the PRS Order should provide principles for security testing instead of prescribing how security testing should be conducted. We consider it is clear that "Relevant security testing" (as defined in article 21(2) of the PRS Order) requires intermediaries to undertake a process to determine whether their payment platforms for relevant operator billing are "in principle" at risk of any security compromises. This is more aligned with us taking a 'principles based' approach than prescribing the exact measures to be taken by intermediaries, including which standards to follow.
- 5.122 As we set out in our consultation (see paragraph 4.102 of the consultation), we proposed at the same time to simplify existing requirements relating to security testing under Code 15. In particular, we have sought to remove the regulatory burden in relation to security testing and allow some flexibility, removing various associated requirements (e.g. the need to appoint one or more suitably qualified or experienced persons; the need for intermediaries to comply with the technical standards at Annex 3 of Code 15; the need for network operators and intermediaries to provide the results of the intermediary's testing to the regulator; and the need for intermediaries and network operators to implement a 'coordinated vulnerability disclosure scheme').
- 5.123 In this way, we have sought to balance the need for ensuring that our requirements are targeted and represent the minimum necessary with the need to ensure that payment platforms are technically robust and secure.



# 6. Pre-contract information and consent

- 6.1 This section sets out our decisions in respect of pre-contract information and consent requirements contained in Chapter 3 of Part 6 of the PRS Order, together with the related requirement to make and keep associated records in article 35 of the PRS Order.
- 6.2 In summary, we have decided to:
- a) proceed with our proposal that general pre-contract information must be given to consumers in a clear, comprehensible and prominent manner before they enter into any CPRS contract (see paragraphs 6.4 – 6.19);
  - b) proceed with our proposal to require that, where a subscription contract is entered into by means of an internet access service (labelled “online and remotely” in the consultation), merchants must provide specific information to consumers directly before they enter into the contract and obtain the consumer’s express consent. However, we have broadened the scope to include recurring donation services (see paragraphs 6.20 – 6.31);
  - c) proceed with our proposal to require that, where a subscription contract is entered into by means of an SMS message, merchants must provide specific information to consumers directly before they enter into the contract and obtain the consumer’s express consent (see paragraphs 6.32 – 6.40);
  - d) proceed with the majority of our proposals in relation to obtaining the consumer’s express consent for ICSS. However, we have decided not to proceed with our proposals for the pre-contractual information to be provided to the consumer for free. This means that our requirements for ICSS reflect those under Code 15 (see paragraphs 6.41 – 6.58); and
  - e) proceed with our proposal to require merchants to make and keep records of consumers’ consent to entering into a CPRS contract and any charges imposed under the contract (see paragraphs 6.59 – 6.74).
- 6.3 We have also made various drafting improvements and clarificatory changes compared to the draft versions of the relevant articles. See Annex 3 – Table of Changes for a comparison of the draft and final versions of each article; and see paragraphs 3.103 – 3.106 for changes to definitions made throughout the PRS Order.

## Information to be provided before entering into a CPRS contract (Article 26)

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### Consultation proposals

- 6.4 We proposed to require merchants to provide general pre-contract information to consumers in a clear, comprehensible and prominent manner before the consumer enters into any CPRS contract. The specific information which we proposed merchants would be required to provide to consumers was listed in Schedule 3 of the draft PRS Order.

## Stakeholder comments

### How the information is given

- 6.5 aimm, BT, BBC Children in Need, Cancer Research, Channel 4, Channel 5, Fonix, Global, Mobile UK, MCP Insight Ltd and Telecom2 Ltd said that our proposed requirements do not distinguish between pieces of information based on their importance to the consumer. Stakeholders argued that under Code 15, there is a distinction between the most important information (which is given at the point of purchase) and other less important information. Some stakeholders claimed that, due to this lack of distinction, there is little or no flexibility for the merchants in how they provide this pre-contract information. It was highlighted that in the case of radio, for example, all of the information listed in Schedule 3 would have to be communicated verbally.
- 6.6 In contrast, Mobile UK was concerned that, without guidance, any further freedom in how and when the pre-contract information is given to consumer could be abused either purposefully or inadvertently.
- 6.7 Mobile UK also asked if multi-factor authentication (“MFA”) could be retained as part of the MNOs’ codes of practice in order to have a two- or three-step consent process.

### Schedule 3 information

- 6.8 TÜV SÜD Limited commented that paragraph 2(h) of Schedule 3 of the draft PRS order implies that fixed rate charges can only occur monthly, whereas charging could also occur, for example, weekly or quarterly.
- 6.9 Action 4 Limited argued that providers should not be required to give their geographical address as part of the pre-contract information because it was concerned it might lead to consumers turning up at these premises with malicious intent.
- 6.10 aimm questioned why the name and contact details of the person responsible for customer care is required. In particular, it noted that this person may not be someone who actually directly deals with consumers. MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm.

## Our decision

### How the information is given

- 6.11 We have decided to proceed with our proposal that general pre-contract information must be given to consumers in a clear, comprehensible and prominent manner before they enter into any CPRS contract. We consider that all the pieces of information listed in Schedule 3 of the PRS Order are important for a customer to make an informed decision about whether to enter into the contract for the service.
- 6.12 However, article 26 of the PRS Order does not specify exactly how or when pre-contract information must be given to the consumer. Contrary to the views expressed by some stakeholders, we consider that this approach gives merchants the flexibility to provide the information in a way suitable to the means of communication (which could involve multiple means of communication) used for the promotion and provision of the service. For example, some information could be provided as part of promotional material (e.g. verbally in a radio broadcast or on a billboard) and other information given at a later stage in the customer journey (potentially by different means) so long as all of the information is given in a clear, comprehensible and prominent manner before the customer gives their consent.

- 6.13 We recognise that Mobile UK expressed concern about the potential for providers to abuse this flexibility. Given the different circumstances in which pre-contract information needs to be provided, we consider that our requirement strikes a balance between giving providers the flexibility to be able to comply with the requirement and the need to protect consumers by ensuring this information is displayed in such a way that enables consumers to make an informed decision about whether to enter into the CPRS contract.
- 6.14 We emphasise, however, that the burden of proof that the required pre-contract information has been given to consumers at the appropriate point rests with the merchants, not consumers. It is therefore in the merchants' interests to consider carefully how they discharge these obligations. This burden should hopefully also minimise opportunities for any abuse.
- 6.15 With regards to Mobile UK's query about MFA, there is nothing in our requirements that would prohibit the use of MFA. As explained in our consultation, we are not seeking to impose requirements to specify how consumer consent should be obtained and, therefore, we did not propose to retain MFA, as set out in paragraphs 3.3.7 to 3.3.9 of Code 15. However, the use of MFA is something that provides a way of verifying the identity of a consumer seeking to use a merchant's controlled PRS. Such verification is therefore relevant to the above-mentioned burden of proof on merchants to show that consent has indeed been given by consumers.

### Schedule 3 information

- 6.16 We have decided to proceed with our proposals about the pre-contract information that must be provided. This information is set out in Schedule 3 to the PRS Order. However, we have made some textual changes to Schedule 3 compared to our draft PRS Order to make the exact nature of the information required clearer in some respects.
- 6.17 In particular, and in addition to some minor textual changes, we have:
- a) aligned the information required by paragraphs 2(d) and 2(e) in Schedule 3 of the PRS Order to ensure that both types of CPRS under the definition of competition or voting services (i.e. facilities to enter a competition/claim a prize and facilities to register a vote/record a preference) are covered by equivalent pre-contract information requirements; and
  - b) clarified the information about the charges for a CPRS in paragraphs 2(f) and 2(h) in Schedule 3 so that the information required in relation to subscription CPRS is more closely aligned with similar provisions (such as in Schedule 23) in the Digital Markets, Competition and Consumers Act 2024 ("the DMCC Act"), which specifically excludes subscriptions for PRS from requirements in Part 4, Chapter 2 relating to subscription contracts.<sup>63</sup> This helps to ensure consistency in what type of information is provided to consumers in respect of CPRS subscriptions, as well as other subscriptions which are regulated by the DMCC Act. We consider that this clarification also addresses the concerns raised by TÜV SÜD Limited about the frequency with which some merchants may charge consumers.
- 6.18 We acknowledge Action 4 Limited's comments about geographical addresses being used in the context of malicious intent and are concerned about these situations. Nevertheless, we remain of the view that geographical addresses of places of business are important elements of the pre-contract information. We note that such information is required under

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<sup>63</sup> See paragraph 6 of Schedule 22 of the DMCC Act.

paragraph (c) of Schedule 2 to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) for distance and off-premises contracts.<sup>64</sup> We consider that any risk to the provider as a result of geographical information being made available to consumers is outweighed by the benefits of consumers having that information at the pre-contract stage. For example, this geographical information may be important for some consumers in deciding whether they wish to enter into contracts with merchants who are established in certain locations or jurisdictions (such as overseas). For other consumers, this information may be important in case they want to communicate via post or to seek an in-person appointment in order to resolve any consumer complaints or queries. Further, we think the actual risk is low given the criminal or civil penalties, or both, which may result from malicious action being taken against the provider's premises or occupants.

- 6.19 In response to aimm's query as to why we require the contact details for someone responsible for customer care, we consider that merchants need to be transparent to consumers about who is ultimately responsible on their behalf for taking any decisions in relation to customer enquiries and complaints. We have made a clarificatory change to paragraphs (m) and (n) in Schedule 3 of the PRS Order to reflect this. This ensures consumers have the details of a named person should they wish to complain about the outcome of the service they receive, as well as the policies and procedures for handling consumer enquiries and complaints. We note this reflects an existing requirement in Code 15.<sup>65</sup>

## Express consent for charges imposed under a subscription contract entered into by means of an internet access service (Article 27)

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### Consultation proposals

- 6.20 We proposed to require that, where a subscription contract is entered into online and remotely, merchants must give the consumers express consent by ensuring the consumer explicitly acknowledges that the provision of the service in question entails an obligation to pay a charge.
- 6.21 We also proposed merchants must provide specific information to consumers directly before they agree to pay the charge. This information must be made available in a clear and legible way adjacent to the button a consumer has to press to signify their consent. Such a button would have to be unambiguously labelled indicating that the consumer's activation of it entails an obligation to pay the merchant.

### Stakeholder comments

- 6.22 aimm and A2B Telecoms Ltd said that because of the volume and nature of information required, there may be practical difficulties in presenting the required information "*adjacent to the button (or similar function)*" by which the consumer gives consent. Donr Ltd added that an additional factor in these practical difficulties is the range of devices

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<sup>64</sup> See <https://www.legislation.gov.uk/ukxi/2013/3134/made>.

<sup>65</sup> Code 15, paragraph 3.2.2(f).

consumers may use, for example, desktop computers with large desktop monitors or small mobile phones. Instead, these stakeholders suggested that this provision should mirror current requirements under Code 15, i.e. that this information can be given at various points before the consumer enters the contract.

- 6.23 Donr also said that the labelling of the online button or similar function referred to in this article should make clear in the body of the PRS Order other phrases which would also be acceptable.
- 6.24 aimm and Donr Ltd also questioned why, if this article does not apply to a recurring donation service, it does apply to a society lottery service.
- 6.25 Telecom2 Ltd said that “[i]t should be possible to give consent by means other than a DTMF button push. AI Voice consent for example should also be suitable”.<sup>66</sup>
- 6.26 MCP Insight Ltd agreed with and support the comments and suggestions made by aimm.

## Our decision

- 6.27 We have decided to proceed with this requirement as proposed but have (i) removed the exemption for recurring donation services so that these are now subject to the requirements in article 27 of the PRS Order and (ii) redrafted article 27(1) to refer to “by means of an internet access service” rather than “online and remotely”.
- 6.28 We remain of the view that this provision is necessary to ensure that consumers have access to the most important information at the point at which they are able to enter into subscription contracts online. Requiring that key information is presented adjacent to the button they need to press to sign up the contract supports the consumer in making an informed decision about entering into the contract. However, having considered aimm’s and Donr Ltd’s comments, we agree that there should be consistency in how the PRS Order treats recurring donation services and society lottery services because both of these services can be entered into online.
- 6.29 In terms of aimm’s, A2B Telecoms Ltd’s and Donr Ltd’s comments, we note that this article is worded such that it requires merchants to “make available” this information which may involve the use of a link or footnote adjacent to the button to direct consumers to these items of information. This affords merchants a degree of flexibility as to how this information is made available online next to the button (or similar function). Therefore, we consider that our requirements do mirror current requirements under Code 15.
- 6.30 We note Donr Ltd’s request that the PRS Order should specify other ways in which the button can be labelled. Article 27(6) of the PRS Order describes the button as “a button or a similar function labelled in an easily legible manner with words such as ‘SUBSCRIBE’ or a corresponding unambiguous formulation indicating that the consumer’s activation entails an obligation to pay the merchant”. We consider that the article is sufficient in both protecting consumers from harm resulting from ambiguously labelled buttons and in affording merchants a degree of flexibility as to how exactly these buttons are labelled. We have also amended article 27(6), so that it uses the word ‘SUBSCRIBE’ rather than ‘BUY

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<sup>66</sup> We understand Telecom2 to be referring to ‘Dual-tone multi-frequency’  
<https://en.wikipedia.org/wiki/DTMF>.

NOW', as we had originally proposed, because the services to which this article relates are subscription services.

- 6.31 In terms of Telecom2 Ltd's comments about giving consent by means other than a DTMF button push, while we have sought to provide greater discretion as to how providers meet these requirements, we consider that a button or a similar function remains an important consumer safeguard because it is unambiguous whether the consumer has activated the button or similar function. In contrast, "AI Voice" (which we understand to be referring to voice recognition technology) may not achieve the same level of reliability and certainty as DTMF.

## Express consent for charges imposed under a subscription contract entered into by means of an SMS message (Article 28)

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### Consultation proposals

- 6.32 We proposed to require that, where a subscription contract is entered into via an SMS message, merchants must obtain the consumer's express consent by ensuring that the consumer explicitly acknowledges that the provision of the service in question entails an obligation to pay a charge. The consumer's express consent would be given in a SMS message containing a word or phrase (such as 'START') that unambiguously indicates the consumer's obligation to pay the merchant.
- 6.33 We also proposed merchants must provide specific information about charges and the contract duration to consumers directly before they agree to pay the charge. This information must be made available in a clear, comprehensible and prominent manner. Such information would have to be provided in an SMS message. Other information could be provided in either an SMS message or via a webpage linked to in the SMS message.

### Stakeholder comments

- 6.34 Donr Ltd said that the term SMS should be extended to allow future technologies, such as Rich Communication Services ("RCS")<sup>67</sup> and other future technologies, in addition to SMS, to make use of PRS without having to amend the PRS Order.

### Our decision

- 6.35 We have decided to proceed with this requirement substantively as proposed. However, we have decided to align our definition of "SMS message" (previously in the draft PRS Order as "SMS") with the definition set out in the Online Safety Act 2024.<sup>68</sup>

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<sup>67</sup> RCS is a communication protocol which is broadly similar to SMS although it has additional functionality and, unlike SMS, is delivered as Internet Protocol ("IP") Multimedia.

<sup>68</sup> Section 55(12) of the Online Safety Act 2024.

- 6.36 Our definition of “SMS message” is now:
- ““SMS message” means a Short Message Service text message composed principally of letters or numbers that may be sent between telephone numbers allocated in accordance with a national or international numbering plan”*
- 6.37 We have carefully considered Donr Ltd’s comments about RCS and future technologies. We note that in its consultation on Code 15, the PSA stated that:
- “To date, we have not seen RCS deployed to any significant degree associated with phone-paid services – it has largely been used as an enhanced and improved method of bulk messaging. There has been nothing to date in our discussions with industry that suggests that RCS will significantly change our assessment of market and consumer trends in the near to medium term.”<sup>69</sup>*
- 6.38 In addition, we note that currently RCS is only supported on various Android smartphones (those using Android 5 and above). We note that RCS is supported on Apple’s latest iOS 18. While we observe that RCS is therefore being rolled out more widely, we nevertheless think that it is appropriate to keep the PRS Order specific to SMS. This is because, unlike RCS which is not ubiquitous, SMS is supported by all mobile operating system platforms. Nevertheless, we will monitor the need for extending this requirement, in the future, to other technologies such as RCS.
- 6.39 Further, the purpose of “SMS message” in the PRS Order is to ensure, where consumers enter into CPRS contract via SMS, that any notifications back to them should be given by the same means. If there is significant change in the usage of other technologies such as RCS, we will consider whether the PRS Order will need to be amended to reflect this development.
- 6.40 Note also that we have amended our definition of “recurring donation service” at article 28(6) of the PRS Order to remove phrase “consists in” following the reasoning set out in paragraph 3.103 onwards. The new definition now refers to “the making available of a facility for making payments at regular intervals to a charity”. As set out in paragraph 3.6, the definition of “charity” is now contained in the general interpretation section of the PRS Order (article 2).

## Express consent for charges imposed under a contract for an ICSS (Article 29)

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### Consultation proposals

- 6.41 We proposed to require merchants of ICSS to provide specific pre-contract information to consumers before the consumer is charged for the service. We proposed that merchants must provide specific pre-contract information in a clear, comprehensible and prominent

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<sup>69</sup> See paragraph 88, <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Consultations/2021/Draft-Code-15/FINAL-Condoc-for-publication.ashx>.



manner by way of an automated message. This aspect of the proposal reflects Code 15, as amended by the PSA in September 2023.<sup>70</sup>

- 6.42 In addition to reflecting Code 15, we proposed to also require that the pre-contract information is provided free of charge. We made this proposal based on our assessment that:
- a) consumers were being charged from the moment the ICSS call begins; and
  - b) a high proportion of ICSS calls were terminated within the first minute.
- 6.43 We considered that the latter suggested that a high proportion of consumers did not want to use ICSS because they ended these calls within the first minute. Our proposals, therefore, sought to prevent consumers from being charged until they had been given pre-contract information and had given their express consent.

## Stakeholder comments

- 6.44 The PSA Consumer Panel, BT and Action 4 Ltd supported our proposals. The Communications Consumer Panel supported our proposals and added that it supports a universal ban on ICSS.
- 6.45 Vodafone also supported our proposals based on its view that “*ICSS do not constitute valid services*”. However, Vodafone added that its support was based on Ofcom directing industry to use the readily available and appropriate price point which enables a free first minute.<sup>71</sup> This was because the potential for ICSS to generate significant consumer harm, meaning that any requirement to create new price points was unlikely to pass any impact assessment.
- 6.46 A2B Telecoms Ltd, Caller Centre Ltd (“CCL”) and aimm said that, as significant regulatory changes had been made recently by the PSA, our proposals are premature because the impacts of the most recent changes have not had sufficient time to play out. CCL said that, judged against the criteria under section 47 of the Act and the duties under section 3 of the Act, Ofcom has not satisfactorily made the case that regulatory action is warranted with regards to ICSS.
- 6.47 CCL said it considered the changes by the PSA had provided consumers with robust protection. It questioned the evidence and assessment Ofcom had relied on in making its proposal. In particular, it considered that the PSA’s research and findings about consumer harm were outdated and that our assessment of ICSS and consumer harm was inconsistent with our duties under the Act.<sup>72</sup> CCL also said we should mandate specific obligations on OCPs and TCPs to make available new price points for ICSS merchants.
- 6.48 A2B Telecom Ltd, aimm, BT, Mobile UK, CCL and Telecom2 Ltd all said we had not taken account of the impact of access charges on the bill-shock experienced by consumers.
- 6.49 CCL and Vodafone said that our proposed implementation period for ICSS was insufficient given the necessary changes to price points involving industry collaboration. Vodafone

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<sup>70</sup> Code 15, paragraph 3.2.10 and Annex 1. These requirements came into force on 18 September 2023 <https://psauthority.org.uk/research-and-consultations/consultation-articles/2023/march/consultation-on-code-15-amendments-to-requirement-3-2-10-and-annex-1>.

<sup>71</sup> We understand Vodafone to be alluding to Service Charge price point 073 as referred to in our Consultation, see footnote 94 on page 58.

<sup>72</sup> Specifically, our duties under section 7 of the Act to carry out impact assessments.

added that there was a risk of additional costs arising from the creation of superfluous price points and that this would not pass an impact assessment even taking into account, in its view, the potential of significant consumer harm arising from ICSS.

6.50 aimm and A2B Telecom Ltd asked what the expectations were on merchants who were able to provide the necessary pre-contract information and obtain express consent within 30 seconds of the free first 60 seconds. Telecom2 Ltd stated that pre-call announcements are normally complete within fifteen seconds.

6.51 MCP Insight Ltd agreed with and support the comments and suggestions made by aimm.

## **Our decision**

6.52 We have decided to proceed with the majority of our proposals in relation to express consent for ICSS. However, having taken account of stakeholder comments, we are not proceeding with our proposals for the pre-contract information to be provided to the consumer for free.

6.53 This means that our requirements for ICSS reflect those under Code 15, specifically, paragraph 3.2.10. ICSS merchants will be prohibited from imposing a charge unless the consumer has been given specific pre-contract information and the consumer has given express consent to continue using the ICSS (including onward connection to the target person or organisation).

6.54 The specific pre-contract information to be given by automated message is:

- a) the total charge for the service;
- b) all additional charges (where applicable), including any access charge, or if the charges cannot be reasonably calculated in advance the fact that such additional charges may be payable;
- c) the name of the merchant (including any trading name);
- d) the telephone number of the target person or organisation;
- e) an explanation that the charge for onward connection would be more expensive than the cost (if any) of the consumer going direct to the target person or organisation; and
- f) an explanation of the maximum charge for the ICSS which may be imposed and what happens when that maximum charge is reached.

6.55 We have also made clarificatory changes to article 29 of the PRS Order to confirm that this information must be immediately given to the consumer as soon as a connection between the consumer and the merchant has been established and the consumer has informed the merchant who it is that they wish to be connected to. We are not prescriptive about the means by which the consumer informs the merchant about who they wish to be connected to. There will be various ways of informing merchants e.g. this could be done verbally or by pressing a button to confirm. Another example is that in many (but not all) cases, consumers will call an ICSS which is associated with only one target person or service to whom the consumer can be connected. Therefore, we do not expect in those circumstances that it will be necessary for the consumer to explicitly inform the merchant whom they wish to be connected to. This is because it is implicit in the consumer's use of that ICSS.

6.56 The consumer's express consent is deemed to have been given once the consumer presses a button in response to the merchant's automated message.

6.57 Since we published our consultation, we have been able to assess the impact of the change the PSA made to Code 15 in September 2023. As a consequence, we have decided not to

proceed with our proposal for pre-contract information to be provided free of charge. In reaching this conclusion, we have taken into account, in particular, that the PSA's changes have had a significant impact on the harms associated with ICSS. In that regard, we note that, on 2 May 2024, the PSA published an update on the impact of its regulatory activity.<sup>73</sup> This highlighted the following:

- a) complaints have fallen from an average of 38 complaints per month in the financial year 2022/23 to 3 per month since the 18 September 2023 changes;
- b) consumer spend on ICSS has fallen by 75% since the 18 September 2023 changes in comparison to the period assessed during the PSA's Thematic Review (1 July 2021 – 30 June 2022); and
- c) consumer detriment has fallen from an estimated £10m per year to £3.3m per year.

6.58 This data shows that far fewer ICSS calls are being made (and there is much less consumer spend and detriment) since the PSA introduced its recent changes to Code 15. In our opinion, this latest information reduces the likely benefit of our proposals because the PSA's changes have already significantly reduced consumer detriment; and it is no longer clear that the impacts on industry would be outweighed by the potential benefit to consumers without us first carrying out a more detailed review. Therefore, on balance, we consider that it would not be proportionate to introduce further requirements at this stage.

## Records of consent (Article 35)

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### Consultation proposals

- 6.59 We proposed to require merchants to make and keep records in writing of consumers' consent to enter into a CPRS contract and any charges imposed under the contract. We said that we did not think it would be necessary to require very prescriptive steps to be taken and, instead, our proposal was to merely mandate records of consent to be kept.
- 6.60 Notwithstanding this, we also said that we anticipated that merchants will continue to meet the MFA requirements under Code 15 in order to appropriately evidence consumer consent.

### Stakeholder comments

#### Third-parties

- 6.61 aimm, BBC Children in Need, Cancer Research UK, Channel 4 and Channel 5 were concerned that merchants may be unable to access the necessary information to make the records required. They asked whether a third-party could make and keep these records of consent.
- 6.62 Mobile UK and VMO2 raised a similar issue concerning our proposal not to require intermediaries to hold these records and the effects this might have on networks.
- 6.63 Infomedia Services Limited said that the removal of third-party verification in the context of MFA and records of consent will result, in the worst instances, *"to re-entry by unscrupulous players who may seek to fabricate evidence of consent"*.

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<sup>73</sup> <https://psauthority.org.uk/news/news/2024/may/icss-update>

## Multiple merchants

6.64 The BBC, BBC Children in Need, Channel 4 and Channel 5 raised the issue of a merchant's access to the necessary information in the context of charity donations promoted via broadcasting. They thought that in those circumstances there may be a lack of clarity as to which one of the number of merchants working in partnership on a fundraising campaign is the merchant for that particular charitable donation CPRS. MCP Insight Ltd agreed with and support the comments and suggestions made by aimm.

## Specificity of the requirement

6.65 aimm, Channel 4, Channel 5, Global, Infomedia and MCP Insight Ltd said it was unclear what exactly constituted a record of consent. aimm expressed concern that the requirements for consent seem to be less robust than under Code 15. They said that, whilst they agreed that prescribing the exact process for obtaining consent might cause issues with futureproofing the PRS Order, the PRS Order should provide a "basic standard" for consent. Their members asked for guidance on this point and suggested some additional requirements to include in the PRS Order in relation to records of consent which they said could be useful.<sup>74</sup> Several other responses also requested clarification. MCP said that the proposed approach to records of consent "*makes sense that contract responsibility is with the merchant*" but that they "strongly support" the suggestions made by aimm.

## Live entertainment services

6.66 Action 4 Limited expressed concern that we were not carrying across the requirement of recording live entertainment services. It said that providers who are operating these services will be recording as a matter of course and this is to protect both themselves and the consumer, for example to deal with any requests for a refund.

## Our decision

6.67 We have decided to proceed with this requirement as proposed.

6.68 Stakeholders should note that the requirements of this article are not limited to records being made and kept solely in relation to consent to the premium rate charge. The requirements apply to any charge. For example, article 26 and Schedule 3 of the PRS Order place requirements on merchants to provide information about access charges and charges for delivery which are not, of themselves, CPRS. We consider this to be necessary because the whole premise of the pre-contract information requirements is that the consumer must be informed about the entirety of the charge that they are likely to incur as part of their use of the CPRS in question.

## Third parties

6.69 Merchants will be responsible for the making and keeping of a written record of consent. Merchants are, however, free to instruct a third party to make and keep a record in writing on their behalf. If they choose to do so, merchants remain responsible for ensuring these

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<sup>74</sup> aimm suggested: (1) Evidence must authenticate that the consent to be charged reconciles with what the consumer saw regarding pricing and other key information prior to that consent; (2) The authentication of Consent to Charge should be sufficiently independent of the merchant and the merchant must not be able to interfere with the authentication process Consent to Charge records should be clearly presented, independently and easily auditable, and demonstrably tamper proof; (3) Robust consent can be audited in a way as to prove that the consent could not have been given in any other way than by the consumers specific actions.

records have been made and have access to them. We anticipate that merchants would secure such compliance through their own contractual arrangements with third parties.

- 6.70 We note Infomedia’s additional comments regarding third-party verification and the potential adverse impacts resulting from unscrupulous merchants. As stated in paragraph 4.130 (including footnote 81) of the consultation, we do not think it is necessary to require very prescriptive steps to be taken with regards to records of consent. However, we anticipate that merchants will continue to meet the MFA requirements under Code 15 in order to appropriately evidence consumer consent, including by using third-party verification. In any case, as stated above, it is the merchant’s responsibility to ensure that consent has been given and suitable records have been made and are accessible to the merchant.

### Multiple merchants

- 6.71 We note that the BBC, in its example, stated that the charity “[is] the merchant construed as the counterparty to the consumer in the controlled PRS contract”. Under the terms of the PRS Order, in relation to a specific CPRS, there can only ever in principle be one merchant providing that CPRS to consumers (see article 9(6) of the PRS Order). The person to be regarded as the merchant will be a question of fact in the specific circumstances.

### Specificity of the requirement

- 6.72 With regards to what constitutes a record of consent, we note that the burden of proof is on the merchant to demonstrate that the consumer has given consent to the provision of the CPRS.<sup>75</sup> All merchants are required to obtain consumer consent before issuing charges to the consumer for the provision of CPRS. In some cases, we have set out what this express consent is (see articles 27 to 29 of the PRS Order). However, in all other cases, it is up to the merchant to establish how consent is to be given. The relevant record of consent will result from the mechanism by which the consumer gives their consent. The mechanism by which the consumer gives consent may vary according to the different types of CPRS offered by merchants and the different platforms used e.g. SMS message or websites. We do not think it is necessary for us to set out what those records of consent should include for all types of CPRS contracts and/or platforms used in the consumer journey.
- 6.73 That said, we would expect that all merchants have an effective audit trail of how and when consent was given by consumers, so that they can provide evidence if challenged.<sup>76</sup> Such records of consent in writing are likely to include, as a minimum:
- i) the name of the consumer together with any associated identifier (for example, for online purposes);
  - ii) the date and time on which the consumer gave consent as evidenced by, for example, a copy of a dated document, online records that include a timestamp or a note of the time and date which was made at the time of the conversation (for oral consents);
  - iii) the information given to the consumer which, for oral consents, could include a copy of the script used at the time; and

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<sup>75</sup> We note that this is congruent with existing UK law, namely The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Regulation 17 of these regulations sets out the burden of proof in relation to off-premises and distance contracts which are analogous to CPRS contracts.

<sup>76</sup> Note that, as set out in article 56, records of consent are required to be kept for at least 2 years. See paragraphs 12.116 onwards.

- iv) evidence as to how consumers gave consent, something which can be evidenced in a similar way to records for (ii) above.

### Live entertainment services

6.74 We note that paragraph 3.2.9 of Code 15 provides that: *“If a call is recorded or monitored, then this must be stated explicitly and immediately upon connection of the consumer to the service.”* We explained in the consultation (see paragraph 4.247(d) of the consultation) that we are not reflecting the requirement to record calls made as part of live entertainment services. We consider that this requirement duplicates existing data protection legislation and, therefore, it is not necessary to include in the PRS Order. This requirement in Code 15 does not actually mandate call recording for such services but sets out what providers must do if they record calls.

# 7. Charges and subscriptions

7.1 This section sets out our decisions in respect of charges and specific requirements for subscription contracts for CPRS.

7.2 In summary, we have decided:

- a) to proceed with our proposal that merchants who provide CPRS by means of a mobile phone service must give consumers certain information free of charge via an appropriate medium (email or SMS message). However, we have made a few changes to align this article with other parts of the PRS Order (see paragraphs 7.4 – 7.13);
- b) to proceed with our proposal to require merchants to notify consumers of virtual chat services every time the consumer spends at least £10 incrementally (see paragraphs 7.14 – 7.17);
- c) to proceed with our proposal that consumers have a right to terminate subscription contracts subject to the amendments explained below (see paragraphs 7.18 – 7.20);
- d) not to proceed with our proposal to require merchants to issue reminder notices of cancellation of charges for recurring donation services, because this is not currently a requirement for all merchants under Code 15 (see paragraphs 7.21 – 7.27);
- e) to proceed with our proposal that merchants must provide consumers with reminder notices in relation to the termination of subscription contracts; however, we have decided to exclude society lottery services from this requirement as well as recurring donation services (see paragraphs 7.28 – 7.41);
- f) to proceed with our additional proposal relating to refunds to require merchants to keep consumers informed about the status and progress of any request for a refund (see paragraphs 7.42 – 7.48);
- g) to proceed with our proposal to require merchants of certain types of CPRS which are used by means of a call to inform customers once certain charging thresholds have been met (see paragraphs 7.49 – 7.53); and
- h) to proceed with our proposal to require merchants of ICSS to charge consumers no more than £40 for the provision of the service, subject to the amendments explained below (see paragraphs 7.54 – 7.60).

7.3 We have also made various drafting improvements and clarificatory changes to the associated articles compared to the draft PRS Order: see Annex 3 – Table of Changes for a comparison of the draft and final versions of each article; and see paragraphs 3.103 – 3.106 for changes to definitions made throughout the PRS Order.



# Charging information for CPRS purchased through the use of a mobile phone service (Article 31)

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## Consultation proposals

- 7.4 We proposed to require merchants providing CPRS by means of a mobile phone service<sup>77</sup> to provide consumers with certain information free of charge, via email or SMS message, and without undue delay after the provision of the CPRS.
- 7.5 We further proposed that this article should only apply to CPRS provided by means of a mobile phone service but excluding calls and virtual chat services.

## Stakeholder comments

- 7.6 aimm, BBC Children in Need and Donr Ltd said that the definition of “appropriate medium” within this article does not appear to be future-proofed for technologies such as RCS. MCP Insight Limited supported and agreed with aimm's comments.
- 7.7 Action 4 Limited was supportive of the need for customer clarity and simplicity. However, it was worried about the practicality of giving notifications free of charge which it said is possible via SMS messaging but not on all voice platforms.
- 7.8 Global said that it is unclear that this article would apply to post-purchase receipting as opposed to pre-purchase and this needed to be clarified.
- 7.9 TÜV SÜD Limited repeated its concerns which it raised in relation to pre-contractual information (see paragraph 6.8) about potential loopholes in article 31(3)(d) of the draft PRS Order in light of the assumption that contracts charged at fixed rates only occur monthly.

## Our decision

- 7.10 We have decided to proceed with this requirement largely as proposed. However, we have made some drafting changes to the article, mainly as follows:
- a) aligned the information merchants are required to provide to consumers under article 31(3) of the PRS Order with what is now set out in Schedule 3 of the PRS Order (following our changes discussed in section 6) and the information required to be sent about subscription contracts (see paragraphs 6.16 to 6.17);
  - b) amended the definition of virtual chat service at article 31(5) to deal with definitional overlaps (see paragraphs 3.105 onwards); and
  - c) amended the definition of “appropriate medium” at article 31(5) in this article to refer to “SMS message” (see paragraph 3.5).
- 7.11 We have considered Action 4 Limited’s comments and confirm that this article does not apply to voice calls or to virtual chat services.
- 7.12 In response to Global’s comment, we consider that the requirement in the article is clear in that merchants are required to give the information to the consumer after the charge has

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<sup>77</sup> Please note that this is a summary of article 31(1) which states that article 31 applies “to the provision of a controlled PRS for which a consumer is required to pay the charge to a person providing a mobile phone service by means of which the controlled PRS in question is provided”.

been imposed. Article 31(2) of the PRS Order states that the provider must give the consumer certain information “without undue delay after a charge for the provision of the controlled PRS has been imposed”.

- 7.13 We have addressed TÜV SÜD Limited’s concerns about the frequency with which some merchants may charge consumers in paragraph 6.17 of this statement.

## Notifications of charges for virtual chat services (article 32)

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### Consultation proposals

- 7.14 We proposed to require merchants to provide the consumer with a notification of charges incurred every time the consumer spends at least £10 incrementally.

### Stakeholder comments

- 7.15 We did not receive any stakeholder comments about this provision specifically, but we note that Action 4 Limited expressed concern about providing the notification free of charge while the consumer is engaging with a service such as a virtual chat service.

### Our decision

- 7.16 We have decided to proceed with this requirement as proposed, subject to some minor drafting changes and a clarificatory change at paragraph (4)(c) to specify that a link to the merchant’s webpage containing the specified information must be provided (and alternative requirements if that merchant does not have a website).
- 7.17 In relation to Action 4 Limited’s comments, we note that this article reflects existing requirements under Code 15.<sup>78</sup> In addition, the requirement states that the notification must be sent “without undue delay” after the time the consumer’s cost of provision reaches any £10 increment. Given that the service is made up of the sending of discrete mobile text messages (or visual images), we consider that there is sufficient time in between these discrete electronic communications in which the notification can be sent by mobile text message without undue delay.

## Right to terminate subscription contracts (article 33)

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### Consultation proposals

- 7.18 We proposed to provide consumers with a right to terminate subscription contracts at any time without giving any reason and without incurring any liability.

### Stakeholder comments

- 7.19 We did not receive any stakeholder comments about this proposal.

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<sup>78</sup> See paragraph 1.7 of Annex 1 (Specified service charges and duration of calls) from Code 15.

## Our decision

- 7.20 We have decided to proceed with this requirement as proposed, except for a clarificatory amendment. We have amended the words “without incurring any liability” in article 33(1) of the draft PRS Order to provide a qualification to the effect that, if there is outstanding liability which has been properly incurred by the consumer, then that liability should not be extinguished by this article. Instead, article 33(1) of the PRS Order now provides consumers with a right to terminate “*without becoming liable for any charge relating to a period after the contract has come to an end*”.

## Reminder notices of cancellation of charges for recurring donation services (deleted article)

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### Consultation proposals

- 7.21 We proposed to prohibit merchants from imposing any charge on a consumer under a contract for a recurring donation service<sup>79</sup> unless the merchant provides the consumer with certain information free of charge, via SMS message, not less than 24 hours before the next donation.
- 7.22 This proposal in what was article 34 in the draft PRS Order sought to replicate paragraph 3.3.11 of Code 15, which sets out various requirements which are placed on a recurring donation service in circumstances where the merchant gives the customer the option to “skip” a monthly payment.

### Stakeholder comments

- 7.23 aimm, BBC Children in Need and Donr Ltd said that the corresponding requirement in Code 15 is optional, whereas we proposed to mandate it in the draft PRS Order. MCP Insight Ltd agreed with the comments and suggestions made by aimm.
- 7.24 Donr Ltd also requested clarity about instances where children make use of a recurring donation service only aimed at adults.

## Our decision

- 7.25 We have decided not to proceed with this proposal. Taking account of stakeholder comments, we no longer consider it necessary to impose our proposed requirement.
- 7.26 In particular, we note that the equivalent requirement under Code 15 is not a requirement for all merchants of recurring donation services. It only applies if the merchant offers consumers the ability to “skip” the next donation in the recurring donation service. Any merchants providing recurring donation services that do not offer such functionality are therefore not obliged to comply with paragraph 3.3.11 of Code 15. We do not consider it is necessary to reflect this requirement in the PRS Order to address any specific consumer harm.
- 7.27 In reaching this conclusion, we have also considered Donr Ltd’s comments. However, as we have decided to delete this article, there is no need to provide the clarity requested by Donr

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<sup>79</sup> Or a children's service that makes available a facility comprised in a recurring donation service.

Ltd. However, we note that a similar point was raised by Cancer Research UK in relation to article 23 (Promoting and marketing services to children) of the PRS Order. As we set out in paragraph 6.15 of this statement, in our proposed definition of “children’s service” we are reflecting paragraph 3.5.5 of Code 15 which refers to “*a service aimed at or likely to appeal to children*”.

## Reminder notices of termination of subscription contracts (article 34)

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### Consultation proposals

- 7.28 We proposed to prohibit merchants from imposing a charge for a subscription service, unless the consumer has been given a reminder notice containing specified information. We said this reminder notice must be provided free of charge, via email or SMS message.<sup>80</sup>
- 7.29 We also proposed that reminder notices for a term-based subscription must be sent not less than seven calendar days but not more than 30 calendar days before the last cancellation date.
- 7.30 We further proposed that reminder notices for subscriptions of indeterminate duration must be sent before each anniversary of the date that the contract was entered into by the consumer and not less than 14 calendar days preceding that anniversary. We note, however, that our proposal regarding subscriptions of indeterminate duration had a typographical error. Our intention was to require the reminder notices to be sent before each anniversary of the date that the contract was entered into by the consumer and not *more* than 14 calendar days preceding that anniversary.

### Stakeholder comments

- 7.31 Donr Ltd considered that it was unfair that this article did not apply to subscription services which comprise a recurring donation service but did apply to society lottery services. It said that this exemption should be offered to all subscription services that a charity can use and therefore that both recurring donation services and society lottery services should be exempt from this requirement.
- 7.32 aimm and Donr Ltd said it is not clear if weekly or monthly reminders would suffice for this information and requested confirmation that if these weekly or monthly reminders were being sent, a separate annual message would not be required.
- 7.33 In addition, aimm also said that the PSA has granted an exemption under Code 15 which removes the requirement for such a reminder, where weekly or monthly reminders are being sent as a matter of course. aimm added that the cost of annual reminders would be a break from normal operating procedures and, therefore, lead to disproportionate costs.

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<sup>80</sup> We consider that making it explicit for these reminder notices to be free of charge is not a material change from Code 15 because paragraph 3.2.11 of Code 15 states that any messages that the consumer needs to access in order to use or engage with a PRS but which are provided separately from the service itself, must be provided at no additional cost to the consumer. Therefore, reminder notices are already required to be provided free of charge.

- 7.34 In addition, aimm said that PRS subscriptions do not “auto-renew” as it is simply available for any length of term which the consumer chooses and as such do not have a specific fixed period.
- 7.35 aimm also pointed out that *“The BEIS consultation of April 2022 ‘Chapter 2; Consumer Rights’ sought to tackle subscription traps.”* It said that this document summarised that, *“To empower consumers, increase their confidence, and facilitate further market growth, government is making changes to subscriptions rules and will legislate to: introduce a specific requirement on traders to send reminders to consumers before a contract rolls over (or auto-renews) onto a new term”*.
- 7.36 MCP Insight Ltd agreed with the comments and suggestions made by aimm.

## Our decision

- 7.37 We have decided to impose this requirement largely as proposed. However, we have decided to exclude recurring donation services and society lottery services in light of Donr Ltd’s comments concerning the equal treatment of these services given their similarity in many respects. We have also addressed the typographical error in the requirement for the timing of reminder notices for subscriptions of indeterminate duration (see paragraph 7.30 above).
- 7.38 In terms of aimm’s comments relating to current exemptions under Code 15 for annual reminders where weekly or monthly reminders are being sent, we have checked with the PSA that there are no such exemptions in place under Code 15. Therefore, what we have decided to impose in this respect is not a new requirement as it reflects existing requirements under Code 15.
- 7.39 In relation to Donr Ltd and other stakeholder queries concerning sending weekly or monthly reminders, we note that there is nothing preventing merchants sending extra weekly or monthly reminders if they wish to do so, as long as a reminder notice is sent in accordance with article 34 of the PRS Order, including the timings and format in paragraph (4) of the article and containing the specific information required by paragraph (3). Sending extra notices goes beyond the minimum standard the requirements in article 34 impose in relation to reminder notices for subscription contracts.
- 7.40 We have also considered aimm’s assertion that there are no subscription contracts which auto-renew. However, we understand that there are term-based subscriptions currently offered by merchants such as subscriptions to premium plans for digital music services (such as Spotify) which involve a consumer being granted access to digital services on a rolling monthly basis. The monthly access automatically renews each month unless the consumer expressly exits the subscription contract. In this context, we also note that we have carried across the concept of “term-based” subscriptions from paragraph 3.3.12(a) of Code 15 and that this is not a new concept for the purpose of the PRS Order.
- 7.41 In response to aimm’s comment that subscription traps are caught by other legislation, we note that the DMCC Act as referenced in paragraph 6.17 of this statement, specifically excludes subscriptions for PRS from the requirements in Part 4, Chapter 2 relating to subscription contracts.<sup>81</sup>

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<sup>81</sup> See paragraph 6 of Schedule 22 of the DMCC Act.

## Additional requirements relating to refunds (article 38)

### Consultation proposals

- 7.42 We proposed to require merchants to keep consumers informed about the status and progress of a consumer's request for a refund. We also proposed that merchants should give a reason for the decision made about the refund.

### Stakeholder comments

- 7.43 aimm, BBC Children in Need, Channel 5 and Donr Ltd sought clarity as to whether refunds are required to be offered to consumers under the PRS Order. Donr Ltd, in particular, said that it was unclear about the consumer expectations if the consumer disagreed with the decision concerning a refund. Donr Ltd asked whether, 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. In this event, Donr Ltd argued that this article should identify any appeal opportunities to set expectations for all merchants.
- 7.44 MCP Insight Ltd agreed with the comments and suggestions made by aimm.

### Our decision

- 7.45 We have decided to proceed with our proposal, subject to minor amendments.
- 7.46 We have removed reference to the 14-day time period for the refund to be paid to the consumer as the timing of the refund is already made clear in article 38(5)(a) of the PRS Order. We have also removed the additional explanation as to when a decision will be deemed to be "provided" to a consumer as we consider that the requirement is sufficiently clear without it.
- 7.47 As regards stakeholders' request for additional clarity, we note that these requirements in article 38 only apply when a merchant receives a request for a refund from a consumer. Following such a consumer request, this article requires that the merchant reaches a decision whether or not a refund will be paid. Such a decision must be given to the consumer without undue delay, and it must contain the information specified in article 38(4). We consider this is no different where consumers disagree with the decision so long as merchants have met the requirements set out at article 38(3) and (4) of the PRS Order. As to Donr Ltd's comments concerning a blanket ban on refunds including mention of appeal opportunities, it is not clear whether Donr Ltd is referring to an outright ban or whether there is an opportunity for the consumer to appeal this ban (and hence potentially receive a refund). Nevertheless, as stated above, these requirements only apply when a merchant receives a request for a refund from a consumer. We note that in a number of articles in the PRS Order, there is a prohibition on charging the consumer in certain circumstances or until certain conditions have been met. In those scenarios, i.e. where a merchant has issued a charge it ought not to have issued, we would consider it necessary for the merchant to issue a refund. For example, we explicitly require refunds in instances where a merchant of a competition or voting service issues a charge for an attempted use of the facility after the time limit has expired- see article 45(3) of the PRS Order.
- 7.48 In reaching this conclusion, we consider that these requirements are necessary to protect consumers from being unaware of the status of any request for a refund or the reason

behind the decision on whether or not to give a refund. These requirements also ensure that consumers are not harmed when any refund is paid to them, because the requirement is clear as to how the refund is paid and that no charge can be imposed for its payment.

## Pricing restrictions for some types of CPRS (article 46)

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### Consultation proposals

7.49 We proposed to require merchants of certain types of CPRS which are used by means of a call to inform the customer once certain charging thresholds have been met. The types of CPRS are:

- a) a chatline service,
- b) a live entertainment service,
- c) a professional advice service used by means of a call, and
- d) a sexual content service used by means of a call.

7.50 Additionally, we proposed to prohibit the merchant from charging more than £40 for the call.

### Stakeholder comments

7.51 BT said that this was a change from the requirement at paragraph 1.6 of Annex 1 of Code 15 which requires calls to sexual entertainment services, live entertainment services, chatline services and professional advice services to be terminated once the charge for such a call has reached £40. BT sought clarification as to whether the access charge would still apply once the charge for a call under this article reached £40.

### Our decision

7.52 We have decided to proceed with our proposal, but have made minor textual changes, including in relation to how the notification to the consumer should be given once any charging threshold is met. We have clarified that this must be given “during the call”.

7.53 Regarding BT’s comments, we agree that this is a change from Code 15. We consider that it is beneficial to consumers to remove the requirement for the call to be terminated once £40 has been charged because it allows the possibility for the call to continue. We anticipate that, in practice, merchants will have to terminate the call to prevent further charging to the consumer. However, it may be possible to continue the call once £40 limit has been reached without charging the consumer further. We do not wish to mandate that the call must be terminated as this is potentially unnecessarily restrictive. As long as there is no further charge to the consumer, the harm in terms of the consumer being charged more than £40 for the call is prevented. As to the point about the access charge, if the consumer was able to stay on the call once the limit of £40 had been reached without being charged further, we expect the access charge to continue to be imposed given that the ECS itself will be continuing.



## Charges for provision of ICSS (article 50)

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### Consultation proposals

- 7.54 We proposed to prohibit merchants of ICSS from charging consumers more than £40 for the provision of the service. Our proposals further set out that where a consumer is charged more than £40, the consumer is not bound by the ICSS contract.

### Stakeholder comments

- 7.55 CCP/ACOD supported the £40 cap on ICSS calls. However, it flagged that £40 is still a substantial amount of money to pay on a single call which could cause distress and harm to some consumers. It said this was particularly the case for those on a tight budget who may be tipped into debt or rendered unable to afford the essentials. It requested that we keep the £40 cap under review.
- 7.56 We also note a related suggestion from CCP/ACOD for us to update our *Treating Vulnerable Customers Fairly* guide<sup>82</sup> because of potentially unexpected high call costs for ICSS. This comment and our response is set out in paragraphs 10.32 and 10.49.

### Our decision

- 7.57 We have decided to proceed with our proposal, with some modifications. In particular, we have decided not to set out that where a consumer is charged more than £40, the consumer is not bound by the ICSS contract. On reflection, we do not think it is necessary to explicitly state if a merchant has not complied with paragraph (1), the consumer is not bound by the contract for the provision of the ICSS. This is because the prohibition in paragraph (1) of this article is sufficient by itself to prevent consumer harm.
- 7.58 Additionally, we have amended the article to make clear that where a merchant provides an ICSS to a child, article 50 will not apply and instead that merchant will need to comply with article 49 of the PRS Order. Article 49 contains a lower limit intended to protect consumers who are children by requiring merchants to:
- a) ensure the service is not provided in a manner which exploits the incredulity, inexperience or sense of loyalty of any child; and
  - b) not impose charges for the CPRS exceeding:
    - i) £5 for a single transaction, up to £20 per month irrespective of the number of transactions (where the service is not provided under a subscription contract); and
    - ii) £5 per month where the service is provided under a subscription contract.
- 7.59 We have made this amendment to provide merchants with clarity that, where they are providing an ICSS to a child, the £40 limit on charges will not apply but instead the relevant limits in article 49 will apply.
- 7.60 As to CCP/ACOD's comments, we note that we are reflecting the existing cap under Code 15. However, taking into account the PSA's recent update<sup>83</sup> on ICSS, and as discussed at paragraph 6.51 onwards, we note that call volumes and consumer detriment have

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<sup>82</sup> <https://www.ofcom.org.uk/phones-and-broadband/vulnerable-customers/treating-vulnerable-customers-fairly/>

<sup>83</sup> <https://psauthority.org.uk/news/news/2024/may/icss-update>

decreased by a significant amount. In addition, we note this PSA update highlights that 95% of all calls, since 18 September 2023, have been made on a drop charge basis. This means that 95% of all ICSS calls are capped at £6 which is the maximum charge, inclusive of VAT, for an ICSS call. Therefore, this drastically reduces the prevalence of calls reaching the £40 maximum.

## 8. Age restrictions and children's services

- 8.1 This section sets out our decisions on age-related requirements in the PRS Order, as well as requirements involving children's services, and requirements where merchants are providing CPRS (such as ICSS) to children.
- 8.2 We have amended our definition of "children's services" set out in article 23(2) of the PRS Order in order to simplify the definition in line with other changes discussed in section 3 relating to definitional overlaps (see paragraph 3.103 onwards). We have also clarified the scope of article 49 of the PRS Order, by amending the article to confirm that it applies to merchants who provide CPRS to children.
- 8.3 Aside from these changes (and minor drafting changes), we have decided to proceed with our proposals to:
- a) prohibit providers from offering certain types of CPRS (chatline services, live entertainment services, remote gambling services, sexual content services and virtual chat services) unless the promotion and marketing of these services clearly states that:
    - i) the service must not be used by anyone under the age of 18,
    - ii) if the consumer is not the bill-payer, the consumer must obtain the bill-payer's permission before using the service, and
    - iii) details of the service may appear on the bill-payer's bill (see paragraphs 8.4 – 8.9);
  - b) prohibit providers from providing the above services to anyone under the age of 18 (see paragraphs 8.10 – 8.19):
  - c) require age verification for the above services (see paragraphs 8.20 – 8.38);
  - d) prohibit providers from offering a children's service unless any promotion and marketing includes the following information:
    - i) any applicable age requirements to use the service; and
    - ii) a statement informing the consumer that, if they are not the bill payer, they must get the bill payers consent before using the service (see paragraphs 8.39 – 8.49); and
  - e) require merchants who provide a controlled PRS to children to:
    - i) ensure that the service is not provided in a manner which exploits the credulity, inexperience or sense of loyalty of any child; and
    - ii) comply with limits on the charges for these services (see paragraphs 8.50 – 8.53).

### Usage requirements for some types of CPRS to be stated in promotion and marketing (Article 25)

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#### Consultation proposals

- 8.4 We proposed to prohibit PRS providers from offering certain types of CPRS, unless the promotion and marketing of these services clearly states that:

- a) the service must not be used by anyone under the age of 18,
- b) if the consumer is not the bill-payer, the consumer must obtain the bill-payer's permission before using the service, and
- c) details of the service may appear on the bill-payer's bill.

8.5 We proposed that this requirement (and the requirements under articles 48 and 49 of the draft PRS Order) would apply in relation to the following services:

- i) Chatline services,
- ii) Live entertainment services,
- iii) Remote gambling services,
- iv) Sexual content services,
- v) Subscription service comprised in a sexual content service, and
- vi) Virtual chat services.

## Stakeholder comments

8.6 aimm and Donr Ltd said that this requirement needs to be amended, because society lottery services can be entered by those over the age of 16 (not only those over the age of 18). MCP Insight Ltd agreed with, and supported, the comments and suggestions made by aimm.

## Our decision

8.7 We have decided to proceed with our proposal relating to usage requirements for some types of CPRS, except for one substantial drafting change in relation to the definition of live entertainment services.

8.8 We have amended the definition of "live entertainment services" (at article 25(4) of the PRS Order) in some key respects, in particular:

- a) We have included a reference to "an excluded service" in order to exclude other specific threshold services defined in the PRS Order from this definition. Having considered the proposed definition in more detail, we could see that there could be a reasonable argument that some other threshold services (as defined in article 4 of the PRS Order) which are provided by means of a call could also include content of such a nature that it is reasonable to assume it was produced solely or principally for the purposes of entertaining a consumer. To avoid this overlap in the definitions, we have therefore excluded a children's service, a competition or voting service, a remote gambling service and a society lottery service from being a live entertainment service.
- b) We have also amended the definition to say "includes" instead of "*consists in, or has as its principal feature*" when referring to content of such a nature that it is reasonable to assume that it was produced solely or principally for the purposes of entertaining a consumer. This is in line with changes to deal with potential definitional overlaps in the PRS Order (see paragraph 3.103 onwards) and is designed to make clear that any CPRS that includes this content will qualify as a live entertainment service, other than those that have been excluded.
- c) We have also amended the definition to specify that it will apply where there are at least two people on a call. This is different from what we proposed in draft PRS Order, where we referred to a call between two persons. However, the policy intention is to

reflect the position in Code 15,<sup>84</sup> which is that for live entertainment services a call can occur between more than two persons at a time. Our proposed definition in the draft PRS Order did not achieve this outcome and we have therefore decided to make this amendment.

- 8.9 As regards stakeholder comments, we note that article 25 does not apply to society lottery services (see paragraph 8.34) and, therefore, we have not made any amendments in light of aimm and Donr Ltd’s comments.

## Prohibition on providing some CPRS to persons under the age of eighteen (article 47)

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### Consultation proposals

- 8.10 We proposed to prohibit merchants from providing certain types of CPRS (see paragraph 8.5) to consumers under the age of eighteen.

### Stakeholder comments

- 8.11 Mobile UK said that it wanted this requirement to change from being an outright prohibition of provision to under 18s to a requirement that *“all reasonable endeavours must be made to ensure that provision is not made [to under 18s]”*. It added that if this change was not made, *“it could elevate the risks levels beyond what is acceptable to MNOs to allow some services to go live which in turn would have a significant impact on the market”*.
- 8.12 aimm, BBC Children in Need and Cancer Research UK flagged that our consultation document was incorrect as it described this article as applying to all subscription services. They pointed out that our consultation document should have instead reflected what was in the proposed article, which was *“a subscription service (see article 8) comprised in a sexual content service”*. MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm.
- 8.13 Action 4 Limited commented that it is *“perverse that you can have sex at 16 years old in this country and until the Act of 2022 (The Marriage and Civil Partnership (Minimum Age) Act 2022) you could get married with consent of your parent or guardian, but you cannot phone or work on an adult phone line.”*

### Our decision

- 8.14 We have decided to largely proceed with our proposal, except for the removal of the reference to *“a subscription service (see article 8) comprised in a sexual content service”*. See paragraphs 3.103 – 3.106 where we set out why this was removed.
- 8.15 Regardless of this change, we are grateful to those who responded for bringing to our attention the oversight in how we referred to this service in the consultation document. They are correct in their understanding of what we intended to say, i.e. that this article in the draft PRS Order did not apply to all subscription services but only a subscription service comprised in a sexual content service. The draft PRS Order reflected the correct position.

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<sup>84</sup> See paragraph D.2.42 of Code 15.

- 8.16 In regard to the article more generally, we note that this requirement operates alongside the requirement to undertake age verification for the same services (see paragraphs 8.20 – 8.38 below).
- 8.17 Our assessment is that the risk of harm to those under 18, if they were to access the services listed in paragraph 8.3 above, is high. These services are inappropriate for those under 18 because of their content and/or the potential for financial detriment that those under 18 may suffer because they are addictive and/or could lead to long term use of the services. As to Action 4 Limited’s comment about what those aged over 16 can do (or could do until recent legislative change), our duty is to protect users of CPRS from harm which of course includes those under the age of 18. As stated above, our assessment of the risk of harm to children is high and therefore we consider it appropriate for this prohibition to be in place, especially for sexual content services (which include the adult phone lines referred to by Action 4 Limited).
- 8.18 Whilst we note that this prohibition is not expressly contained in Code 15, we consider the age verification provisions under Code 15 are aimed at preventing children from using these services. This article replicates that by providing a prohibition which underpins the age verification requirements in article 48 of the PRS Order.
- 8.19 In relation to Mobile UK’s comments, we understand the concern here although we consider that given the high risk of harm to children if they were to access these services, it is necessary and proportionate to mandate a prohibition on usage, rather than introduce a qualification in the form of reasonable endeavours to prevent provision. We do not think that anything less than a prohibition affords those under the age of 18 the protection we consider is necessary given the high risk of harm from accessing these services. We also note that this should not be a change from the result of age verification requirements under Code 15, which if carried out properly will also ensure that those under the age of 18 are prevented from accessing these services. This means that, in practice, this should not impose an additional burden on MNOs where they were complying with the age verification requirements in Code 15.

## Age verification for some types of CPRS (article 48)

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### Consultation proposals

- 8.20 We proposed to require merchants of certain services to undertake age verification to ensure that consumers under the age of 18 do not use the specified CPRS.
- 8.21 In particular, we proposed that these merchants must:
- a) establish and maintain age verification procedures;
  - b) carry out these age verification procedures; and
  - c) keep written records of the age verification carried out for each consumer.
- 8.22 We proposed that this requirement would apply to the same services that merchants were prohibited from being provided to under 18s (see paragraph 8.5 above).
- 8.23 We also proposed to require merchants to refund any bill-payer who was charged as a result of someone under 18 using the service without undue delay after the merchant becomes aware of the fact.

## Stakeholder comments

### Scope of age verification requirements

- 8.24 Telecom2 Ltd said age verification should be applied to all age-restricted services and not just a few.

### Society lottery services

- 8.25 Donr Ltd said that article 25 of the draft PRS Order seemed to capture society lotteries under the definition of remote gambling services, but that this article did not match the “self-certification model” from the Gambling Act 2005. This appears to be a similar comment to that made by aimm, who said that the age verification requirements in this article did not match the self-certification model for society lotteries, where consumers certify they are over 16 and are refunded the cost of their entry if age verification then fails when it comes to a prize claim. MCP Insight Ltd agreed with, and supported, the comments and suggestions made by aimm.

### Record-keeping

- 8.26 Action 4 Limited and TÜV SÜD Limited said that the PRS Order should clarify the retention period for the written age verification records. TÜV SÜD Limited suggested that this should reference the Data Protection Act 2018 to avoid any doubt about record keeping. Action 4 Limited also said that they considered the requirement to keep such a record in writing of the age verification it carries out in respect of each consumer in article 50(4) of the draft PRS Order to be onerous, stating that for a PRS provider with millions of minutes per month and thousands of callers, it may be extremely difficult to do this especially if live recordings no longer have to be made in respect of certain services.

### Age verification for calls

- 8.27 Telecom2 Ltd noted that, where CPRS is used via a call, age verification is challenging and requested guidance as to what age verification is required in those circumstances.

### Under 18s’ access to age verified devices

- 8.28 VMO2 said that, because children may get access to devices that have already been age-verified, merchants are unable to ensure that age verification is 100% accurate despite their best efforts. It added that we should reflect this scenario in the PRS Order to ensure a proportionate approach.

## Our decision

- 8.29 We have decided to proceed with our proposals, with only minor textual changes. In particular, we consider that this requirement reflects paragraph 3.5.4 of Code 15 which requires merchants to ensure that appropriate age verification measures are in place for certain services. As a result, we consider that there will be little or no impact to providers from implementing this requirement compared to the current position under Code 15.

### Scope of age verification requirements

- 8.30 The age verification requirements apply to the types of CPRS listed in paragraph 8.5 above. These are the same types of services to which article 25 (Usage requirements for some types of PRS to be stated in promotion and marketing) and article 47 (Prohibition on providing some CPRS to persons under the age of eighteen) apply.



- 8.31 Therefore, and in response to Telecom2 Ltd’s comments, we consider that the age verification requirements do apply to all CPRS which are age-restricted under the PRS Order. In addition, we consider that these are essentially the same services for which Code 15 required age verification measures under paragraph 3.5.4.
- 8.32 Additionally, where a merchant places age-restriction on services not listed above in paragraph 8.5, they can choose to apply age verification to those services too. Providers should also have regard to the requirement under article 39 (see paragraphs 10.22 – 10.50) to take reasonable and proportionate steps to mitigate risks to vulnerable consumers. As set out in article 39(4), one specific characteristic which may make a consumer vulnerable is age. Therefore, age restrictions and age verification, may be a mitigation which providers put in place to protect customers in respect of other CPRS outside the scope of this article.

### **Society lottery services**

- 8.33 We note Donr Ltd’s comments that this article seems to apply to society lottery services. However, this article does not apply to society lottery services because they are not captured by the definition of remote gambling services in article 52(4) – they are excluded from this definition. Therefore, society lottery services are not within the scope of this article.

### **Record-keeping**

- 8.34 Record-keeping requirements are set out in article 56 of the PRS Order and will apply to age verification records (see paragraphs 12.116 – 12.126), meaning that merchants will need to keep these records for at least two years. While there is no corresponding provision for age verification record-keeping under Code 15, PRS providers will have been subject to the notice on data retention issued by the PSA<sup>85</sup> which states that “relevant data” (defined as all information held that relates to the promotion, operation, content and provision of any PRS) should be retained for a minimum of two years. Therefore, we do not consider the requirements around record-keeping in the PRS Order will impose additional, significant regulatory burdens on PRS providers, as they align with the current approach operated by the PSA.
- 8.35 Where PRS providers were previously relying on non-written records, they will need to consider how to produce written records to sit alongside their age verification procedures. Given the importance of ensuring that age verification occurs on the relevant services, we consider that a requirement to keep written records demonstrating such checks have happened is necessary to protect children from using the age-restricted CPRS which is within scope of this requirement.
- 8.36 We understand Action 4 Ltd’s concerns about keeping written records being onerous for certain PRS providers. Having considered this point, we believe that this is a requirement that can be managed by merchants. For example, either the systems used to receive and record those calls can make a note of the checks that are done in an automated manner, or the operator using such systems can make a note of the relevant checks.

### **Age verification for calls**

- 8.37 We note Telecom2 Ltd’s comments concerning the challenges of age verification for CPRS provided by means of a call. The PRS Order is not prescriptive about the procedures that

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<sup>85</sup> <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/For-business/Code-guidance-and-compliance/Other-important-documents/Code-15/Data-Retention-Notice-16-02-2022.ashx>

merchants have to put in place. This approach should enable them to design procedures that are appropriate and practical for the way in which a service is provided. Therefore, there is no particular form of age verification procedure that is required for CPRS access via a call.

### **Under 18s' access to age verified devices**

- 8.38 Article 48(2) of the PRS Order requires merchants to “*establish and maintain procedures for obtaining and verifying that a consumer intending to use the service is not under the age of 18.*” Merchants will need to ensure they have designed those procedures in a robust way, taking into account possible ways in which a service is accessed, in order to verify that a consumer of its service is not under the age of 18. As part of this requirement, they will also need to consider how they should address the possibility of children using a device which has already been age-verified to access the service, such as requiring age verification at relevant stages before the service can be used.

## **Promotion and marketing of children’s services (Article 23)**

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### **Consultation proposals**

- 8.39 We proposed to prohibit providers from offering children’s services unless they include certain information within their promotion and marketing material.
- 8.40 We proposed to define children’s services as:  
*“a threshold service that consists in, or has as its principal feature,  
a) the provision of content, or  
b) the making available of a facility,  
that is aimed at children or could reasonably be expected to appeal to a child”.*
- 8.41 We also proposed to explicitly apply the requirements to competition or voting services and recurring donation services making available a facility comprised in a children’s service.

### **Stakeholder comments**

- 8.42 Donr Ltd said that our proposed drafting was confusing. It noted that it thought our intention was that these requirements would apply to a recurring donation service targeted at children but that this was difficult to understand from our proposed drafting.
- 8.43 TÜV SÜD Limited said that there was no corresponding requirement for a CPRS provider to age verify users.
- 8.44 Cancer Research UK said that our proposed definition is unclear, could be contradictory and is inconsistent with the approach of other regulators such as the Fundraising Regulator and the Advertising Standards Authority.
- 8.45 Mobile UK commented that the MNOs remain comfortable with these provisions.

### **Our decision**

- 8.46 We have decided to proceed with our proposal to prohibit providers from offering a children’s service, unless any promotion and marketing includes certain information. The information that must be specified is:

- a) any applicable age requirements to use the service; and
- b) a statement informing the user that, if they are not the bill payer, they must get the bill-payer's consent before using the service.

- 8.47 We have, however, amended our definition of “children’s services” from that consulted on, to provide additional clarification as to our definition. In addition to now using “includes” instead of “consists in, or has as its principal feature” in common with other CPRS definitions in the PRS Order (see paragraph 3.105 onwards), article 23 of the PRS Order does not now make explicit reference to competition or voting services or recurring donation services as we had proposed in our consultation. This is because we consider that our final definition of children’s services is sufficiently clear that these requirements will apply to such services where they are aimed at children, or could reasonably be expected to appeal to a child, without explicitly referencing them.
- 8.48 In relation to TÜV SÜD Limited’s comments, we note that the requirements in relation to age verification are contained in article 48 (see paragraphs 8.20 – 8.38). We would add that children’s services do not require age verification because there is a low likelihood of harm arising from children using these services as opposed to the potential for greater harm from a child using services which are not aimed at or likely to appeal to a child. Therefore, it is only necessary to verify the age of users of services which are likely to cause harm to those under a certain age, in this case, children.
- 8.49 In relation to Cancer Research UK’s comments about the definition, we note that we are simply reflecting Code 15 which refers to “*a service aimed at or likely to appeal to children*”.<sup>86</sup> Therefore, we are reflecting essentially the same concept as in Code 15 which means that any service which could reasonably be expected to appeal to a child is caught by this requirement.<sup>87</sup> We also consider that with the amendments making reference to “includes”, as well as removing the references to competition or voting service, and recurring donation service, this definition is now more streamlined and easier to understand.

## Requirements for CPRS provided to children (article 49)

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### Consultation proposals

- 8.50 We proposed to require merchants of children’s services to ensure that the service is not provided in a manner which exploits the credulity, inexperience or sense of loyalty of any child. We also proposed to prohibit merchants from charging above certain thresholds.<sup>88</sup>

### Stakeholder comments

- 8.51 Cancer Research UK was concerned that donation services might appeal to children even though they are excluded by the merchant’s terms of service. It considered, therefore, that

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<sup>86</sup> See paragraph 3.5.5 of Code 15.

<sup>87</sup> We note Donr Ltd made a similar comment with regards to *Reminder notices of cancellation of charges for recurring donation services (deleted article)*, see paragraphs 7.21 – 7.27.

<sup>8888</sup> Where the service is not a subscription, the thresholds are £5 per single transaction and £20 per month irrespective of the number of transactions within the month. Where the service is a subscription, the threshold is £5 per month. These thresholds reflect paragraphs 1.10 and 1.11 of Annex 1 of Code 15.

charities would have to comply with this article. In their view, this would be difficult to do because no age information is given by the consumer when they donate via SMS message. This means that the price cap would have to be in place for all donations and that would impact how much the charities can receive via CPRS.

## **Our decision**

- 8.52 We have decided to proceed with these requirements as proposed but have decided to apply these requirements to merchants who provide a CPRS to a child as opposed to children's services, as proposed in article 44(1) of the draft PRS Order.
- 8.53 We have decided to change the reference from providing "children's services" to providing "a CPRS" to a child as this achieves the policy objective of ensuring that children who are provided with a CPRS are not exploited nor charged above certain thresholds. This ensures that other CPRS which may be likely to appeal to a child but which are not actually provided to a child in practice (perhaps owing to other regulations e.g. fundraising) do not have to comply with the charging thresholds which might be problematic. For example, in the case of charity donations, children do not use these services but, as they may appeal to children, charities would have come within the scope of this article as previously proposed in the draft PRS Order. We consider that our change in that regard in the PRS Order addresses the concerns raised by Cancer Research UK in relation to this article.

# 9. Competition or voting services

- 9.1 This section sets our decisions in respect of competition or voting services. These requirements are contained in Part 6, Chapter 6 of the PRS Order.
- 9.2 In summary, we have decided to:
- a) use a slightly different definition of competition or voting services to that proposed (see paragraphs 9.4 – 9.13);
  - b) not proceed with our proposal to require that merchants must not encourage consumers to choose one particular way of using a competition or voting service over another (see paragraphs 9.14 – 9.19);
  - c) proceed with our proposal to require that valid tickets of entry must be given to consumers who use the service before the time limit expires but we have added an exception relating to circumstances outside of the merchant’s control. We have also removed the requirement that a confirmation of the entry must be given in writing, it can now be given in a way appropriate to the means of communication used to make the entry (see paragraphs 9.20 – 9.32);
  - d) proceed with our proposal to require that providers must consider all valid entries fairly and give prizes to consumer free of charge (see paragraphs 9.33 – 9.36); and
  - e) proceed with our proposal to prohibit merchants from charging consumers for entries made after the time limit has expired (see paragraphs 9.37 – 9.49).
- 9.3 We have also made various drafting improvements and clarificatory changes to the draft versions of the articles. See Annex 3 – Table of Changes for a comparison of the draft and final versions of each article and paragraphs 3.103 – 3.106 onwards for changes to definitions made throughout the order.

## Meaning of competition or voting service (article 41)

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### Consultation proposals

- 9.4 We proposed to define a competition or voting service as a threshold service which makes available to consumers a facility for entering a competition, claiming a prize, registering a vote or recording a preference. We proposed to exclude betting (within the meaning of sections 9 to 11 of the Gambling Act 2005) to prevent a definitional overlap with remote gambling services.
- 9.5 We also proposed to explicitly state that a children’s service which makes available a facility for entering a competition, claiming a prize, registering a vote or recording a preference was to be read as being a competition or voting service.

### Stakeholder comments

- 9.6 Mobile UK agreed with the extension of controls to children’s competitions.
- 9.7 Donr Ltd wanted us to clarify whether our definition captured society lotteries given the exclusion of betting services.

- 9.8 Global was concerned that referring only to competitions would lead to a presumption that competition or voting services did not include “Free Prize Draws” (where payment is not mandatory for entry and premium rate services are used as an additional route of entry alongside a free route). It noted the UK Gambling Commission makes a distinction between “Prize Competitions” and “Free Prize Draws”.
- 9.9 Action 4 Limited suggested that competition law requires clarity as to whether a competition is based on chance or based on an element of skill although it considered that, in reality, reputable providers would be clear as to which kind of competition the service was.

## Our decision

- 9.10 We have decided to make some changes to our proposed definition in light of stakeholder comments. The PRS Order now defines a competition or voting service in article 41(1) as:
- “a threshold service (other than a remote gambling service or a society lottery service) that includes the making available of a facility for—*
- a) entering a competition or claiming a prize, or*
  - b) registering a vote or recording a preference”.*
- 9.11 We consider that this definition is clearer than our proposal in setting out the types of services that should be subject to the rules for competition or voting services. Our updated definition, therefore:
- a) removes the reference to children’s services to address the definitional overlaps as set out in paragraphs 3.103 onwards. We consider that it is clear from the definition that such services are subject to the rules on competition or voting services without the explicit reference;
  - b) removes the reference to betting and the Gambling Act 2005. Instead, we explicitly exclude gambling services; and
  - c) adds an explicit exclusion for society lottery services because for the purpose of this article (and all articles relating to competition or voting services), society lotteries are substantially equivalent to remote gambling services. Therefore, as the remote gambling services are explicitly excluded, we have decided to explicitly exclude society lotteries as well.
- 9.12 In relation to Global’s point on “Free Prize Draw”, we consider our definition is clear as to which services are caught by the definition of competition or voting service. Firstly, our definition states that competition or voting services are threshold services as defined in article 4 (which refers to the charging thresholds in article 3). This means that even if something is a “Free Prize Draw”, it is caught by our definition only if there is a charge for entry into that draw via CPRS and the service satisfies the definition in article 4. Secondly, we note that our definition is clear in setting out that it covers entering a competition and claiming a prize.
- 9.13 We note in relation to Action 4 Limited’s comment, that our definition does not set out what a competition is because we rely on the natural definition which covers both skill and chance.

## Different ways of making use of competition or voting services

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### Consultation proposals

- 9.14 We proposed to require that, where a merchant offers different ways of using a competition or voting service, the merchant must not encourage consumers to choose one particular way over another.

### Stakeholder comments

- 9.15 aimm, BBC, BBC Children in Need and Global noted the current industry practice of using links to website pages to make available the full information about the different ways of making use of a competition or voting services. They noted that this may be more useful to consumers where time or space is limited than trying to include all the information up front. The BBC added that it believed this current approach would not be something that would cause consumers to make transactional decisions they would not otherwise make.
- 9.16 ITV was concerned about the impact on its business of our proposal and considered that our proposal was a new requirement that should be supported by an impact assessment. It noted that *“having the ability to incentivise certain routes of entry is important to reduce the overall costs of running competitions.”*
- 9.17 MCP Insight Ltd said that it agreed with and supported the comments and suggestions made by aimm regarding our proposed approach for competition or voting services.

### Our decision

- 9.18 We have decided not to proceed with this proposed requirement.
- 9.19 This article was intended to reflect paragraph 3.13.8 of Code 15 which required all routes of entry (into a competition or voting service) to be presented and displayed with equal prominence. Having considered stakeholder comments, we no longer consider it necessary to ensure merchants do not encourage consumers to choose one particular way of using a competition or voting service over another so long as consumers are fully aware of different ways of entering the service. This is achieved by the requirements relating to the provision of pre-contract information in the PRS Order (see article 26 and Schedule 3 paragraphs 2(d) and 2(e)).

## Valid ticket of entry for competition or voting services (article 42)

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### Consultation proposals

- 9.20 We proposed to require a valid ticket of entry to be given to a consumer who has used the facility made available in a competition or voting service before the time limit expired and has met any relevant conditions applicable to the service.<sup>89</sup> Only consumers with valid

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<sup>89</sup> Note that the time limit and relevant conditions will have been provided previously as per our general pre-contract information requirements under Article 26.



tickets of entry should have their votes taken into account or acquire a chance of winning the competition.

- 9.21 We also proposed that, where the method of entry was a phone call, any call that had started during the specified time period must be considered valid even if the call had not been concluded prior to the end of the specific time period.
- 9.22 As part of this article, we proposed that providers would have to give a confirmation in writing to consumers that they had made a valid entry without undue delay.

## Stakeholder comments

- 9.23 Mobile UK supported our proposal in relation to valid tickets of entry.
- 9.24 aimm, BBC, Channel 4, Channel 5 and ITV raised concerns that our proposals would require merchants to consider entries as valid once the consumer has simply sent an entry rather than when the merchant has received the entry. In that regard, aimm, Channel 4 and Channel 5 gave the example of a merchant not receiving an attempted entry on time, even if it was sent before the time limit has expired, because of an outage or network latency.
- 9.25 In addition, aimm, Channel 4 and BBC said that it would not be possible to issue a valid ticket of entry in writing to a consumer who has made use of the facility by calling the merchant.
- 9.26 The BBC suggested drafting changes to this article in order to ensure that entries via SMS message were treated equally to those made via a relevant telephone number.

## Our decision

- 9.27 We have decided to proceed with the requirements largely as proposed. However, taking into account stakeholder feedback about the need to receive entries, we have decided to add an exception relating to circumstances outside of the merchant's control.
- 9.28 Specifically, where a consumer's use of the facility before the time limit expires is unknown to the merchant due to circumstances outside the merchant's control, the merchant does not have to give a valid ticket of entry. In such circumstances, and once the merchant becomes aware of consumers' attempt to use the facility, the merchant must instead inform the consumer that their attempt to enter was unsuccessful and either confirm that no charge was made or that a charge was paid by the consumer but that they will be refunded.<sup>90</sup>
- 9.29 We consider that this addresses the concerns raised about merchants having to consider an entry valid if they have not received it because of, for example, a power outage or network latency.
- 9.30 We have also decided to take a different approach than previously proposed in relation to how confirmation is provided to a consumer that they made a valid entry. Article 42 does not require that such a confirmation is given in writing. Instead, the confirmation must be given in a way appropriate to the means of communication used. For example, where the consumer uses a voice call, the confirmation could be given via an automated message during the call.

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<sup>90</sup> Note that article 45(2) of the PRS Order prohibits the merchant from imposing any charge on the consumer in relation to the consumer's attempt to use the facility.

- 9.31 Regarding BBC's comments and associated drafting changes, we consider that these are based on a misunderstanding of the purpose of paragraph 3 of this article. This paragraph makes clear that, in the case of a consumer's use of a relevant telephone number to attempt to enter the competition or voting service and this use occurs before the end of the entry window, the merchant is to treat the consumer as having met the time limit even if the time limit expires while the consumer is on the call. No equivalent provision needs to be made for SMS messaging because either the SMS message is received before the time limit has expired or not. There is no time duration for the connection made by an SMS message as there is for a call.
- 9.32 In addition, we note that paragraph 4 of this article deals with the scenario, among others, of the merchant not receiving the SMS message entry before the time limit has expired even though the consumer sent the SMS message before the entry had expired. Whatever the cause of the delay in receiving the SMS message entry, insofar as it is unknown to the merchant due to circumstances outside the control of the merchant, the entry is unsuccessful. Therefore, we have decided not to adopt the BBC's drafting.

## **Consideration of a valid ticket of entry for competition or voting services and claiming prizes free of charge (Articles 43 and 44)**

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### **Consultation proposals**

- 9.33 We proposed that merchants would need to consider all valid entries fairly. We explained that this would mean that all valid tickets of entry into a competition must be given equal chance of winning any prize that is offered, and all valid tickets of entry to register a vote or preference are taken into account when deciding the outcome of the competition or vote.
- 9.34 We also proposed that we would require that merchants provide to consumers any prize which has been won free of charge.

### **Stakeholder comments**

- 9.35 We did not receive any comments in relation to our proposals on consideration of valid tickets of entry and claiming free prizes.

### **Our decision**

- 9.36 We have decided to proceed with these requirements as proposed. We did not receive any responses about this provision.

## Attempted use of a facility comprised in a competition or voting service after a time limit has expired (Article 45)

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### Consultation proposals

- 9.37 We proposed that, where a consumer attempted to use a competition or voting service after the time limit had expired, the merchant would be prohibited from imposing a charge on the consumer.
- 9.38 We also proposed that, once the merchant becomes aware of consumers' attempt to use the facility, the merchant must inform the consumer that their attempt to enter was unsuccessful and either confirm that no charge was made or that the charge was paid by the consumer but that they will be refunded.

### Stakeholder comments

- 9.39 aimm and Global noted that the PSA's equivalent provision permits the merchant to inform consumers that their entries were unsuccessful (or invalid) by stating "in advance" that entries received outside of the entry window will not be entered.<sup>91</sup> They argued that our proposals should similarly allow merchants to discharge this responsibility in the pre-contract information.
- 9.40 They also mentioned that, as these services can open and close quickly, our proposals could lead to difficulties in offering a new competition or voting service on the same telephone numbers alongside complying with the requirement to notify consumers of any failed attempt to enter the previous service.
- 9.41 In addition, aimm and Global said that our proposed requirement did not state how long after the time limit had expired the merchant would be required continue to let consumers know of any unsuccessful attempt. Global said that under our proposal consumers may become frustrated about failed attempts (with no explanation of the reasons for the failure) and this would drive consumer harm and complaints to the merchant.
- 9.42 Both aimm and TÜV SÜD Limited asked for clarifications in relation to access charges. aimm asked what would happen should a consumer use the service after the service has closed and whether they would still be charged the access charge. TÜV SÜD Limited made a similar point relating to where customers are charged an access charge in this situation, meaning that consumers would be paying to access something they can no longer enter.

### Our decision

- 9.43 We have decided to proceed with our proposed approach.
- 9.44 Article 45 gives consumers clarity and certainty as to whether their attempts to use the facility after the specified time limit were successful or not and whether any refund is due. We consider that being unaware of the success or not of this attempt will lead to consumer harm because, in the absence of information either way, the consumer may expect that there is a chance of them winning a competition even if the attempted entry was

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<sup>91</sup> See paragraph 3.13.5 of Code 15.

unsuccessful. Or, as in the case of a voting facility, the consumer may expect to have had their vote recorded and taken into account. Therefore, we consider that this requirement is needed to address the risk of consumer harm arising from consumers not knowing that their attempted entry has been unsuccessful.

- 9.45 We note Global's view that this requirement will cause consumer frustration from failed attempts. However, we consider this is an unavoidable outcome of circumstances which are beyond the control of the merchant such as a consumer not following fully the instructions for entry or network latency delaying the arrival of the mobile text message to the merchant. Further, we think that any frustration felt by consumers will be outweighed by the benefit to consumers of knowing that an attempted entry has been unsuccessful and that a refund will be issued (or no charge has been taken). We think that consumers want to know whether an attempted use of the service has been successful or not.
- 9.46 It is also important for consumers to know whether they have been charged or not without delay after their attempted entry. We acknowledge the consumer's phone bill will convey this information, but the consumer may not have immediate access to this billing information. In addition, if the phone bill does not explicitly state that an attempt has been unsuccessful, the consumer would have to infer from the absence of a charge for that service that no such charge was made.
- 9.47 We do not consider that informing consumers "before the fact", as suggested by some respondents, provides adequate protection for consumers. This would only tell consumers that, in principle, late entries will not be considered. Individual consumers will be concerned about their individual attempted entry after the fact. We consider that, in order to ensure they are adequately informed about the success (or otherwise) of their entry, they should be able to take comfort in the fact that they will be informed if their attempted entry was not successful. We note that merchants must provide the conditions of entry as part of the pre-contract information under the PRS Order (see article 26 and Schedule 3(2)(d) and (e)) and, therefore, consumers will be given information about the time limit in any case.
- 9.48 Our requirements do not seek to be prescriptive and precise about to the exact timeframes by which a merchant must comply with the obligation to notify a consumer of an unsuccessful attempt to enter the service. The phrase "*without undue delay after the merchant becomes aware of the consumer's attempt*" requires a case-by-case approach by merchants, taking into account the individual circumstances and conditions of the service in question. We consider that this flexibility is necessary to ensure that providers can comply with this requirement in relation to all kinds of competition or voting services (including those which are open for only a brief period of time).
- 9.49 In relation to aimm's and TÜV SÜD Limited's queries on access charges, the PRS Order does not set out requirements relating to the access charge except that information about any additional charges (such as an access charge) are made available to consumers before the consumer enters the CPRS contract. We also consider that article 45 is clear that it applies in relation to the consumer's attempt to use the facility. Access charges are beyond the control of merchants and, therefore, the requirements under this article on merchants not to impose any charge on the consumer in relation to the consumer's attempt to use the facility can only refer to charges relating to the competition or voting service itself, not access charges. We note that any use of an ECS by a consumer, such as when an attempt to enter a competition or voting service is made even if it is unsuccessful, would incur any

relevant access charge as per the terms of the contract between the consumer and the network operator for the provision of the ECS (which is beyond the control of merchants).

# 10. Other consumer protection measures

- 10.1 This section sets out our decisions in respect of general consumer protection measures and consumer complaints. At the end of this section (see paragraphs 10.102 onwards), we also address other stakeholder comments which relate either to our proposals not to reflect certain existing provisions from Code 15 in the PRS Order or which relate to other suggestions or comments raised by stakeholders.
- 10.2 In summary, we have decided to proceed with our proposals to:
- a) require that information provided by a PRS provider in carrying out a regulated activity must not be likely to mislead a consumer (see paragraphs 10.3 – 10.18);
  - b) require that merchants provide their service to consumers within a reasonable time (see paragraphs 10.19 – 10.21);
  - c) prohibit PRS providers from undertaking any regulated activity unless they take reasonable and proportionate steps to identify potential risks to the interests of vulnerable consumers, and to mitigate any identified risks (see paragraphs 10.22 – 10.50);
  - d) prohibit PRS providers from carrying out any regulated activity that contains material likely to incite violence or hatred against a group of persons or member of a group of persons based on specific characteristics. PRS providers must also take all reasonable steps to prevent the risk of the regulated activity causing harm to consumers (see paragraphs 10.51 – 10.67);
  - e) prohibit merchants from providing CPRS until they have met requirements related to consumer complaints and enquiries, in particular having written policies and procedures (see paragraphs 10.68 – 10.86);
  - f) require PRS providers to make and keep a written record of all evidence necessary to substantiate claims made in promotion and marketing of a CPRS (see paragraphs 10.87 – 10.89);
  - g) require merchants providing professional advice services to take reasonable and proportionate steps to ensure that anyone working as part of the service to give such advice or assistance to consumers has the qualifications and experience necessary to do so (see paragraphs 10.90 – 10.93); and
  - h) require merchants of remote gambling services to make available to the consumer a record of the consumer's use of the service (see paragraphs 10.94 – 10.101).

## Misleading information (article 22)

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### Consultation proposals

- 10.3 We proposed to prohibit PRS providers from carrying out any regulated activity (whether that activity is the provision of CPRS or promotion and marketing) that is likely to mislead consumers (either by containing misleading information or omitting material information). Material information was defined as the information in Schedule 3 (pre-contact information).

## Stakeholder comments

- 10.4 A2B Telecom Ltd, Action 4 Limited, aimm, Channel 5, Donr Ltd and Telecom2 Ltd were concerned that the concept of an “average consumer” was overly subjective and required greater clarity. MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm. Action 4 Limited and aimm, together with a number of other responses, also requested clarification as to the definition of “average vulnerable consumer”. Action 4 Limited noted that there is a definition of vulnerability in law, however all consumers or humans can be vulnerable at some point in their lives. It queried who will be the arbitrator of what is the determination of the word “reasonably”, which we assume to relate to the definition of “vulnerable consumers” (which is discussed in more detail from paragraph 10.22 below). aimm also said it considered that *“judging what an average consumer might be – within the breadth of considerations of vulnerability – be very difficult or at the very open to a high level of subjectivity.”*
- 10.5 Donr Ltd said that the draft PRS Order at article 22(5) did not make it clear what sample size would be needed to create an “average” view from a consumer. It queried whether it would be acceptable to assume the service is not misleading if two people reviewed a service and thought it was clear and not misleading. It said that the PRS Order should better state the expectations in relation to determining an appropriate number of people needed to create an “average” view that a service is not misleading.
- 10.6 Mobile UK said that our proposals at article 22(3) and (4) of the draft PRS Order alongside the application of risk assessments under our due diligence and risk management rules may lead to the value chain returning to “old style WAP pages T&Cs”<sup>92</sup>. TalkTalk had similar concerns, stating that the consumer protection requirements in Part 6 of the draft PRS Order may *“introduce increased subjectivity on the part of PRS providers (including network operators) in risk assessment requirements and whether specific consumer information could be deemed to be misleading.”*

## Our decision

- 10.7 We have decided to proceed with our proposals about misleading information, but we have made some drafting changes to make the requirements clearer in light of stakeholder comments. In doing so, we have also considered stakeholder comments which requested clarity as to the “average consumer” which is referred to throughout article 22. Code 15 contains a general requirement at 3.3.2 that PRS providers and their services must not mislead or be likely to mislead consumers in any way. The Code contains further detail in guidance. In the PRS Order, we considered it to be necessary to add clarity as to when the inclusion or omission of information would be considered misleading.
- 10.8 The concept of the “average consumer” can be found in other consumer-focused legislation, notably in the DMCC Act.<sup>93</sup> As explained earlier in this document (see paragraph 6.17), the DMCC Act specifically excludes subscription contracts for PRS from the requirements in Part 4, Chapter 2 of the DMCC Act.<sup>94</sup> The Consumer Protection from Unfair

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<sup>92</sup> We understand Mobile UK to be referring to Wireless Application Protocol: [https://en.wikipedia.org/wiki/Wireless\\_Application\\_Protocol](https://en.wikipedia.org/wiki/Wireless_Application_Protocol).

<sup>93</sup> At the time of publication of this document, the DMCC Act is partially in force. Most of the DMCC Act will be brought into force by secondary legislation.

<sup>94</sup> See paragraph 6 of Schedule 22 of the DMCC Act.



Trading Regulations 2008 (“the 2008 Regulations”) also provided a definition of “average consumer” which is adopted in an amended form by the DMCC Act. We expect PRS providers to be familiar with the 2008 Regulations given that many PRS providers have been required to comply with those regulations.<sup>95</sup>

10.9 The guidance to the 2008 Regulations explains that “average” does not mean a statistically average consumer, and that the concept of the average consumer has been developed in the case law of the European Court of Justice.<sup>96</sup> Therefore, for existing PRS providers under Code 15, this concept will be something they should be familiar with to the extent that they are obliged to comply with those regulations.

10.10 The Explanatory Notes to the DMCC Act also explains the definition of an “average consumer” in more detail. It states:

*“While the standard is objective in character, it recognises that the average consumer’s level of attention is likely to vary according to the category of goods or services in question. Also, for example, it recognises that an average consumer is likely to not be a technical expert. The average consumer definition is not a statistical test or statistical average.”<sup>97</sup>*

10.11 Article 22(5) of the PRS Order sets out how references to an “average consumer” in that article are to be read. It does so in a similar way to the DMCC Act and the 2008 Regulations. In particular, article 22(5) makes clear that an “average consumer” is one who is:

- a) reasonably well informed,
- b) reasonably observant, and
- c) reasonably circumspect.

10.12 Vulnerable consumers are defined separately in the PRS Order at article 39(4). Several responses to the consultation queried what is meant by the “average vulnerable consumer”. We have clarified article 22, which previously stated at paragraph (7) of the draft PRS Order:

*“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 (and the attributes of the average consumer in paragraph (5) are to be read accordingly).”*

10.13 However, article 22(6) now reads:

*“Where a regulated activity is directed at a particular group (including a group of vulnerable consumers), references to the average consumer are references to an average member of that group (and the attributes of the average consumer in paragraph (5) are to be read accordingly).”*

10.14 We consider that our redrafting of this provision now clarifies that, where regulated activity is “directed” at a particular group, including a group of vulnerable consumers (see article 39 of the PRS Order as well as the Ofcom guidance on vulnerable consumers<sup>98</sup>) references to the average consumer in article 22 will be read as if the average consumer were a member

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<sup>95</sup> The 2008 Regulations will be revoked by the DMCC Act – see section 251 of the DMCC Act. At the time of publication of this document, this section is not yet in force.

<sup>96</sup> [Consumer protection from unfair trading - guidance - oft1008 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/oft1008) – page 69.

<sup>97</sup> <https://www.legislation.gov.uk/ukpga/2024/13/notes/division/9/index.htm> – paragraph 1434.

<sup>98</sup> <https://www.ofcom.org.uk/phones-and-broadband/vulnerable-customers/treating-vulnerable-customers-fairly/>

of that group. This closely mirrors the position under the 2008 Regulations<sup>99</sup> and the DMCC Act.<sup>100</sup> We consider that it should be clear to the PRS provider in question whether they are directing their regulated activity at a particular group of consumers, including vulnerable consumers.

- 10.15 We note stakeholder comments that the concept of the “average consumer” is overly subjective. We disagree, since the use of the word “reasonably” clearly signals that an objective test applies in this context. The article is not prescriptive about how an average consumer is to be determined by the PRS provider because of the need to take into account any relevant circumstances when determining how information should be presented to consumers, for example, the context of the service, its users and the way in which it is provided. The definition recognises that the average consumer is not likely to be a technical expert and that is not a statistical test or statistical average. We therefore consider that article 22 of the PRS Order provides sufficient clarity as to the factors that PRS providers should take into account when presenting information to consumers, and this article closely mirrors other consumer focused legislation.
- 10.16 We consider that this requirement also gives providers flexibility as to how information is provided to the consumer so long as it does not mislead a consumer. In response to Mobile UK’s concern that the value chain may be encouraged, as a result of the requirements in this article and application of risk assessments, to return to “old style WAP pages T&Cs”, PRS providers will need to determine how to provide information to consumers in a way which complies with this article. They should do so by taking into account all other relevant requirements in the PRS Order relating to information, such as pre-contract information requirements (see paragraphs 6.4 – 6.19).
- 10.17 Our view is that our requirements should generally afford flexibility in terms of how information is provided to consumers, although certain key information must be provided in specified ways.
- 10.18 We also note TalkTalk’s concerns about subjectivity in value chain risk assessments concerning what might be deemed to be misleading and the potential for increased challenge. As explained above, we consider that the requirements in this article enable an objective assessment to be undertaken by PRS providers. We discuss TalkTalk’s comments in our decision relating to risk assessments in sections 5 (see paragraph 5.53).

## Requirement to provide a controlled PRS within a reasonable time (article 30)

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### Consultation proposals

- 10.19 We proposed that merchants should provide the service to the consumer within a reasonable time. We also proposed that this would only apply in relation to CPRS that does not expressly fix the time for the service to be provided in the contract.

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<sup>99</sup> See Regulation 2 “interpretation” for the definition of “average consumer”.

<sup>100</sup> See section 247 of the DMCC Act “*Meaning of “average consumer”: vulnerable persons*”.

## Stakeholder comments

10.20 We did not receive any comments from stakeholders in relation to this proposal.

## Our decision

10.21 We have decided to proceed with our proposals in relation to providing a CPRS in a reasonable time. However, in the PRS Order we have amended article 30(2) to remove reference to the contract between a merchant and a consumer including a term that the merchant must provide the service within a reasonable time. On reflection, we consider that it is sufficient for the purposes of the PRS Order to simply impose a requirement on merchants that the service must be provided within a reasonable time, leaving consumer protection legislation (such as the Consumer Rights Act 2015) to apply to regulate contracts more generally where a merchant fails to do this.

## Vulnerable consumers (article 39)

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### Consultation proposals

10.22 We proposed to prohibit PRS providers from undertaking any regulated activity unless that PRS provider had regard to the interests of vulnerable consumers.

10.23 Our proposal had a broader scope than the equivalent requirements in Code 15 which imposed vulnerable consumer requirements only on intermediaries and merchants.

### Stakeholder comments

#### Scope - application to all providers

10.24 Infomedia broadly supported the widening of the requirements to protect vulnerable consumers to all providers. However, it said our consultation proposals did not set out evidence as to how widening the scope in this way will better protect consumers. It was concerned that our proposal would create an unnecessary regulatory burden on those companies in the value chain who do not have contact with customers, such as technical service providers or creative design agencies, for whom it would not be reasonable to expect full vulnerable customers policies. In particular, it was concerned that widening the scope would have a “dampening effect” in the market by discouraging market entry and competition and drastically reducing the pool of these “ancillary service providers”. Infomedia said it believed the current arrangements provide more than sufficient protection “*whereby such providers agree contractually with merchants, intermediary provider or MNOs to comply with those MNO and/or intermediary vulnerable customer policies and processes without needing separate policy documents of their own*”.

#### Scope - definition of vulnerable consumer

10.25 Action 4 Limited broadly agreed with our proposal. However, it said that the test for vulnerability is subjective and that everyone is vulnerable in some way or another at some point in their lives. It also said that consumers use CPRS of their own free will and, while some in industry provide refunds for those who genuinely use CPRS in error, it is unfair for industry to be held accountable for consumers who are not genuine in their use of CPRS. It said, “*this is not to say that we do not support consumer refunds, and therefore in principle we agree with this section*”.

- 10.26 BT said that it “supported the principles of identifying and protecting vulnerable consumers”, but also referred to aim’s comments on article 22 of the draft PRS Order that judging what an average consumer is could be very difficult or at least open to subjectivity. BBC Children in Need made the same comment but said that it was “well versed in the consideration of vulnerable consumers within the value chain of phone-paid services, as this is a Code 15 standard”.
- 10.27 Donr Ltd said that it would not be feasible to operate a service at scale with a full range of safeguards for each type of vulnerable consumer. It also suggested that a balanced approach would be to offer refunds to such consumers or to restrict future access to the service.
- 10.28 Google said that the definition of “vulnerable consumers” encompasses a very broad range of potential consumers who have an extremely varied set of needs and circumstances. Owing to this, Google added (and Donr Ltd made this same point) that it would not be technically or practically feasible for Google to assess each individual with regards to vulnerability and doing so would raise “significant user privacy concerns”.

### Responsibility of app stores

- 10.29 Google said that our proposals do not detail what is meant by “have regard to” or what compliance with this article looks like in practice for intermediaries (in general) and app stores (in particular). It also sought confirmation of our expectations of intermediaries/ app stores under the article. It summarised what it believed to be the position, which is that it:
- “i) establish and maintain reasonable and proportionate processes and/or policies that consider general identified risks to the categories of “vulnerable consumers” listed in draft Article 40 at suitable intervals (to be determined by the intermediary/app store itself); ii) try to mitigate any identified risks to those categories of “vulnerable consumers”; and iii) maintain written policies/procedures evidencing those processes/considerations.”*
- 10.30 Google requested whether, if their understanding accurately reflects Ofcom’s expectations under the draft article, this could be clarified in the final text of the PRS Order.

### General comments

- 10.31 The PSA Consumer Panel said that Code 15 and its associated vulnerable consumer guidance provides a good level of protection to consumers who may be vulnerable. The PSA Consumer Panel, therefore, welcomed our intention to reflect these requirements as well as the proposals under draft article 40 (article 39 in the PRS Order) to strengthen regulation in the area of vulnerable consumers. In particular, it supported our intention to prohibit regulated activity “until proper and demonstrable regard for vulnerable consumers had been met” as well as our broadening of the scope of the vulnerable consumer requirements across the entire value chain.
- 10.32 CCP/ACOD commented more generally on our proposals, noting that the PSA’s remit provides Ofcom with another lens through which to look at vulnerability, and that there are some clear linkages between PRS and Ofcom work in respect of online safety and making sense of media. It therefore encouraged us to ensure that we share knowledge and experience across our own teams and learn from other sectors.<sup>101</sup>

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<sup>101</sup> In particular, it said that it would “welcome an updated to Ofcom’s Treating Vulnerable Customers Fairly guide to ensure that communications providers make allowances for consumers duped by ICSS providers into unexpectedly high call costs”.

- 10.33 British Red Cross agreed with our proposals and added that it would be helpful if we were to produce accompanying guidance about how to interpret these requirements.

## Our decision

- 10.34 We have decided to proceed with the definition of vulnerable consumers and the requirements in this article substantively as proposed, although we have made some drafting changes to make the requirements even clearer.

### Scope - application to providers

- 10.35 We consider that it is important to ensure that the requirements relating to vulnerable consumers cover all PRS providers who carry out any regulated activity, including promotion and marketing. Our view is that it is appropriate for our requirements in this respect to apply to network operators as well as to intermediaries and merchants. In particular, we note that many different PRS providers are present across the value chain, and the distinction between promotion and marketing and provision of services may, at times, not be clearly distinguishable from the perspective of the consumer. This is because in some instances, the promotion of the service is simultaneous with the provision of pre-contract information and may be immediately followed by the consumer entering into the contract for the CPRS.
- 10.36 With regards to comments raised by Infomedia, we note the obligations under this article apply to “PRS providers” as defined by the PRS Order and that it is not clear whether the “ancillary service providers” (technical service providers or creative design agencies) noted by Infomedia would meet this definition. It is a matter for those “ancillary service providers” to determine whether or not they are in scope of this definition in light of the precise activity they are carrying out. We also note the possibility of our provisions in article 9(3) and (6) of the PRS Order being relevant to this matter, depending on the activity and the arrangements in place between providers.<sup>102</sup>
- 10.37 In relation to PRS providers, both intermediaries and merchants already have obligations in relation to vulnerable customers under Code 15 (see paragraphs 3.5.1 to 3.5.3 of Code 15) and network operators are required to have regard to the requirements under paragraph 3.4.11 of Code 15 relating to customer care for vulnerable consumers (see also paragraphs 3.5.3 of Code 15).
- 10.38 Therefore, we consider that although the requirements in relation to vulnerable consumers in the PRS Order will place a new burden on network operators, this brings them in line with merchants and intermediaries. Secondly, this additional burden is not a significant increase to the existing requirement under paragraph 3.4.11 of Code 15. Nevertheless, we consider that any additional burden on network operators is necessary in order to protect vulnerable consumers from harm when using CPRS. We consider this to be a key obligation in order to reduce the risk of potential harm and ensure fair treatment of vulnerable consumers.

### Scope - definition of vulnerable consumer

- 10.39 Given the nature of CPRS and the broad types of harms that might arise within this market, we consider it is important that the definition of vulnerability is sufficiently clear to PRS

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<sup>102</sup> We note that our intention is to capture under the PRS Order the same providers who were caught by Code 15.

providers, while retaining flexibility as to the potential circumstances which might make consumers vulnerable in the context of CPRS so to ensure that vulnerable customers are adequately protected at all times.

- 10.40 In light of this, we have restructured the definition of “vulnerable consumers” at article 39(4) of the PRS Order so that it is clearer in what circumstances consumers will be deemed vulnerable under the PRS Order. In particular, we are extending requirements to all PRS providers that they are unable to engage in any regulated activity unless they have had regard to the interests of vulnerable consumers. This is different to Code 15 which only imposes this requirement on intermediaries and merchants. As such, any impact of this extension will be borne only by network providers.
- 10.41 We have also included a new definition of “decisions about controlled PRS” to be read alongside “vulnerable consumers”, which sets out that these decisions include decisions by consumers about whether, how and on what terms to purchase CPRS, make payment for CPRS or exercise contractual rights in relation to CPRS. We believe that our amended definition achieves a balanced and inclusive definition of vulnerability, and that it is closely aligned with Ofcom’s definition as defined in Ofcom’s General Conditions<sup>103</sup> and our specific duties under section 3 of the Act. We have taken care to align this definition with Ofcom’s broader approach to vulnerability as we consider it will enable us to take a consistent approach to regulation across our sectors and so be better equipped to protect vulnerable consumers effectively.
- 10.42 In relation to comments made by BT and BBC Children and in Need, we discuss in detail above how the definition of “vulnerable consumers” applies to the requirements regarding misleading information and the term “average consumer” under article 22 (see paragraphs 10.8 to 10.15).
- 10.43 We agree with Google that our definition of vulnerable consumers (both as proposed in the consultation and redrafted in the PRS Order) is broad. We consider this is necessary to ensure that consumers, who may be vulnerable due to different circumstances, are protected. We note that an important aspect of the definition is that consumers may require assistance to make decisions about a controlled PRS (such as decisions about whether, how and on what terms to purchase a controlled PRS, make a payment for a controlled PRS or exercise a contractual right in relation to a controlled PRS) due to a specific characteristic, circumstance or need. This aspect broadly reflects the PSA’s definition of a vulnerable consumer in paragraph D.2.80 of Code 15 which also refers to decision-making.
- 10.44 With regards to Donr Ltd’s and Google’s comments about these requirements applying to consumers at an individual level, while the definition of vulnerable consumer is broad and inclusive, our requirements are clear that PRS providers must take reasonable and proportionate steps to identify and mitigate risks to vulnerable consumers. This does not have to be undertaken at an individual level for each consumer, but rather can be approached with particular groups of consumers who share the same vulnerabilities in terms of specific characteristics, circumstances or needs and how they impact consumers’ capacity to make decisions about CPRS.

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<sup>103</sup> <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

10.45 While part of Action 4 Limited’s comments appears to us to relate to our proposals in relation to refunds (see paragraph 10.25), we have considered those comments in relation to this article and, in particular, their view that the definition of “vulnerable consumers” is subjective. The requirements in article 39 do not relate to refunds as such but set out the steps all PRS providers must take in relation to vulnerable consumers before carrying out any regulated activity. We consider that our definition of “vulnerable consumers” is clear. The definition has been amended to specifically include the words “*in a way a PRS provider could reasonably be expected to foresee*”. The reference to “reasonably” means that the foreseeability aspect needs to be determined objectively (and not subjectively as Action 4 Limited says) as to whether the specific characteristics, circumstances or needs of particular groups of consumers, and their capacity or otherwise to make decisions about a CPRS, should be taken into account for the purpose of article 39 requirements.

### Responsibility of app stores

10.46 We have considered Google’s comments as to the language used in consultation version of this article. On reflection, we agree with Google’s comments that the previous language could be clearer in terms of the prohibition against undertaking regulated activity unless “*the PRS provider has had regard to the interests of vulnerable consumers*” (emphasis added). We have therefore amended article 39 in the PRS Order which now reads, at paragraph (1), as follows:

*“(1) A PRS provider must not carry out any regulated activity, unless the PRS provider takes reasonable and proportionate steps—  
(a) to identify potential risks to the interests of vulnerable consumers, and  
(b) to mitigate any identified risks”*

10.47 In that regard, we note, in particular, that we have removed the phrase “has had regard to” and instead made clear that PRS providers must take reasonable and proportionate steps to identify and mitigate potential risks. Paragraphs (2) and (3) also contain requirements concerning policies and procedures in writing which are substantively the same as the draft version, albeit with some minor drafting changes.

10.48 We consider that the requirements in the PRS Order about steps which must be taken by PRS providers in relation to vulnerable consumers are now clear in reflecting our policy intentions of protecting vulnerable consumers.

### General comments

10.49 We note that British Red Cross sought clarity as to how to interpret these requirements. As explained above, we have made certain amendments to clarify how the requirements under this article will apply and the steps which PRS providers must take in relation to vulnerable consumers. We now consider those requirements to be sufficiently clear. Given that our requirements are intended to largely reflect existing obligations under paragraphs 3.5.1 to 3.5.3 of Code 15, we expect that many existing providers under Code 15 will already be in compliance with those requirements.

10.50 We note CCP/ACOD general comments, including the suggestions that we share knowledge and experience across other teams and, in particular, the suggestion concerning a potential update to the *Treating Vulnerable Customers Fairly* guide.



## Harmful material (article 40)

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### Consultation proposals

- 10.51 We proposed to prohibit PRS providers from carrying out any regulated activity that contains material likely to incite violence or hatred against a group of persons or a member of a group of persons based on specific characteristics. Those characteristics are those described in Code 15 and a number of additional characteristics (namely, pregnancy or maternity, marriage or civil partnership, nationality or language) to reflect existing legislation.
- 10.52 In addition, we proposed to impose a general requirement that PRS providers must also take all reasonable steps to prevent the risk of harm to consumers.

### Stakeholder comments

#### Consumer complaints

- 10.53 aimm, BBC Children in Need and MCP Insight Ltd asked whether, in the scenario of an ostensibly compliant service generating consumer complaints, the expectation from us is that consumer harm will be inferred and the service suspended/terminated by the network or intermediary. aimm said that consumer complaints may not always indicate harm. MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm.

#### Other comments

- 10.54 Action 4 Limited said that, while it believed that our proposal was sensible and pragmatic, it considered that it was not clear, especially in the context of live adult interactions, who can arbitrate what is offensive given that what is considered offensive is subjective.
- 10.55 British Red Cross supported our proposals, but it requested accompanying guidance for this article in addition to their request for this in relation to other articles.
- 10.56 Donr Ltd said that it thought the requirements proposed in this article were “fine” but questioned whether an additional reference to “gender” as a “specified characteristic” would be more pragmatic, although it said it accepted that the characteristic “sex” could imply this.
- 10.57 Additionally, TÜV SÜD Limited suggested that the specified characteristics should refer to “other hate speech”.
- 10.58 Infomedia said, *“it would be welcome if OFCOM would confirm that the prohibitions here are not intended to, and would be unlikely enforced for, news and current affairs reporting of such material in line with more general broadcasting regulation.”*
- 10.59 BT, Mobile UK and VMO2 said that the MNOs already have robust policies and procedures (which are publicly available) and technical systems in place to protect consumers from harm and offence. These stakeholders said that the draft PRS Order is not the appropriate place for this level of detail, whereas the MNO Codes of Practice are the right place for this to be provided.<sup>104</sup> They repeated the request that the MNO Codes of Practice be given standing in the PRS Order to avoid legal challenges arising from their omission.

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<sup>104</sup> These comments referred to matters such as prohibiting underage use of services and excessive usage of services.

## Our decision

- 10.60 We have decided to proceed with this requirement largely as proposed, except for our decision to remove “nationality or language” as a specified characteristic in order to align this list of specified characteristics with existing legislation.<sup>105</sup>

### Consumer complaints

- 10.61 The stakeholder comments relating to consumer complaints appear to be relevant to risk assessments. Article 40 does not refer to consumer complaints as such, although it refers to the carrying out of any regulated activity. We agree with aimm’s comments that not all consumer complaints or enquiries necessarily evidence non-compliance with the requirements in this article. In any case, we expect that providers are likely to have regard to consumer enquiries or complaints when undertaking risk assessments as required under the PRS Order and may take appropriate action such as suspending or terminating arrangements with other providers.

### Other issues

- 10.62 In response to Action 4 Limited’s comments, unlike Code 15, we have not referred to the concept of “offence” in the requirements of this article in the PRS Order. Article 40 of the PRS Order instead contains a general requirement at paragraph (2) that “[a] PRS provider must also take all reasonable steps to prevent the risk of the regulated activity causing harm to consumers”. Paragraph (3) clarifies that “harm” includes harm to mental health, including, for example, as a consequence of suffering fear, anxiety or distress. We consider that this is a clearer, more objective requirement which achieves the same objective of preventing consumer harm.
- 10.63 In relation to the suggestion made by TÜV SÜD Limited to insert a reference to “other hate speech” in the list of specified characteristics, we consider that our general requirement would provide the appropriate protection to consumers arising from any hate speech.
- 10.64 In relation to the suggestion by Donr Limited to include “gender” in the list of specified characteristics, we consider that this would be caught by the characteristic “sex” and therefore there is no need to include gender as an additional characteristic. This is in line with section 4 of the Equality Act 2010 which refers solely to “sex” and “gender reassignment” but does not refer to “gender”.
- 10.65 We have decided not to publish guidance in relation to the requirements in this article at this stage as set out below (see paragraphs 10.103 – 10.104).
- 10.66 As regards Infomedia’s request for our confirmation, we consider that some news reporting activities could fall within the meaning of “regulated activity” as defined in article 9(12) of the PRS Order. Whether or not that would be the case is something that will depend on the facts in each individual case. Where news reporting constitutes a regulated activity, the PRS provider in question would, in principle, be subject to the prohibition in article 40(1) of the PRS Order. As such, the PRS provider must ensure that the relevant news reporting does not itself produce or reproduce harmful material contrary to that prohibition.
- 10.67 While we acknowledge the potential, or actual benefit, of the MNO Codes of Practice, our overarching objective is to impose requirements under the PRS Order that seek to reflect the policy outcomes of Code 15 and, therefore, we have decided to impose this

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<sup>105</sup> See section 4 of the Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

requirement related to harmful material under the Order.<sup>106</sup> Nevertheless, see paragraphs 10.115 and 10.116 for our conclusions with regards to the MNO Codes of Practice.

## Consumer enquiries and complaints (articles 36 and 37)

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### Consultation proposals

- 10.68 We proposed to prohibit merchants from providing CPRS to a consumer unless they comply with several requirements regarding consumer enquiries and complaints. In particular, we proposed to require merchants to have written policies and procedures about consumer enquiries, complaints and refunds (or other forms of redress) and for these to be clear and accessible publicly free of charge. We also proposed to require merchants to review and revise these policies and procedures, where necessary, to ensure they are effective and for them to be approved by a generally authorised person.
- 10.69 We also set out seven proposed requirements relating to how consumer enquiries, complaints and refunds should be handled by the merchant.
- 10.70 We proposed to apply these requirements solely to merchants because they are the providers with whom consumers enter into CPRS contracts and, therefore, have primary responsibility for consumers' enquiries and complaints.

### Stakeholder comments

#### Brand websites and app stores

- 10.71 aimm said that the merchant's website "is sometimes a step removed from the consumer experience" and that the "brand website (if different) is more appropriate for the promotion of these policies and procedures". It also said app stores who handle customer care should have the policies and procedures required by these articles visible on their platforms. MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm.

#### Role of different PRS providers

- 10.72 BT and Mobile UK asked for clarity about the role of network operators in relation to consumer enquiries and complaints. More specifically, VMO2 said that MNOs carry out due diligence on intermediaries, and by removing the requirement on intermediaries to keep records of consent and have oversight of merchants' handling of complaints could lead to impacts on MNOs' ability to carry out an appropriate investigation in the case of a merchant failing to appropriately deal with consumer complaints.

#### Method of making a complaint

- 10.73 aimm also queried whether our proposals required complaints to be made via telephone.

#### Reporting complaints to Ofcom

- 10.74 aimm, BT, BBC Children in Need, Cancer Research UK and Mobile UK queried how consumers will be able to report their complaints to the relevant regulator once the PRS

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<sup>106</sup> These comments referred to matters such as prohibiting underage use of services and excessive usage of services.

Order comes into force. They said that the current online complaints section of the Ofcom website points to the PSA.

- 10.75 MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm.

## Definitions

- 10.76 TÜV SÜD Limited noted that the requirements did not provide any definition of a complaint, and they did not stipulate the time zone or provide a definition of “working days”. It pointed out that in other countries working days may be different.

## Our decision

- 10.77 We have decided to proceed with this requirement substantively as we proposed but have made minor drafting changes to make it clearer.

## Brand websites and app stores

- 10.78 Regarding aimm’s comments about how policies and procedures concerning enquiries and complaints are made available to consumers, we note that our requirement does not prohibit other websites or platforms (such as brand websites or app stores) from making these pieces of information available. Further, article 11(5)(b) in the PRS Order requires a qualifying intermediary (including an app store) to administer a process for handling complaints made by consumers in respect of a merchant who intends to rely on the registration exemption in article 11 including, in particular, making available to consumers the merchant’s contact details on its website. Article 36 requires such policies and procedures to be clear and accessible to members of the public free of charge, including being available on the merchant’s website if it has one. The onus is on the merchant to ensure compliance with these requirements.

## Role of different PRS providers

- 10.79 As to comments about the role of merchants, intermediaries and network operators, we note that these articles apply solely to the merchant who is responsible for the care of its customers with whom it has entered into contracts.
- 10.80 We are not seeking to remove the involvement of intermediaries or networks from the complaints process, but we are making merchants ultimately responsible for the requirements in relation to enquiries and complaints under the PRS Order. Intermediaries and other parties can still be contracted to deal with complaints in practice. Our view, however, is that merchants should (and under the PRS Order will) be ultimately responsible for how consumer enquiries and complaints are handled. With regards to how network operators should carry out their investigations into merchants’ processes, this is a matter for network operators to decide. However, we note the duty on network operators under our due diligence and risk assessment requirements to suspend arrangements with other specified providers if there is a suspected contravention or actual contravention of one or more of the requirements imposed by the PRS Order.<sup>107</sup> We also note the broader risk assessment requirements which may be relevant to decisions about and/or contractual arrangements between PRS providers. Network operators may therefore wish to take these into account when examining merchant’s processes. Please see the detailed explanation of risk assessment requirements under the PRS Order in section 5 of this statement.

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<sup>107</sup> See article 18 of the PRS Order.

## Method of making a complaint

10.81 We note that article 37(2) sets out the requirement that, where consumers make any enquiry or complaint using a telephone, they must be able to do so at no more than the basic rate. This does not mean that consumers *must* make enquiries or complaints by telephone – they can use other means to do so – but that those other means must be free of charge. The third requirement of article 37, in paragraph (4), refers to “enquiries and complaints made by means other than a call”.

## Reporting complaints to Ofcom

10.82 We have a well-established process for dealing with complaints made to us about our other regulated sectors. As regards merchants bringing themselves into compliance by giving appropriate details for reporting complaints to us, stakeholders will already be aware of our general address details for complaints in writing and by phone.<sup>108</sup> In addition, we are currently working on updating our dedicated webpage for making consumer complaints by reference to the PRS sector. We expect CPRS complaints to be dealt with in the same way, including complaints in writing, online (through an online form) or by phone.<sup>109</sup>

## Definitions

10.83 We have considered TÜV SÜD Limited’s comments about the various definitions under these articles, but we do not consider any amendments are required as a result of those comments.

10.84 We firstly note that article 2 of the PRS Order provides a definition of “working day” which is as follows:

*““working day” means any day other than— (a) Saturday or Sunday, or (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”*

10.85 Secondly, while the word ‘complaint’ is not defined in the PRS Order, we consider that its natural and ordinary meaning is sufficiently clear for our purposes in the PRS Order.

10.86 On TÜV SÜD Limited’s point about relevant time zone, it is already clear from section 9 of the Interpretation Act 1978 that Greenwich mean time applies and this position applies automatically to the PRS Order without a need for us expressly stating so.<sup>110</sup>

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<sup>108</sup> <https://www.ofcom.org.uk/make-a-complaint/get-in-touch/>

<sup>109</sup> [Make a complaint - Ofcom](#)

<sup>110</sup> Section 9 of the Interpretation Act 1978 states that “[s]ubject to section 3 of the Summer Time Act 1972 (construction of references to points of time during the period of summer time), whenever an expression of time occurs in an Act, the time referred to shall, unless it is otherwise specifically stated, be held to be Greenwich mean time.” <https://www.legislation.gov.uk/ukpga/1978/30/section/9>. In that regard, it should be noted that the reference to an “Act” in that section 9 should be treated as applying also to subordinate legislation, like the PRS Order: see section 23 of the Interpretation Act 1978.

## Factual claims in promotion and marketing about a CPRS (Article 24)

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### Consultation proposals

10.87 We proposed to require PRS providers to make and keep a written record of all evidence necessary to substantiate claims made in promotion and marketing of a CPRS. This requirement would apply to all PRS providers who undertake promotion and marketing.

### Stakeholder comments

10.88 We did not receive any responses about this proposal specifically. However, we note that Mobile UK said, in relation to the articles in Chapter 2 of the draft PRS Order, that *“the MNOs remain comfortable with these provisions.”*

### Our decision

10.89 We have decided to proceed with our proposals, but we have made minor drafting changes to article 24.

## Relevant qualifications for professional advice services (article 51)

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### Consultation proposals

10.90 We proposed to require merchants who provide professional advice services to take reasonable and proportionate steps to ensure that anyone working as part of the service who gives such advice or assistance to consumers has the qualifications and experience necessary to do so.

### Stakeholder comments

10.91 Action 4 Limited asked who determines the qualifications of those working on professional advice services.

### Our decision

10.92 We have decided to proceed with our proposals, with some minor textual changes. We have also amended the definition of a “professional advice service”, to replace the language of this being a service that *“consists in, or has as its principal feature”* the provision of advice and assistance with language stating that this is a service that **“includes** content comprising advice and assistance” (emphasis added).<sup>111</sup> Our reasons for doing so are discussed in paragraph 3.103 onwards, relating to the issue of definitional overlaps. We consider this makes clear that where a CPRS includes this kind of content, it will come within the definition of professional advice service and therefore will be required to comply

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<sup>111</sup> Article 51(3)(b) of the PRS Order explains that references to advice or assistance includes, in particular, advice or assistance in resolving matters of a legal, financial, medical and personal nature, including matters relating to family, relationships and psychological or other health problems.

with this article (as well as other requirements in relation to professional advice services that are set out in the PRS Order, along with the more general requirements).

- 10.93 We also note that article 51 is not prescriptive in terms of any particular steps providers must take to ensure professionals have the necessary qualifications and experience to give advice or assistance. Merchants will need to determine what is reasonable and proportionate, taking into account the specific circumstances of the service in question. In that regard, merchants may wish to refer to any relevant legislation or guidance related to the profession(s) in question, including anything set out by professional bodies.

## Consumer information relating to remote gambling services (Article 52)

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### Consultation proposals

- 10.94 We proposed to require merchants of remote gambling services to make available a record of the consumer's use (including information about any wins and losses) to the consumer for the duration of their use of the service. The consumer's account information must also be made available.

### Stakeholder comments

- 10.95 We did not receive any responses about this proposal.

### Our decision

- 10.96 We have decided to proceed with our proposals but following a review of the article more generally we have made minor clarificatory changes to article 52 of the PRS Order.
- 10.97 We have amended the definition of "remote gambling service" to replace the language of this being a service "that makes available a facility for" gaming and betting (within the meanings in the Gambling Act 2005) with the language that this is a service that "**includes** the making available of a facility" for the same (again, emphasis added). This is in line with our amendments to our definitions of certain CPRS, as explained at paragraph 3.103 onwards, to make clear that where a service includes this type of facility, it will be classed as a remote gambling service and will need to follow the relevant rules in article 52 (as well as other rules that apply more generally).
- 10.98 We have also removed the exclusion of "competition or voting service" from this definition in the PRS Order as article 41 of the PRS Order already excludes remote gambling services from falling within the definition of "competition or voting service". Therefore, we did not consider it necessary to have to mirror the exclusion here as that article would work to exclude both services from one another.
- 10.99 We have made a small amendment to the definition of "betting tipster service", also in this article, to make clear that it is a threshold service that only makes available a facility for offering information to consumers for the purposes of facilitating the making or accepting of a bet in relation to the specified things listed within that definition.<sup>112</sup> Again this relates to the issue of definitional overlaps, discussed at paragraph 3.103 onwards, and is

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<sup>112</sup> See article 52(4) for the definition of "betting tipster service".



considered necessary as a betting tipster service is excluded from the definition of remote gambling service, and cannot include a facility that may otherwise fall within the remote gambling service definition.

- 10.100 In relation to the requirements in article 52, we have amended paragraph (2)(b) to make clear that the merchant must make available to the consumer account information which will include the latest balance applying to the consumer in respect of using that service.
- 10.101 We have also clarified at paragraph (3) that the information in paragraph (2) (such as records of the consumer’s use of the remote gambling service and account information) must be made available at all times while the consumer is using the service.

## Other stakeholder comments

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- 10.102 In this section, we respond to stakeholder comments in two areas:
- a) comments about provisions from Code 15 which we have decided not to carry across; and
  - b) suggestions as to what we ought to include in the PRS Order (or consider more long term) which do not relate to existing provisions under Code 15.

### Existing Code 15 requirements which we have decided not to carry across

#### Guidance

- 10.103 British Red Cross said that, while our proposals are transparent, it would be helpful if we prepared and published accompanying guidance as part of our implementation of the PRS Order.
- 10.104 We do not intend to publish such guidance at this stage. We expect that PRS providers will already be complying with the majority of the provisions in the PRS Order, since we are largely seeking to retain requirements imposed by Code 15. For new requirements, or requirements that have materially changed compared with Code 15, we consider that the language in the PRS Order is clear and precise as to what PRS providers must do to bring themselves into compliance. We have also responded in previous sections of this statement to specific points raised by stakeholders in their responses and we believe that our clarifications should assist PRS providers in that regard.

#### Excessive use

- 10.105 aimm, BT, and VMO2 shared concerns that excessive use may become a problem given we proposed not to carry across rule 3.3.5 of Code 15, and the associated guidance on this in Code 15, into the Order.<sup>113</sup> aimm suggested that we should consider including a requirement on merchants to consider how they will monitor for excessive use and act accordingly if it is identified. BT said that merchants need to be held accountable for excessive use.
- 10.106 Commenting on our statement in the consultation that “*one-off CPRS does not lead to long-term financial impact*”, Mobile UK said that it believes “*this is as a result of controls under Code 15 and the MNO Codes of Practice to monitor and control excessive use*”.

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<sup>113</sup> Paragraph 3.3.5 of Code 15 states, “*Merchant providers must take reasonable and prompt steps to identify excessive use of their service or services by any consumer and to inform the relevant consumer of that usage.*”

- 10.107 VMO2 said that, while it *“understands Ofcom’s intention to future proof the Order in respect of excessive use, however, this is something that could be determined by the MNOs Code of Practice which, at least would give scope to tailor to particular services.”*
- 10.108 BT and Mobile UK went on to say that MNOs will have to address areas such as excessive use which can be very harmful to consumers. They added that *“[t]he [PRS] 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.”* BT and Mobile UK went on to say that the MNO Codes of Practice are the appropriate place for such requirements and therefore these Codes of Practice should be recognised in the PRS Order (see paragraphs 10.112 – 10.113).
- 10.109 We do not consider it is necessary to reflect excessive use requirements from paragraph 3.3.5 of Code 15 in the PRS Order. This is because we consider that relying on pre-contract information and receipting requirements will result in consumers making informed decisions about their use of CPRS. We also consider that our proposals regarding vulnerable consumers will play an important role in protecting these consumers from harm resulting from excessive use of CPRS.
- 10.110 In relation to Mobile UK’s comment regarding one-off CPRS and excessive use controls, we consider that the fact that one-off CPRS involve a single purchase (unlike subscription contracts) means there is no long-term financial impact. However, we acknowledge that excessive use can result from repeated one-off purchases. We consider that pre-contract information and receipting requirements are sufficient to protect consumers from excessive use alongside our vulnerable consumer protections.
- 10.111 Further, we agree with BT and Mobile UK who said that the PRS Order is not the appropriate place for excessive use requirements because of the complexity involved in setting out what excessive use is and how it relates to normal or average use. We note that the guidance associated with paragraph 3.3.5 of Code 15 is lengthy and complex and therefore we do not consider that such complexity could be reflected appropriately in the PRS Order. As we explain below, there is no reason why MNOs cannot continue to operate such codes as they currently do under Code 15, provided that they do so in compliance with the provisions of the PRS Order.

## **Stakeholder suggestions which go beyond existing Code 15 requirements**

### **Self-regulation**

- 10.112 BT believed that Ofcom should continue to monitor trends and, in the longer term, consider a more self-regulated approach by players in the value chain.
- 10.113 While we understand that BT’s point about monitoring trends and moving to a self-regulatory model is directed to the future, we have borne in mind the desirability of promoting and facilitating the development and use of effective forms of self-regulation in reaching our conclusions on the PRS Order (as we are required to do under sections 3 and 6 of the Act). However, our view is that the matters which we are required under section 3 of the Act to further or to secure are not likely to be furthered or secured by effective self-regulation at this stage.
- 10.114 In particular, we note there has been a history of PRS providers engaging in harmful practices in the PRS sector which has led to both consumer harm and a lack of consumer trust in the marketplace, negatively impacting on compliant providers and the overall growth of the market. We therefore consider that removing regulation is not a viable

option at this stage. However, we intend to undertake ongoing supervision and compliance monitoring in order to monitor trends and compliance with the requirements.

#### **MNO Codes of Practice**

- 10.115 BT, Mobile UK, VMO2 and Vodafone recommended that the draft PRS Order should be amended to acknowledge the important and vital role of MNO Codes of Practice as part of regulating the PRS sector. They argued that this approach would ensure that any regulatory actions taken by MNOs to reduce risk are not met by a legal challenge.
- 10.116 We note that the MNO Codes of Practice are, in effect, voluntary codes (enforced through contracts by the MNOs and their contracting parties) and, as such, they are a form of self-regulation. We have already explained above why we consider that self-regulation cannot effectively further or secure the matters which we are required under section 3 of the Act to further or to secure at this stage. It is, however, a matter for industry to decide how it wishes to take forward the MNO Codes of Practice under the new regulatory regime, taking account of the requirements set out in the PRS Order. In our view, there is no reason why MNOs cannot continue to operate such codes as they currently do under Code 15, provided that they do so in compliance with the provisions of the PRS Order.

#### **Compliance with requirements**

- 10.117 TÜV SÜD Limited argued that, while the draft PRS Order updates and replaces the existing PRS regime, it still fails to ensure compliance with the requirements of the Order. In particular, it was concerned that there is no requirement to demonstrate continued compliance with the draft PRS Order and that we should consider greater scrutiny of PRS providers by either continual monitoring or periodic audits, by Ofcom-approved bodies, of the systems and controls used by PRS providers to maintain compliance with the draft PRS Order.
- 10.118 We consider that effective monitoring of the PRS market will be an important part of ensuring compliance with the PRS Order. We will undertake compliance monitoring, supervision and, where appropriate, enforcement action in a similar way to our current approach for other areas of telecom regulation.

# 11. Enforcement

- 11.1 This section sets out our decisions on the enforcement provisions of the PRS Order contained in Part 10, and our enforcement of the PRS Condition.
- 11.2 We have decided to proceed with all the requirements we proposed in our consultation. However, we have clarified that the enforcement procedures in articles 57 to 64 in Part 10 can only be used in relation to a possible contravention of the substantive requirements imposed on PRS providers by Parts 2 to 9 of the PRS Order (Part 1 contains introductory provisions that do not impose requirements). This clarifies that a failure to comply with requirements imposed by way of the enforcement procedures in Part 10 will be enforced solely by way of the statutory enforcement procedures that apply under section 123 and 124 of the Act (see paragraph 11.13). We have also made some drafting improvements and clarificatory changes to Part 10 (see Annex 3 – Table of Changes for a comparison of the draft and final versions of each article).
- 11.3 We first address our decision to proceed with our proposed approach to enforcement overall, setting out in broad terms how our procedures will operate. The rest of the section then considers the responses we received to specific elements of our proposals and explains the reasons for our decisions on each article of the PRS Order.

## Our approach to enforcement

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- 11.4 We received no comments on our overall approach to enforcement as set out in the consultation. We have decided to proceed with this approach as summarised below which comprises:
- a) enforcement under Part 10 of the PRS Order;
  - b) enforcement of the PRS Condition (see paragraphs 11.12 and 11.13); and
  - c) following our Enforcement Guidelines<sup>114</sup> when taking action under either a) or b).
- 11.5 We consider that the PRS Order reflects many of those features of Code 15 which, when combined with Ofcom’s existing procedures as set out in our Enforcement Guidelines, will provide a fair and effective enforcement procedure for regulated PRS providers.
- 11.6 Our existing enforcement procedures arise from our statutory duties in relation to several regulatory regimes (including PRS in terms of how Ofcom would use its powers to enforce the PRS Condition). Our view is that they represent a fair, effective, transparent and proportionate approach that has been tried and tested over a number of years and has been subject to the scrutiny of the courts. For this reason, we consider it reasonable to apply this approach to all our enforcement activities in respect of PRS. In reaching this decision, we have also had regard to our duty in section 3(3) of the Act requiring Ofcom to have regard to the principles under which our regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- 11.7 By further aligning the approach and procedures for enforcement of PRS with our other regulatory sectors, Ofcom can apply its tested approach to PRS under the PRS Order. In

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<sup>114</sup> [Regulatory Enforcement Guidelines for investigations \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/enforcement/enforcement_guidelines_for_investigations/)

addition, we consider that aligning these enforcement processes allows us to take advantage of operational efficiencies to deliver an enforcement function whilst making best use of our resources.

### **Enforcement under Part 10 of the PRS Order**

- 11.8 For any possible contraventions of requirements imposed by Parts 2 to 9 of the PRS Order, Ofcom could potentially use one of the two forms of enforcement procedures under Part 10 of the PRS Order. We could either:
- a) follow our “standard procedure”, or
  - b) follow our procedure to impose interim measures.
- 11.9 In following our “standard procedure”, we would:
- a) firstly, serve a provisional enforcement notice under article 59 inviting representations from the affected PRS provider (see paragraphs 11.44 – 11.50); which may also contain:
    - i) any proposed penalties in accordance with article 60 (see paragraphs 11.67 -11.72);
    - ii) any proposed directions in accordance with article 64 (see paragraphs 11.78-11.82), and then
  - b) secondly, serve a final enforcement notice served under article 61 (see paragraphs 11.5-11.61).
- 11.10 In following our interim measures procedure, we would:
- a) firstly, give a direction under article 62 applying interim measures without representations from the affected PRS provider (see paragraphs 11.87-11.90); and
  - b) secondly, after inviting representations from the affected PRS provider, either make a decision to confirm the direction imposing interim measures or revoke that direction under article 63 (see paragraphs 11.87-11.90).
- 11.11 The PRS Order specifies that the enforcement procedures in Part 10 can only be used in relation to the substantive requirements imposed on PRS providers by Parts 2 to 9. This is a modification compared to our draft PRS Order which allowed these procedures to be used for any provisions of the PRS Order (i.e. including Part 10 itself). We made this change to clarify that, where a PRS provider fails to comply with any of the requirements imposed in Part 10 (i.e. to comply with enforcement measures), enforcement action can only be taken under the statutory arrangements for enforcement of the PRS Condition.

### **Enforcement of the PRS Condition**

- 11.12 We proposed in our consultation to modify the PRS Condition, so that it would require PRS providers to comply with the provisions of the PRS Order as well as previous directions given by the PSA under its approved codes of practice.<sup>115</sup> We have decided to make such modifications to the PRS Condition, with only a few minor textual changes (see Annex 1 to this statement). Therefore, for possible contraventions of any requirements imposed by the PRS Order, Ofcom could potentially decide to take action for non-compliance with the PRS Condition using section 123 of the Act (applying the statutory enforcement procedures set out in sections 94 to 96 of the Act) and, where applicable, section 124 of the 2003 Act. However, as explained above, we expect that our normal practice will be to use the

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<sup>115</sup> See paragraphs 5.191-5.199 of our consultation for our explanations, together with our notification published in annex 9 to the consultation for our proposed textual changes to the PRS Condition.

enforcement procedures in Part 10 in relation to the substantive requirements imposed on PRS providers by Parts 2 to 9 in most cases.

- 11.13 In respect of requirements imposed by the PRS Order, we expect our enforcement of the PRS Condition to relate to the following only:
- a) any requirements to preserve evidence in accordance with article 58 (see paragraphs 11.38-11.43);
  - b) any final enforcement notice in accordance with article 61(6);
  - c) any direction for interim measures in accordance with article 62(10);
  - d) any confirmation of such directions for interim measures in accordance with article 63(8);
  - e) any directions for serious contraventions in accordance with article 64(10); and
  - f) any decisions under the transitional arrangements under article 66 and Schedule 4 (see paragraphs 11.103-11.109).

### Enforcement guidelines

- 11.14 In cases of potential non-compliance with either the requirements imposed by Parts 2 to 9 of the PRS Order or the PRS Condition, we expect to follow applicable parts of our Enforcement Guidelines.
- 11.15 Our Enforcement Guidelines set out in general terms how we normally conduct investigations. We proposed in our consultation to insert two new annexes to our Enforcement Guidelines setting out legislative components of the Act and PRS Order to deal specifically with our intended enforcement approach to the PRS Order and the PRS Condition respectively. We have decided to adopt those annexes with only minor textual changes (see annexes 4 and 5 to this statement). These annexes include details of the application of the general approach set out in the Enforcement Guidelines to the PRS sector.
- 11.16 We will also follow the approach set out in Ofcom’s Penalty Guidelines<sup>116</sup> in imposing any penalty for contraventions of the requirements imposed by the PRS Order or contraventions of the compliance requirement in the PRS Condition or both (see paragraphs 11.67-11.72).

## Initial assessment phase of our investigations

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### Consultation proposals

- 11.17 We proposed to follow the initial assessment process forming part of our investigations, as set out in Section 3 of the Enforcement Guidelines, when an issue of potential concern comes to our attention.

### Stakeholder comments

- 11.18 Infomedia expressed concern that removing the PSA’s enforcement stage of “warning letter” would allow Ofcom to begin investigative activity without offering providers the chance to rectify compliance issues in an informal manner.

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<sup>116</sup> [Penalty-Guidelines-September-2017.pdf \(ofcom.org.uk\)](#)

## Our decision

- 11.19 We have decided to proceed with our proposal to use the initial assessment process as set out in the Enforcement Guidelines also for PRS cases.
- 11.20 We will not make a substantive decision on whether or not there has been a contravention of a requirement during the initial assessment. Instead, we will make a decision on whether or not to open a formal investigation to decide this.
- 11.21 Our decision in the initial assessment stages will take account of:
- a) whether the case is an administrative priority for Ofcom, including considering:
    - i) the risk of harm or seriousness of the alleged conduct;
    - ii) the strategic significance of addressing the alleged conduct and whether alternative proceedings are likely to achieve the same ends; and
    - iii) the resource implications of conducting an investigation; and
  - b) whether the evidence we have justifies opening an investigation, having considered all relevant factors.<sup>117</sup>
- 11.22 We consider that this approach would achieve the same or similar effect as the PSA's current approach in the opening of an investigation, but in a way that is consistent with how we approach the enforcement of other regulatory regimes. In addition, our Enforcement Guidelines align with the PSA's Case Prioritisation Policy and Principles, as similar criteria are considered in deciding whether an enforcement case should be opened.<sup>118</sup>
- 11.23 In following this approach, we will be guided by overarching regulatory principles including for us to operate with a bias against intervention and seek the least intrusive regulatory mechanisms to achieve our policy objectives.<sup>119</sup> In some cases, Ofcom may seek to resolve an issue without the need for formal enforcement action. For example, we may be satisfied that the business has taken, or has offered assurances that it will take, appropriate steps to address any concerns we have identified such that there is no need for further action. Therefore, and in response to Infomedia's concerns, we consider that our approach allows us to address compliance concerns informally where appropriate in a similar way to how the PSA has done so to date.

## Power of Ofcom to publish notice of investigation (Article 57)

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### Consultation proposals

- 11.24 We proposed that the PRS Order specifies that Ofcom may publish a notice on our website if we decide to open an investigation. We also proposed that, where we publish such a notice, we must give a notification to the provider who is being investigated.

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<sup>117</sup> See paragraph 3.6 of the Enforcement Guidelines

<sup>118</sup> [Case-Prioritisation-Policy-and-Principles-Jan-2020.ashx](https://psa.gov.uk/case-prioritisation-policy-and-principles-jan-2020) ([psaauthority.org.uk](https://psa.gov.uk))

<sup>119</sup> See paragraph 1.2 of the Enforcement Guidelines.



- 11.25 We proposed to add details of these requirements to the ‘Why and how Ofcom opens cases’ section of the annex to the Enforcement Guidelines for the PRS Order.

## Stakeholder comments

- 11.26 Stakeholders including aim, Donr Ltd, Fonix and MCP Insight Ltd thought that Ofcom should change the wording of the PRS Order to reflect that we “must” publish a notice on our website if we open an investigation. Stakeholders advised that such a duty would assist them in complying with the risk assessment requirements (see section 5).
- 11.27 aimm also asked if Ofcom will state the originating source of information that led to the investigation being opened.
- 11.28 VMO2 said that we should notify MNOs as a matter of course when an investigation is opened. VMO2 consider that a notification to the MNO when a merchant is placed under investigation would enable the MNO to take action should any action be required pending the outcome of the investigation.

## Our decision

- 11.29 We have decided to proceed with our power to publish notices of investigations in article 57 of the PRS Order, as proposed in our consultation with only minor textual changes.
- 11.30 The PRS Order specifies that we “may” publish a notice of our investigations. This is intended to allow flexibility for instances where it may not be appropriate for us to make information public, or where we need to delay doing so for operational purposes (see paragraph 3.32 and 3.33 of our Enforcement Guidelines).
- 11.31 Ofcom will decide whether or not to include details about information that led us to opening the investigation on a case-by-case basis. This is because in some instances we may have opened an investigation based on a complaint, or a report from a whistleblower, and it may not be appropriate to share full details. This is particularly the case if the individual raises a concern about confidentiality.<sup>120</sup> In practice, we will likely publish the general issue that prompted our investigation in the majority of cases.
- 11.32 In response to VMO2’s request, we have decided that Ofcom should not be required under the PRS Order to inform the whole value chain of our decisions to open investigations. However, we would usually publicise the investigation on our website, where PRS providers (including MNOs) would be able to view the announcement. We do not expect that a PRS provider would take any action in respect of a PRS provider simply because we have opened an investigation. However, providers may wish to consider revisiting their own due diligence and risk assessments in the light of any new information arising from the announcement of an investigation.

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<sup>120</sup> See page 13 of the Enforcement Guidelines.

## Conducting an investigation

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### Consultation proposals

- 11.33 We proposed, where Ofcom decides to open an investigation following an initial assessment, to conduct an investigation in accordance with Section 4 of our Enforcement Guidelines.
- 11.34 In that regard, our Guidelines set out:
- a) our likely engagement and contact with the subject of the investigation, complainants and third parties;
  - b) the structure of case teams;
  - c) timescales for investigations;
  - d) information gathering supported by the requirement for the provision of information under article 55 of the PRS Order (see section 12) together with the possible requirement for records to be preserved when we open an investigation under article 58 of the PRS Order (see paragraphs 11.38-11.43);
  - e) publication of information and confidentiality;
  - f) publicising cases; and
  - g) how to raise concerns with Ofcom.

### Stakeholder comments

- 11.35 Telecom2 Ltd commented that it would like to have clarity and certainty about fixed timescales within which Ofcom should complete its investigations.

### Our decision

- 11.36 We have decided to proceed with our proposal to carry out investigations in line with Section 4 of our Enforcement Guidelines.
- 11.37 When we open an investigation, we aim to progress it in a timely manner and conclude it as soon as reasonably possible. We will normally give the subject of an investigation an indication of the likely timescales involved in completing an investigation, typically when that investigation is opened. We will also generally provide updates to that subject on the progress of the investigation, including when we expect to reach specific milestones, and inform providers where there are changes to them. As the timescales will be different for each individual case, we are unable to fix our investigation timescales in either the PRS Order or our Guidelines.

## Preservation of evidence for an investigation (Article 58)

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### Consultation proposals

- 11.38 We proposed that, where a PRS provider is notified that we are investigating them under article 57 (discussed above), we may require them to preserve records for the purpose of completing our investigation.

- 11.39 We proposed to add details of these requirements to the “Investigating” section of the annex to the Enforcement Guidelines for the PRS Order.

## Stakeholder comments

- 11.40 Ofcom did not receive any comments on the proposals relating to information preservation requirements.

## Our decision

- 11.41 We have decided to proceed with our proposal to require the preservation of evidence for our investigations, but we have decided to make some modifications to this article compared to the version we consulted on. Apart from some minor textual changes to article 58, we have decided firstly to replace references to preserving “records in writing” with simply “evidence”. As a result, we have also removed the proposed requirement to “make” records in (what is now) article 58(1)(a), so that the PRS provider on whom the requirement is imposed only needs to “keep” potentially relevant evidence to our investigation in question. We have also added a qualification in (what is now) article 58(1)(b), so that the PRS provider is required to take all reasonable steps to obtain from another person and keep such evidence.
- 11.42 We note again (as explained in our consultation) that this requirement to preserve evidence only applies where Ofcom has taken certain steps. Firstly, we must publish a notice of our investigation under article 57(1) of the PRS Order. Secondly, we must give a notification of that notice under article 57(2) specifying that the PRS provider in question is being investigated and that we require that PRS provider to preserve any evidence. In such cases, affected PRS providers must keep, or take all reasonable steps to obtain from another person and keep, any evidence relevant, or potentially relevant, to a matter being investigated by us.
- 11.43 Such a requirement would take effect for an indefinite period from the time we notified the provider unless otherwise stated. We are required under article 58(3) to notify affected providers as soon as reasonably practicable after we have completed the investigation that they no longer need to preserve any evidence.

## Provisional enforcement notice (Article 59)

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### Consultation proposals

- 11.44 We proposed that Ofcom would be able to serve a provisional enforcement notice (“PEN”) where we have reasonable grounds for believing that a provider is contravening, or has contravened, a requirement under the PRS Order.
- 11.45 We also proposed that the PEN would have to set out:
- a) the determination made by Ofcom;
  - b) the requirement we believe is being, or has been, contravened;
  - c) a period and manner in which the provider may make representations;
  - d) the steps we think the provider should take to comply with the requirement and remedy the consequences of the contravention and the period in which those steps should be taken;
  - e) any penalty we are minded to impose; and

- f) any direction we are minded to give for serious contraventions.
- 11.46 Our proposals in that regard also included that the PEN could relate to more than one contravention or a specific period for an ongoing contravention. They also made clear that we could serve a new PEN in respect of the same contravention in three different situations, namely:
- a) the contravention is one occurring after the time of the serving of the earlier PEN;
  - b) the contravention is ongoing and the new PEN covers a period falling after the period to which the earlier PEN relates; or
  - c) the earlier PEN has been withdrawn without a penalty having been imposed in respect of the contravention.
- 11.47 We also proposed to apply the approach set out in our Enforcement Guidelines when making provisional decisions (see paragraphs 5.4 to 5.13 of the Enforcement Guidelines).
- 11.48 Following our service of a PEN, we made clear that the subject of an investigation would be able to make representations to Ofcom. Such representations could relate to our provisional finding, as well as any steps we have indicated that we are minded to require, any penalties we are minded to impose or any directions for serious contraventions we are minded to give.
- 11.49 We also explained that our PEN would set out how long a subject has to make representations taking into account the circumstances of the case. We normally expect this period being at least 20 working days to make written representations, but the period could be longer for more complex cases.<sup>121</sup> It could also be a shorter period where we consider the circumstances require it, for example, where we are considering suspending or restricting a PRS provider's services.
- 11.50 We proposed to briefly describe Ofcom's powers in relation to our provisional enforcement decisions in the "Outcomes of regulatory investigations" section of the annex to the Enforcement Guidelines for the PRS Order.

## Stakeholder comments

- 11.51 aimm said that a minimum time period should be included in the PRS Order for providers to make representations on our provisional decisions.

## Our decision

- 11.52 We have decided to proceed with our consultation proposals, but we have clarified that the PEN can only be in relation to possible contraventions of requirements imposed by Parts 2 to 9 of the PRS Order (see paragraph 11.11 above). Otherwise, we have only made some minor textual changes to article 59.
- 11.53 We consider that our approach to provisional decisions is similar to the PSA's use of formal notifications and enforcement notices under paragraph 5.4 of Code 15. All key elements of the PSA's process are reflected in our own approach for taking enforcement action under the PRS Order. Therefore, we consider that the effect and impact of our approach for investigated providers at this provisional stage would, in general, be similar to current arrangements under Code 15.

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<sup>121</sup> See paragraph 5.14 of the Enforcement Guidelines.

- 11.54 Article 59 requires Ofcom to specify the period and manner in which affected PRS providers may make representations about our provisional decisions, but it does not specify a minimum time period for representations. We think setting a minimum time period in the PRS Order, as suggested by aimm, would prevent us dealing flexibly with each case depending on its own specific and unique circumstances. However, we note that, in determining the time period, we must have regard to our general duty in section 3(3) of the Act to act in a way that is transparent, accountable, proportionate, and consistent. In addition, we would normally follow our Enforcement Guidelines in determining the time period. These state that, typically, we will give the subject of an investigation a period of at least 20 working days to make written representations (see paragraph 5.14 of the Enforcement Guidelines). The precise period will depend on the particular circumstances of the case, and more complex cases may require a longer period. As explained in our consultation, there might also be circumstances where we require to follow a more expedited process, for example where we consider that there is a failure to comply with an information request.
- 11.55 Ofcom may also offer the subject of the investigation the opportunity to attend an oral hearing, either in person or remotely, to make representations on matters referred to in the provisional decision. Ofcom will normally ask the subject to confirm by a given date if it wishes to make oral representations and will then set a date for the oral hearing. This will normally be held 10 to 20 working days after the deadline for written representations has elapsed. This is a new procedure under the PRS Order and different from the oral hearings under Code 15.
- 11.56 Furthermore, we note that subjects of our investigations are also able to make a procedural complaint to Ofcom in accordance with Section 9 of the Enforcement Guidelines. Procedural complaints can be made if the subject of an investigation, a complainant or a third party, is dissatisfied about any aspect of the investigation procedure. The assigned Procedural Officer can deal with complaints which relate to the following:
- a) deadlines for parties to respond to information requests, submit documents or provide representations;
  - b) requests for redaction of confidential information in documents that Ofcom proposes to publish or disclose;
  - c) requests for disclosure or non-disclosure of certain documents or information on Ofcom's case file;
  - d) issues relating to the process for oral hearings; or
  - e) other significant procedural issues that may arise during the course of an investigation.

## Final enforcement notice (Article 61)

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### Consultation proposals

- 11.57 We proposed that, upon making a final decision in an investigation, the PRS Order would specify the powers for Ofcom to either:
- a) serve a final enforcement notice ("FEN") on the subject of the investigation; or
  - b) inform the subject that we are satisfied with their representations and that no further action will be taken.

- 11.58 We also proposed Ofcom would be able to do either of the above only where the affected provider has had an opportunity to make representations about the matters notified and the deadline for making representations has passed.
- 11.59 Moreover, we explained that our proposal was that we would only be able to serve a FEN if, after considering any representations made, we are “satisfied” that the provider has been in contravention of a requirement notified in the PEN. We also proposed that the FEN would need to be given without delay and contain our reasons for concluding there has been one or more contravention(s) of the relevant requirement(s). It may also confirm requirements set out in the PEN. We also noted that affected providers would be required to comply with any requirement imposed in the FEN and to do so in the timeframe specified in the FEN.
- 11.60 We proposed to follow the approach set out at paragraphs 5.4 to 5.5 and 5.26 to 5.34 of the Enforcement Guidelines in making and serving the FEN. In particular, we noted that the final decision maker would be senior member of Ofcom’s staff with appropriate Board-delegated authority who would not have been involved in the investigation or the preparation of the provisional decision. We said that they would make decisions having considered all the relevant evidence and any representations. We also clarified that we normally publish a non-confidential version of the final decision on our website.
- 11.61 We proposed to briefly describe Ofcom’s powers in relation to our final enforcement decisions in the “Outcomes of regulatory investigations” section of the annex to the Enforcement Guidelines for the PRS Order.

## Stakeholder comments

- 11.62 Both Telecom2 Ltd and aimm commented that there is no scope within the PRS Order for a provider to appeal a final enforcement notice. They also stated that the judicial review process is too costly for many providers, and as such, the right to appeal is limited.

## Our decision

- 11.63 We have decided to proceed with our proposals in relation to the FEN, with only some minor textual changes.
- 11.64 Having carefully considered the comments made by Telecom2 Ltd and aimm, we have decided not to introduce any new review mechanism of our final decisions in relation to contraventions of the requirements of the PRS Order within the PRS Order itself. As clarified in the explanatory memorandum accompanying the PRS Order, affected providers will have a statutory appeal right in respect of both Part 10 enforcement procedures and enforcement of the PRS Condition, governed by section 192 of the Act.
- 11.65 This means, in short, that they may appeal against such decisions to the Competition Appeal Tribunal (CAT). Appeals to the CAT are governed by the Competition Appeal Tribunal Rules 2015 and the CAT has produced a Guide to Proceedings,<sup>122</sup> which deals with (among other things) the CAT’s approach to making any orders to pay costs in respect of the appeal proceedings. We also note that the CAT must decide any appeals in the PRS context, by reference to the grounds of appeal set out in the appellant’s notice of appeal, by applying the same principles as would be applied by a court on an application for judicial review (see

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<sup>122</sup> <https://www.catribunal.org.uk/rules-and-guidance>

section 194A(2) of the Act). However, unlike the procedure for applying for judicial review in the courts, there is no permission stage in appeals to the CAT. This means that affected providers can proceed with appealing to the CAT, provided that they comply with the applicable requirements for making appeals under section 192 and the Competition Appeal Tribunal Rules 2015, without the need to be granted permission.

- 11.66 Additionally, we consider that our own enforcement procedures give affected providers an adequate opportunity to make representations before Ofcom makes a final enforcement decision. This can be in the form of either written submissions or, where offered by Ofcom, in person to a decision-maker in an oral hearing. We consider that overall our enforcement procedures represent a fair, effective, transparent and proportionate approach. We also note that we do not have a second-stage review mechanism for other enforcement decisions that we take relating to the telecommunications sector under Part 2 of the Act and that the exercise of our powers in relation to the PRS sector (including to make the PRS Order) also fall under the same Part 2 of the Act. Therefore, we consider that a consistent approach should be taken with regard to any final decisions made under the PRS Order.

## Penalties (Article 60)

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### Consultation proposals

- 11.67 We proposed that the PRS Order should specify that the maximum amount of any penalty that Ofcom can impose in respect of a contravention is £250,000.
- 11.68 However, we also proposed that Ofcom should be allowed discretion to decide, where the PEN relates to more than one contravention, to impose a single penalty in respect of all of the contraventions or separate penalties in respect of each contravention. Our discretion in that regard would depend on what we consider is appropriate and proportionate to the contravention(s).
- 11.69 As regards the amount of our proposed £250,000 cap, we noted that it is aligned with the maximum statutory caps that apply for any penalties imposed:
- a) under codes approved by Ofcom under section 121(5)(a) of the Act (including Code 15); and
  - b) by Ofcom in enforcing the PRS Condition under section 123(2) of the Act.
- 11.70 We also proposed that we would be required to set out in the PEN the amount of any penalty that we are minded to impose. After considering the affected provider's representations to the PEN, we would then either confirm this amount in the FEN or require the payment of a lesser amount in the FEN.
- 11.71 In this context, we proposed to follow our Penalty Guidelines to determine the amount of any penalty we impose. We would also be required to have regard to those Penalty Guidelines under section 392(6) of the Act.
- 11.72 In addition, we proposed that our settlement process set out in Section 6 of our Enforcement Guidelines would also apply in relation to any enforcement action taken under the PRS Order.



## Stakeholder comments

11.73 Telecom2 Ltd said that it would like to have transparency over how fines will be calculated. It also said that it thought other members of the value chain should be required to return payments or a proportion of revenue share received from the service, otherwise the provider picks up the entire sanction. Additionally, Telecom2 Ltd asked whether VAT would be recoverable for financial penalties.

## Our decision

11.74 We have decided to proceed with our proposals on penalties, with only minor textual changes to article 60 of the PRS Order.

11.75 As regards Telecom2 Ltd's response, we consider that sanctions should be imposed on the affected provider who is subject to the enforcement finding and that it is this provider that should be liable to pay any sanction imposed on it. In regards the recovery of VAT, this is not something that Ofcom is responsible for and Telecom2 Ltd should seek further advice about any tax implications from independent advisers or consider contacting HM Revenue & Customs for any guidance.

11.76 In terms of Telecom2 Ltd's request for us to provide transparency on the process of how fines are calculated, we draw its attention to our Penalty Guidelines including specific factors that we take into account, namely:

- a) the seriousness and duration of the contravention;
- b) the degree of harm, whether actual or potential, caused by the contravention;
- c) any gain (financial or otherwise) made by the provider in contravention (or any connected body) as a result of the contravention;
- d) whether in all circumstances appropriate steps had been taken by the provider to prevent the contravention;
- e) the extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur;
- f) whether the contravention in question continued, or timely and effective steps were taken to end it, once the provider became aware of it;
- g) any steps taken for remedying the consequences of the contravention;
- h) whether the provider in contravention has a history of contraventions (repeated contraventions may lead to significantly increased penalties); and
- i) the extent to which the provider in contravention has cooperated with our investigation.

11.77 Another factor potentially affecting the amount of the penalty due to be paid by providers is the settlement process. Settlement is a voluntary process which leads to a formal and legally binding regulatory decision. Settlement involves the subject of the investigation admitting it has contravened a regulatory requirement and accepting that the remainder of the investigation will follow a streamlined administrative procedure. In such cases, Ofcom would normally apply a discount to the level of the penalty imposed on the subject in light of the resource savings involved. More details about this settlement process are found in Section 6 of our Enforcement Guidelines.

## Directions for serious contraventions (Article 64)

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### Consultation proposals

- 11.78 We proposed that the PRS Order specifies the powers for Ofcom to, in summary, prohibit, suspend or restrict a provider's working in connection with a regulated PRS activity, or withhold payments due to other providers and, where further directed, make payments directly to customers. As noted above, such proposed directions for serious contraventions would be included in the PEN.
- 11.79 Specifically, we proposed that Ofcom would only be able to impose these sanctions where:
- a) it is appropriate and proportionate to the contravention;
  - b) the provider is in serious contravention of a requirement of the PRS Order; and
  - c) the provider in question either:
    - i) knowingly contravened the requirement;
    - ii) was reckless as to whether its conduct complied with the requirement; or
    - iii) in circumstances where it was reasonably practicable for the provider to comply with the requirement, the provider failed to take all reasonable steps to prevent the serious contravention.
- 11.80 We also proposed that we should be able to give a direction to providers other than the provider that is the subject of an investigation. Such a direction could be, in relation to their dealings with the provider subject to the notice, that they:
- a) must notify Ofcom of any payments owed to the provider that is the subject of an investigation;
  - b) must withhold all, or part of, a payment owed; or
  - c) are prohibited, suspended or restricted from dealing that provider.
- 11.81 Ofcom would also be able to impose consumer protection conditions on a provider alongside a direction to prohibit, suspend or restrict a service or withhold payments (whether on the provider subject of the investigation or another provider). They could include requirements to make compensation payments for loss or damage in relation to annoyance, inconvenience or anxiety arising as a result of a contravention.
- 11.82 We proposed to describe the ability of Ofcom to apply these sanctions and the circumstances in which we can do so in the "Outcomes of regulatory investigations" section of the annex to the Enforcement Guidelines for the PRS Order under the sub-heading "Directions for serious contraventions".

### Stakeholder comments

- 11.83 We did not receive any responses to our proposals on directions for serious contraventions.

### Our decision

- 11.84 We have decided to proceed with our proposals on serious contraventions. However, apart from some minor textual changes, we have clarified in the PRS Order that these directions would only relate to serious contraventions of requirements imposed by Parts 2 to 9 of the PRS Order (see paragraph 11.11 above).

- 11.85 In doing so, we have retained our proposal in article 64 of the PRS Order, so that a direction for serious contravention can only be imposed where Ofcom has notified a provider that we are minded to impose such a direction in a PEN and confirmed such a direction in a FEN.
- 11.86 These powers broadly reflect the powers that the PSA currently has under Code 15.

## Interim measures (Article 62) and confirmation of directions under article 62 (Article 63)

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### Consultation proposals

- 11.87 We proposed that Ofcom should have the power to, in summary, take immediate action in urgent cases or where a provider is unlikely to pay its debts. In that regard, we proposed that we could impose measures to prohibit, suspend or restrict a service or provider, or direct the withholding of payments.
- 11.88 We also proposed that a case would be considered urgent if the contravention resulted in, or created an immediate risk of, serious harm to consumers or members of the public including, in particular, to vulnerable customers.
- 11.89 Further, we proposed Ofcom would also have the power to give directions to providers other than a provider that is the subject of an enforcement notice similar to those for directions for serious contravention as described above (see paragraphs 11.78-11.82).
- 11.90 We also proposed that Ofcom would take urgent action and impose interim measures in accordance with our Enforcement Guidelines on urgent actions (see paragraphs 7.1 to 7.11 of the Guidelines). We proposed to describe the ability of Ofcom to take urgent action “Urgent actions (interim measures)” section of the annex to the Enforcement Guidelines for the PRS Order.

### Stakeholder comments

- 11.91 Mobile UK said that MNOs would like to understand any checks and balances that will operate when Ofcom decides to prohibit or enforce providers other than the provider being investigated, during or after the investigation.
- 11.92 aimm queried the meaning of article 64(3)(a) in the draft PRS Order, especially at article 64(4) where it states that a case is an urgent case if the contravention has resulted in, or creates an immediate risk of, serious harm to consumers or members of the public. aimm members requested guidance on what constitutes serious harm.
- 11.93 Telecom2 Ltd requested that the amount providers other than those being investigated are required to pay in compensation is limited to the amount withheld from the provider under investigation.
- 11.94 PSA Consumer Panel made a comment encouraging Ofcom to consider the prohibition of individuals as a sanction in our enforcement regime.

### Our decision

- 11.95 We have decided to proceed with our proposals on interim measures. However, apart from some minor textual changes, we have clarified that these interim measures can only be

taken in respect of suspected contraventions of requirements imposed by Parts 2 to 9 of the PRS Order (see paragraph 11.11 above).

- 11.96 Our proposed arrangements in that regard are similar to those currently in place under Code 15 giving the PSA powers to sanction, prohibit, suspend or restrict the services of providers. Therefore, PRS providers would be under a similar risk of intervention in their operations as a result of a contravention of such requirements under the PRS Order as they currently are if they contravene requirements under Code 15.
- 11.97 In response to Mobile UK's questions on checks and balances in giving directions imposing interim measures, article 62 of the PRS Order is clear on the conditions that we would first need to satisfy, namely where:
- a) the giving of such a direction is appropriate and proportionate to the contravention;
  - b) there are reasonable grounds for suspecting that the provider is contravening, or has contravened, a requirement imposed by Parts 2 to 9 of the PRS Order; and
  - c) either
    - i) there are reasonable grounds for suspecting that the provider is unable, or is likely to be unable, to pay its debts as they fall due; or
    - ii) there are reasonable grounds for suspecting that the case is an urgent case, and the urgency of the case makes it appropriate for us to give an interim measures direction.
- 11.98 In exercising these powers, we expect to have regard to other relevant considerations including the impact of the direction on the subject and any relevant third-party interests, as well as on the interests of citizens and consumers. Such considerations are particularly important in this context given that interim measures may have immediate effect.
- 11.99 However, article 63(1) of the PRS Order then requires Ofcom to give the provider subject to an interim measure direction an opportunity to make representations about the grounds for giving the direction and the effect of it, as well as an opportunity to propose any steps to remedy the situation. We are required to do so as soon as reasonably practicable after giving the direction imposing the interim measures under article 62. In addition, as soon as reasonably practicable after the period for giving representations has ended, Ofcom would have to either confirm or revoke that direction.
- 11.100 As regards aimm's query about the meaning of serious harm, we do not consider that any further guidance on what constitutes serious is needed. The use of "serious harm" in the PRS Order is similar to wording used in Code 15 and Ofcom also have similar powers in the telecoms sector which reflect similar wording. Ofcom will carefully judge whether we consider a relevant contravention is resulting or, or creates a risk of, serious harm by considering the individual circumstances of the case. In particular, we expect to take into account any impacts on vulnerable consumers.
- 11.101 In response to Telecom2 Ltd's comment, it is our intention that the provider under investigation is responsible for compensation payments. However, in order to ensure money is available to be paid out to consumers, the PRS Order also gives Ofcom the power to require other providers to withhold "relevant payments" from the provider under investigation and direct those other providers to give that money directly to consumers in the form of compensation payments. "Relevant payments" are defined in article 62(11) as payments owed to the other provider relating to, or connected with, the provision of a PRS. Article 62(7) allows Ofcom to impose conditions in relation to the retention of such relevant

payments and article 62(8) sets out those conditions can include the making of payments. Taken together, we consider that these requirements limit the amount that can be paid out by providers other than those under investigation to the money withheld from the contravening provider.

- 11.102 The PSA Consumer Panel suggested that we should have the power to prohibit individuals from the PSA market in a similar way to that the PSA currently does. Our powers only extend to imposing requirements in relation to PRS providers as defined in the Act. Where a provider is an individual (e.g. a sole trader), then our enforcement action could in effect amount to a similar sanction to the PSA's current prohibitions on individuals. However, while we would not be able to ban certain individuals who work at a PRS provider from operating in the PRS market, we will in appropriate circumstances consider referring individual directors of PRS Providers to the Insolvency Service for it to consider whether there are grounds for disqualification as a director.

## Transitional arrangements for the purposes of a relevant approved code (Article 66)

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### Consultation proposals

- 11.103 We proposed that, after the transfer, the PRS Order would authorise and require Ofcom to do anything the PSA (and its predecessor names) were authorised or required to do under the provisions of any of its approved codes for the purpose of, or in connection with, the carrying out of its functions. Those matters specifically include the enforcement of provisions of a relevant approved code, but they also include other matters to deal with PRS regulation more generally under such a code.
- 11.104 In addition, we proposed that anything done by the PSA for the purpose of, or in connection with, the carrying out of its functions prior to transfer would have effect as if it were done by Ofcom. References in an approved code to the PSA would also have effect as if they were references to Ofcom.
- 11.105 Given that Ofcom does not operate a Tribunal system as the PSA does, our proposed transitional arrangements included some modifications to current arrangements in Code 15 in circumstances where Ofcom were to use the relevant provisions. In particular, we proposed to specify in the PRS Order details of:
- a) how Ofcom would appoint people to adjudicate on historical cases; and
  - b) what would happen to historical cases referred to adjudication by the PSA but on which no decision has been made prior to transfer.

### Stakeholder comments

- 11.106 Action 4 Limited raised concerns about Ofcom ceasing approval of Code 15 whilst continuing enforcement action in relation to historical investigations under that code. The comments suggest that Ofcom ceases the operation of Code 15 with immediate effect and that any open cases should be looked at again by Ofcom under the new regime.

## Our decision

- 11.107 We have decided to proceed with our proposed transitional arrangements with only minor textual changes. We consider that our approach would ensure that there are no gaps in the enforcement regime for CPRS during and following the transfer of responsibility to Ofcom.
- 11.108 The transitional regime is important to protect consumers where, for example, potentially non-compliance conduct was not identified by the PSA prior to the transfer or there was not enough time for the PSA to complete all stages of its enforcement process prior to the transfer. In such cases, our transitional arrangements will enable Ofcom to step in to ensure that consumers are protected. The transitional regime also ensures that any penalties issued by the PSA prior to transfer do not fall away once the PSA ceases to exist. Any such penalties that have not been paid to the PSA prior to transfer will be due to be paid to Ofcom.
- 11.109 We will not be able to take action in relation to historical cases under the PRS Order as suggested by Action 4. Any potential contravention of Code 15 happening prior to the transfer will not be a contravention of the requirements imposed by Parts 2 to 9 of the PRS Order, because they only come into effect on 1 February 2025. We have created the transitional arrangements in order to deal with potential contraventions that occurred prior to the transfer. In the interest of fairness, and to the extent possible, any such contravention will be addressed using the rules in place at the time the contravention is alleged to have occurred. In contrast, any incident occurring after 1 February 2025 will be addressed under the PRS Order as Code 15 will no longer apply.

# 12. Ofcom's fees, record keeping and information requests

- 12.1 This section sets out our decisions in relation to some specific administrative requirements of the PRS Order. In particular, this section deals with:
- a) our approach to cost recovery and the requirement to pay Ofcom's administrative charges (contained in article 14 of Part 3 of the PRS Order);
  - b) the requirements on network operators to retain payments and keep premium rate number records (contained in articles 53 and 54 of Part 7 of the PRS Order);
  - c) requirements to provide Ofcom with information (contained in article 55 of Part 8 of the PRS Order); and
  - d) record keeping (contained in article 56 of Part 9 of the PRS Order).
- 12.2 Subject to minor clarificatory drafting amendments, we have decided to proceed with our proposed requirements set out in our consultation in those respects.

## Requirement to pay Ofcom's administrative charges (article 14) - overview

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- 12.3 In paragraphs 4.248 to 4.270 of our consultation, we set out our proposed approach to cost recovery and the related requirement to pay Ofcom's administrative charges. Our proposals in that regard broadly reflected the PSA's own approach to its funding arrangements under Code 15.
- 12.4 By way of overview, after considering stakeholder comments we have decided to proceed with our proposed approach and the related requirement with only some minor drafting changes to article 14. We explain below our conclusions separately on each of the following main components of these proposals:
- a) the funding model;
  - b) TCP's liability to pay administrative charges;
  - c) defined thresholds;
  - d) financial information;
  - e) our proposed funding methodology;
  - f) the charging and relevant calendar year;
  - g) outpayments;
  - h) PRS revenue; and
  - i) penalties.
- 12.5 In making our decisions on the appropriate funding regime to be adopted under the PRS Order, we have had particular regard to the desirability of observing, to the extent that it is appropriate, the charging principles contained in our statement of charging principles ("SoCP") in accordance with which we fix administrative charges for other sectors that we



regulate.<sup>123</sup> We elaborate below (see, in particular, paragraphs 12.36 to 12.37) on the specific charging principles that we consider are relevant in this PRS context. Our view is that having regard to such charging principles is something that is relevant to us ensuring that we have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as required by section 3(3) of the Act.

## Funding model

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### Consultation proposals

- 12.6 We proposed to broadly retain the current PSA funding model which is a levy-based approach and is determined by the market size and the amount to be funded by the levy. We also proposed that the market size should continue to be based on financial transaction data in the PRS value chain using outpayments (which are the sums payable by TCPs to intermediary and/or merchant providers in respect of revenue generated by PRS).

### Stakeholder comments

#### “Market size” and “amount to be funded by levy”

- 12.7 aimm, Global, Mobile UK, Telecom2 Ltd and VMO2 argued that the term “market size” was not clear and required further clarification. aimm, Mobile UK and VMO2 also argued that the term “amount to be funded by the Levy” also needed further clarification. MCP Insight Ltd supported and agreed with aimm's comments.
- 12.8 Mobile UK also commented that the “market size” had been artificially inflated by the increase in two app stores’ traffic but that this does not correspond to an increase in regulatory activity.

#### Transparency of the process for establishing our regulatory costs

- 12.9 aimm asked for clarity around how the cost of regulation would be established. It noted that the PSA currently consults on its costs each year, allowing aimm's members some transparency over the costs. It also requested further clarity as to how the shared costs will be calculated and apportioned. It also queried whether Ofcom or the National Audit Office would be responsible for this. MCP Insight Ltd supported and agreed with aimm's comments.
- 12.10 BT said it would be simpler to fund regulation in this area via the fees that regulated telcos already pay to Ofcom, instead of having a separate funding process.
- 12.11 TalkTalk noted that the funding methodology is centred on networks having to pay an annual fee and questioned whether all parts of the value chain, including intermediaries and merchants, should be included within the methodology, given the application of the other rules to all providers in the value chain.

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<sup>123</sup> For the electronic communications, radio and television sectors, see our SoCP of 8 February 2005: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/51058/charging\\_principles.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf). For the postal sector, see our SoCP of 20 March 2018: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf)

- 12.12 Three expressed concern that the current proposals materially water down the current level of stakeholder scrutiny and oversight relating to the budget. It argued that, as a matter of law and principle, Ofcom’s ability to raise a levy should be subject to certain requirements and safeguards, including the requirement to demonstrate in a transparent manner that the proposed charges are necessary to cover the costs of exercising the relevant function.
- 12.13 Three also commented that the transfer of functions from the PSA to Ofcom would likely increase the complexity in the calculation of the relevant costs, as many costs will inevitably be shared across all of Ofcom’s statutory functions. TalkTalk, Three and VMO2 noted that some stakeholders are also under an obligation to pay an annual administrative fee to Ofcom which contributes towards Ofcom’s costs of exercising its wider functions in the telecoms sector. They were concerned that this may result in “double counting” of relevant costs.

### Anticipated costs of regulation

- 12.14 aimm, BT, Fonix, Mobile UK and Three said they expected to see a material decrease of regulatory costs for regulated firms as a result of economies of scale and scope arising from the transfer of functions from the PSA to Ofcom. MCP Insight Ltd supported and agreed with aimm’s comments.
- 12.15 aimm and TalkTalk said it is difficult to comment on whether Ofcom’s proposed approach to cost recovery is appropriate without first knowing what the costs of regulation are likely to be. MCP Insight Ltd supported and agreed with aimm’s comments.
- 12.16 ITV suggested that Ofcom should postpone its consultation on questions relating to cost recovery until such time as it is able to provide an account of its anticipated costs of regulation.

### Excluding charity donations from the levy calculations

- 12.17 aimm, BBC Children in Need, Donr Ltd and Global noted that the current PSA levy excludes charity donations from its calculations, but that Ofcom’s calculation appears to include charity donations. They argued this was unnecessary and unfairly collects an income from people’s intentions to support good causes. As such, it was argued that all income to charities should be excluded from the calculation to mirror the current process.
- 12.18 In addition, Donr Ltd also argued that society lottery services should not be treated differently from charity donations as they perform the same function as a donation, with the primary difference to supporters being an incentive to give. As such, Donr Ltd said that society lottery services should also be excluded from the administrative charge.

## Our decision

### “Market size” and “amount to be funded by levy”

- 12.19 In responding to comments made on this issue, we note that the PSA currently sets out its funding needs in its annual Business Plan and Budget consultation.<sup>124</sup> This PSA document explains that the market size for the purposes of the levy calculation is estimated by reference to historical outpayments and assumptions about trends in the market. In that regard, the amount to be funded by the levy is a simple calculation of the PSA’s budget

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<sup>124</sup> [Consultation on Business plan and budget 2024/25 \(psaauthority.org.uk\)](https://psaauthority.org.uk/consultation-on-business-plan-and-budget-2024-25)

minus other sources of its income (which, in the past, under the PSA funding model, would have included, for example, registration fees and amounts received from imposing fines under Code 15).

- 12.20 While article 14 of the PRS Order does not expressly refer to the “market size”, the formula for calculating our administrative charges set out in article 14(2) reflects a similar approach to the approach taken by the PSA, so that our charges will continue to be based on financial transaction data in the PRS value chain using outpayments.
- 12.21 For example, if the sum of Ofcom’s budgeted estimated relevant expenditure within the meaning of article 14(7), including a proportionate share of overheads, is £3m (which is represented by the “DAE” and “O” elements of the formula), and the “market size”, based on the total outpayments for the relevant period is £300m (which is represented by the “TOP” element of the formula), then:
- a) the resulting quotient is 0.01 (£3m/£300m).
  - b) if stakeholder A’s total outpayments for the relevant period is £0.5m (which is represented by the “NOS” element of the formula), stakeholder A’s levy would be £5,000 ( $0.01 * £0.5m$ )
- 12.22 We consider that article 14 of the PRS Order is straightforward and clear on how our administrative charges will be calculated for each charging year. We believe that our above-mentioned example further clarifies how charges will be calculated in principle. We should also add that the “DAE” element of the formula also allows us to make any adjustments to deal with a deficit or surplus mentioned in article 14(6) in respect of a particular charging year.
- 12.23 As regards Mobile UK’s point about the “artificial inflation of market size”, we do not believe that the cost of regulation should be determined by the size of the market. It is also important to note that the amount of levy charged relates to cost and not market size (which is only used to calculate a fair share of the levy to be paid, i.e. individual network outpayments as a percentage of total outpayments).

### Transparency of the process for establishing our regulatory costs

- 12.24 We received a number of comments from stakeholders relating to the transparency of the process for establishing our regulatory costs. We set out our responses to these comments below, including providing additional clarification, where appropriate.

#### Clarity about how the cost of regulation will be established

- 12.25 We explained in our consultation that, in deciding on the funding model for the PRS sector, we considered it appropriate to align our approach to that of other regulatory sectors that we regulate by having regard, in particular, to our SoCP that apply for those sectors.
- 12.26 In particular, we consider that these charging principles contain key principles and criteria that are appropriate to guide our approach to cost allocation also for the PRS sector, including:
- a) the fundamental feature of Ofcom’s approach to the attribution of costs is adherence to the key principle of “causality”.
  - b) each item of cost recorded in Ofcom’s accounts is attributed to the activities within each sector, in this case, PRS regulatory costs.
  - c) direct costs of activities are recorded directly whereas indirect costs are added by either allocation or apportionment:

- i) allocated costs represent items of operating costs or capital expenditure which can be assigned wholly to a particular sector or activity by virtue of information in the accounting records; and
- ii) apportioned costs represent overheads which are spread over each of the activities on a fair and equitable basis using standard cost apportionment methods.

12.27 We will also consider that the following criteria in the SoCP are appropriate for the allocation of costs in the PRS sector, namely:

- a) *objectivity*: cost allocations are not intended to benefit any particular sector or activity;
- b) *consistency*: there will be consistency in approach between budget and actual costs, and from year to year; and
- c) *transparency*: there will be:
  - i) a clear distinction between direct and apportioned costs;
  - ii) identification of appropriate cost drivers for each type of activity and the use of objective operational and/or financial data relevant to that cost driver to apportion sums to spectrum management and non-funded functions costs; and
  - iii) clear links to Ofcom's corporate plan.

#### **Level of stakeholder scrutiny in establishing our costs**

12.28 We note a number of stakeholders also raised concern about the level of stakeholder scrutiny in relation to establishing our regulatory costs. Again, we intend to achieve scrutiny and transparency in the same way as we do for budget setting in our other regulatory sectors.

12.29 We will firstly consult on our Plan of Work for the forthcoming year and subsequently set a budget that will deliver the programme of work which will have been subject to consultation. The budget will be allocated and apportioned to the sectors according to the proportion of Ofcom's costs that each sector accounts for and, as such, we will be able to determine the estimated costs for the PRS sector. We will publish our estimated costs for all sectors in our annual Tariff Tables on or before 31st March each year. In establishing our regulatory costs, it is important to note that Ofcom operates within financial expenditure caps, as agreed with DSIT in conjunction with HM Treasury.

12.30 We are also required under article 14(5) of the PRS Order to publish a reconciliation statement in respect of each charging year. These statements will be included in Ofcom's annual report and accounts which are audited by Ofcom's auditors, the National Audit Office. Those statements will also carry forward any deficit or surplus from previous years to ensure that the aggregate amount of the charges payable to us is sufficient to meet, but not exceed, the relevant expenditure estimated to be incurred in relation to the following year (see article 14(6)). Taken together, we consider that the administrative charges that we will impose under the PRS Order will be simple and as clear as possible for stakeholders. These charges will also be practicable in using data that stakeholders would anyway gather for their own management purposes, as well as relatively simple to administer for Ofcom.

#### **Increased complexity, funding through Ofcom's existing telecoms levy and risk of double counting**

12.31 Our approach is that, where providers operate as both PRS providers and providers of other services for which they are charged a fee, providers will be charged separate fees for the different regulatory activities. This is the position at present and will continue to be the case under our cost recovery approach.

- 12.32 Some network operators may be of a description falling within Ofcom’s designation<sup>125</sup> to pay our separate administrative charges under section 38 of the Act. However, those powers only allow us to recover our costs of carrying out the functions mentioned in section 38(5) of the Act, which do not include our functions under the PRS Order. In contrast, section 122(4) of the Act contains an express power for us to recover our costs incurred by Ofcom in connection with our functions under the PRS Order.
- 12.33 Furthermore, we note that the above-mentioned designation for the telecoms sector does not result in any “double counting” of relevant costs. This is because the relevant turnover for those purposes relates to entirely different activities compared to the activities relevant to calculating the charges under the PRS Order. In particular, network operators liable to pay charges under that section 38 designation only pay charges based on turnover made from carrying on the following activities:
- a) the provision of electronic communication services to third parties;
  - b) the provision of electronic communication networks, electronic communication services and network access to communication providers; or
  - c) the making available of associated facilities to communication providers.
- 12.34 Those activities would not capture PRS which are a form of micro-payment for paid for content, data services and value-added services. Therefore, where relevant stakeholders would be captured under both regimes, they would be required to pay two separate administrative charges imposed under section 38 of the Act and article 14 of the PRS Order, respectively, for carrying out different regulatory activities.
- 12.35 We consider that this outcome would reflect both fairness and cost reflectiveness in our cost recovery approach. In particular, our view is that the charges payable by a stakeholder in either/both sector(s) should reflect the regulatory activities undertaken in that particular sector and be proportionate to the relevant stakeholders’ relevant revenue/outpayments.

#### **Application of Ofcom’s annual fees**

- 12.36 In terms of the application of Ofcom’s annual fees, we note that Code 15 puts the burden of levy collection on the network operators but assumes that the levy will be passed through the value chain until finally borne by the merchant (much like how VAT works).
- 12.37 In reality, the MNOs have historically chosen not to pass the levy on and have treated it as a cost of business (and, in effect, included it in their commercial revenue share arrangements). We do not see any reason for changes to these current arrangements under the PRS Order.

#### **Responsibility for calculating and apportioning Ofcom’s shared costs**

- 12.38 We have also had regard to aimm’s question about who is responsible for calculating our budget including shared costs. This responsibility falls on Ofcom, with our accounts being audited by the National Audit Office.

#### **Anticipated costs of regulation**

- 12.39 We note some stakeholders said that it is difficult to comment on our cost recovery proposals without knowing how much regulation will cost. We consider that the level of budget required for us to regulate and the method of calculating the levy requirement from

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<sup>125</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/46839/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/46839/statement.pdf)

industry are two different matters. Our view is that stakeholders should be able to comment on the latter without having details of the former.

- 12.40 We agree that there are synergies to be achieved and efficiencies to be gained from the transfer of PRS regulation from the PSA to Ofcom. As a result, we expect savings which will be achieved over time.
- 12.41 We would also note, however, that the proposed transfer of regulatory responsibilities from the PSA to Ofcom is not a cost saving exercise but one of strategically responding to the market changes and ensuring enduring consumer protection.

### Excluding charity donations from the levy calculations

- 12.42 We note that charity donations are currently excluded from the PSA's levy calculations. This is because there is 100% pass through to the charities in terms of the PRS revenue relating to income from charity donations, meaning there is no revenue share. This current exclusion is not a Code 15 provision but, rather, an agreement between the PSA and its TCP funders not to include charity donations as part of their levy calculations.
- 12.43 We have decided to retain the current exclusion for charity donations from the current levy calculation. We accept the argument that charities are distinct from other forms of CPRS insofar as they have been established exclusively for public benefit and their only purpose is charitable, i.e. they do not seek to make profits and all the money they raise goes towards achieving their aims.
- 12.44 However, and given the legal status of the PRS Order, in order to retain an exclusion for charity donations from our levy calculations, unlike current arrangements, we would need to specifically exclude charity donations from our levy calculations from the PRS Order. We propose to do this through amending the definition of "PRS revenue" by including a specific exclusion for any charges imposed for the purpose of those users donating to a charity.
- 12.45 We have also considered Donr Ltd's comments that society lottery services should also be excluded from the levy calculation. These services are not currently excluded from the PSA's levy calculation. This is because they are not considered to be comparable to charity donations and there is not 100% pass through of the PRS revenue. On this basis, we do not agree that charity donations and society lottery services are identical services, so we have decided not to exclude society lottery services from the levy calculations.

## TCP's liabilities to pay administrative charges

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### Consultation proposals

- 12.46 We proposed that TCPs should be responsible for funding arrangements through introducing the term of "liable network operator". We noted that this proposal retains, in effect, the PSA's current approach to funding arrangements. We also said it was also important to note that only those TCPs who fall within the "network operator" definition as defined in the Act would be liable. This is because only those persons would normally be expected to have arrangements or contracts directly with intermediaries or merchants.

## Stakeholder comments

12.47 Mobile UK sought further clarification about the TCP and OCP arrangements. It noted that MNOs could be either and that, under paragraph 4.20(a) of the consultation document, it stated that OCPs do not carry the burden of paying the levy.

## Our decision

12.48 We have decided to adopt our proposal that only TCPs should be responsible for funding arrangements under the PRS Order through introducing the term “liable network operator”. Again, we consider it appropriate to retain the approach currently taken by the PSA requiring network operators to pay its levies under Code 15.

12.49 In responding to Mobile UK’s comments, we agree that CPs (and, in particular, MNOs) may act as both an OCP and a TCP. However, we consider that this is not a relevant factor for the purposes of PRS regulation, nor in terms of how the PRS funding model applies to networks. This is because OCPs are not covered by the statutory definition of a person who provides a PRS under section 120(9) of the Act, which is our starting point for persons that may be regulated under the PRS Order. Nor, therefore, does our definition of a “liable network operator” under the PRS Order capture OCPs as regulated network operators. In other words, where an MNO is acting as both an OCP and a TCP, it is only the MNO’s activities as a TCP that are relevant in this context.

## Defined thresholds

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### Consultation proposals

12.50 We proposed to apply a threshold to a de minimis level of outpayments of £10,000 and to exclude from the funding arrangements smaller TCPs whose total amount of outpayments in a relevant calendar year is less than £10,000 exclusive of VAT.

### Stakeholder comments

12.51 We did not receive any responses on the issue of defined thresholds.

### Our decision

12.52 We have decided to proceed with our proposal to exclude network operators whose relevant turnover amount in a relevant year falls below £10,000 exclusive of VAT.

## Financial information

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### Consultation proposals

12.53 We proposed to collect the “outpayments” data from TCPs on an annual basis by using a published “General Demand” for information. We noted that, in practice, this would effectively mean that we would issue a single information notice that is addressed to all TCPs, as opposed to issuing individual notices to each TCP (as under Code 15).



## Stakeholder comments

12.54 Mobile UK and VMO2 sought clarity on whether information notices would be issued to all TCPs and, if so, they sought clarification on how Ofcom would protect commercially confidential information.

## Our decision

12.55 We have decided to proceed with our proposals in relation to financial information. We consider that the use of a single information notice in the form of a General Demand to be published by Ofcom in accordance with article 55 of the PRS Order will be simpler for Ofcom to administer than issuing individual notices. Most network operators liable to pay our charges under article 14 are also likely to be familiar with responding to our similar General Demand that is directed to those liable to pay our charges for regulating the telecoms sector.<sup>126</sup> This approach therefore also ensures consistency and simplification across the sectors. In that regard, we already collect commercially confidential information and have robust processes in place to ensure that all such information is secure. Indeed, the general restrictions on our disclosure of information imposed on Ofcom under section 393 of the Act will apply also to the information that we collect using this General Demand.

## Ofcom's proposed funding methodology

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### Consultation proposals

12.56 We proposed to use the following formula for the purposes of calculating a TCP's administrative charge (AC):

$$AC = [(DAE + O) \div TOP] \times NOS:$$

- a) "DAE" - the total sum of our estimated relevant expenditure estimated to be incurred in the charging year in question, together with any adjustments to deal with a deficit or surplus in the prior year;
- b) "O" - a reasonable apportionment of our estimated overhead costs attributable to such expenditure for the charging year in question; and
- c) we arrive at the AC by, firstly, dividing our total budgeted costs (i.e. DAE + O) with the total amount of outpayments of all TCPs in the relevant calendar year (shortened to "TOP") and, secondly, by multiplying the quotient with the total amount of outpayments of a TCP in the relevant calendar year (shortened to "NOS").

12.57 We also noted that we sought to align our methodology with the PSA's levy-funded model, where possible. However, our recoverable costs would be limited to those that are referred to in section 122(4) of the Act.

## Stakeholder comments

12.58 Three argued there was insufficient detail provided in the draft PRS Order and consultation document as to how the relevant costs will be calculated, including a lack of clarity about

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<sup>126</sup> See our latest General Demand for the telecoms sector here:  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/265251/annual-networks-services-s135-demand-tsa-update.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/265251/annual-networks-services-s135-demand-tsa-update.pdf)

terms such as “relevant expenditure” and “overheads”. It expressed concern that, unless there was greater clarity, Ofcom would be afforded an excessive degree of discretion to apportion costs.

- 12.59 Mobile UK expressed concern that the calculation used may be based on voice services only rather than all services.

## Our decision

- 12.60 We have decided to proceed with the proposed funding methodology as set out in the consultation document.

### Additional clarification on our funding methodology

- 12.61 In terms of providing additional clarification on our funding methodology, we would make the following observations.

- a) In a typical charging year, Ofcom’s costs for the PRS sector would consist of the following:
  - i) *Direct costs* i.e. both staff and non-staff costs (e.g. research) of undertaking our statutory duties in this sector.
  - ii) *Proportionate share of indirect costs* (based on the sector’s share of total direct costs) including premises, ICT, HR, Finance.
  - iii) *Estimated surplus/deficit for the prior charging year, where applicable* (because invoices are based on budgeted costs at the start of the financial year).
- b) Accordingly, in terms of our formula for the purposes of calculating a TCP's administrative charge (AC), we would note the following:
  - i) “DAE” is the total sum of our estimated relevant expenditure estimated to be incurred in the charging year in question, together with any adjustments to deal with a deficit or surplus. This would be represented by the sum of (a)(i) and (a)(iii) described above.
  - ii) “O” is a reasonable apportionment of our estimated overhead costs attributable to such expenditure for the charging year in question. This would be represented by (a)(ii) described above.
  - iii) we arrive at the AC by, firstly, dividing our total budgeted costs (i.e. DAE + O) with the total amount of outpayments of all TCPs in the relevant calendar year (shortened to “TOP”) and, secondly, by multiplying the quotient with the total amount of outpayments of a TCP in the relevant calendar year (shortened to “NOS”).

### Clarification on definitions

- 12.62 There were also a number of requests for additional clarifications which are used in our calculation. These included the following:

- a) *“Overheads”*: this represents items identified as being the costs that facilitate Ofcom's performance of its duties and are spread over each of the sectors on a fair and equitable basis i.e. their proportion of total costs. This includes different teams and functions, including rent and equipment, within Ofcom, such as People & Culture, Facilities and Finance. For example, assuming Ofcom has 5 regulatory sectors with directly attributable budgeted costs split as follows (sector A: 45%; sector B: 25%; sector C: 15%; sector D: 10%; sector E: 5%), each of these sectors would be allocated a share of overheads based on their share of budgeted direct costs. Therefore, sector C, for

example, would have 15% of the total budgeted overheads apportioned to it as its fair share.

- b) *“Relevant expenditure”*: this represents all regulatory costs directly attributable to the PRS sector within the meaning of this expression (as defined in article 14(7)) plus a proportionate share of overheads.

### Scope of our calculation

- 12.63 We do not agree with Mobile UK’s comments that our proposed calculation is based on voice services only. We consider this to be a misunderstanding as to how we have drafted our proposed calculation. In particular, we note that we have not included any references within our calculations which would suggest that our calculation is limited in this way.

## Charging and relevant calendar year

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### Consultation proposals

- 12.64 We proposed to base the calculation of outpayments on prior calendar years to save us having to adjust fees during the financial year. We noted this should reduce the administrative burden on both Ofcom and stakeholders.
- 12.65 We said the period for which charges will apply is called the “charging year” that will normally run between 1st April and 31st March. However, we also proposed the “relevant calendar year” would be the period of twelve months beginning on 1st January in the last but one calendar year prior to the charging year in question. For example, 2024/25 fees would be based on the value of 2022 (calendar year) outpayments. We noted that this approach is consistent with the approach we take in imposing charges for the telecoms sector and, therefore, we expect that there should be a limited impact on existing network operators under Code 15.

### Stakeholder comments

- 12.66 TalkTalk argued that the “relevant calendar year” is based on outpayments in 2022 but determines the charges which need to be paid in 2024/25. It said this was an excessively lengthy lag in a consistently fluctuating market and that charges should be based on a more up to date basis to provide a more realistic view of services and outpayments made within a given period.
- 12.67 Telecom2 Ltd said it would like charging to be based on post pay rather than pre-pay so that this is based on actual received revenue rather than projected revenue.
- 12.68 Action 4 Limited said that it understood that the mechanism for Ofcom’s funding will be different from the PSA but that this should work for the industry. Action 4 Limited also asked how we expect companies to pay “fines” within 30 days, as set out in article 14(4) of the draft PRS Order.

### Our decision

- 12.69 We have decided to proceed with our proposed approach in relation to charging and calendar years subject to minor clarificatory drafting changes to the terms “charging year” and “relevant calendar year”. In relation to “charging year”, this includes reflecting the first period in article 14(7)(a) of the PRS Order as beginning with the new commencement date

for the PRS Order of 1<sup>st</sup> February 2025. This means the first charging year will be two months long (1<sup>st</sup> February – 31<sup>st</sup> March 2025).

### Definition of “relevant calendar year”

- 12.70 We have defined “relevant calendar year” to be consistent with the approach we take in imposing charges for the telecoms sector. Again, we expect that most network operators who will be liable to pay our charges under article 14 of the PRS Order will be familiar with this approach. We consider this approach has a number of benefits, including:
- a) outpayments would be based on actual (audited) revenue. This would involve less administrative burden on both the regulator and relevant stakeholders, as both revenue data collection and invoicing would only occur once a year;
  - b) fees would be more predictable as we would not be charging on a quarterly basis based on updated revenue data; and
  - c) the levy would be based on budgeted costs for the financial year. Following our year end accounting process, any under or over recovery of costs would be reflected in the following year’s budgeted levy.
- 12.71 It is also important to note that we would undertake a reconciliation exercise of budgeted and outturn costs for the year at year end. To the extent that our outturn is less than budgeted (for example, because of less work than forecast), the fees for the following charging year would be adjusted accordingly.

### Excessive lag between “charging year” and “relevant calendar year”

- 12.72 We note that new entrants or exits from the market would occur whatever period we base the revenue on. Whilst using more recent revenues would mean this is reflected in the levy more quickly, the levy is based on budgeted costs which would always require adjusting at the financial year end.
- 12.73 Also, we note that relative share of the market might change year on year but in the interest of practicality and verifiable data, we consider that it is important we have a stable base to calculate the budgeted annual levy on.

### Pre vs post-pay

- 12.74 Our approach is to base fees on historic revenue (two calendar years prior). In practice, this should mean that fees would be based on actual revenue rather than projected revenue.

### Timings for payments of fines

- 12.75 We have also considered Action 4 Limited’s comments in relation to article 14(4) of the draft PRS Order. However, we consider this is based on a misunderstanding as this is about timings for paying our administrative charges, not fines. We consider that it is a reasonable timescale to require an invoiced amount for our administrative charges to be paid in full by liable network operators within 30 days after receipt of our invoice, if the amount is equal to or less than £75,000. Where the amount is more than £75,000, we also consider it appropriate for such operators to pay in equal monthly instalments in arrears on or before the 30th day of receiving our invoice. This is consistent with what we do in our other regulated sectors (post, TV & networks & services, in particular).<sup>127</sup>

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<sup>127</sup> See paragraph 3.8 of our published [statement of charging principles](#).

## Outpayments

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### Consultation proposals

12.76 We proposed to largely reflect the concept of “outpayments” as defined under paragraph 7.1.1(a) of Code 15. Our proposed definition of “outpayments” was as follows:

*“means that total sum of the amounts payable by a liable network operator to intermediaries and merchants in respect of PRS revenue”.*

### Stakeholder comments

12.77 We did not receive any responses on our proposed definition of “outpayments”.

### Our decision

12.78 We have decided to proceed with our proposed definition of “outpayments”.

## PRS revenue

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### Consultation proposals

12.79 We proposed a new definition of “PRS revenue” for the purposes of the draft PRS Order. Our proposed definition was as follows:

*“...the total net amount passed on to a network operator by an originating communications provider in respect of charges imposed by the provider on its users of the electronic communications services for the provision of CPRS, together with any facilities made available to them”.*

12.80 We said the reason we drafted this definition is because we believed that a TCP is unlikely to know the CPRS transactions which are made by the customers of an OCP where the TCP and OCP are different providers.

### Stakeholder comments

12.81 We did not receive any responses on our proposed definition of “PRS revenue”.

### Our decision

12.82 We have decided to broadly proceed with our proposed definition of “PRS revenue” with the exception of including a specific exclusion for any charges imposed for the purpose of those users donating to a charity. As we set out in paragraphs 12.42 – 12.45 above, we want to continue to exclude charity donations from the current levy calculation and we have decided that the best way to do this is through amending the definition of “PRS revenue” by including a specific exclusion for any charges imposed for the purpose of those users donating to a charity.

## Penalties

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### Consultation proposals

12.83 Unlike the PSA, we said we would not be able to use money collected through penalties to offset the amount of funds to be collected. In particular, we noted that all financial penalties imposed by Ofcom are transferred to HM Treasury and/or the relevant Consolidated Fund. Ofcom does not receive any financial benefits from, nor is it statutorily able to make use, of any financial penalties received.

### Stakeholder comments

12.84 aimm and Infomedia both expressed concern that future fine collection under Ofcom regulation would not be able to be used to offset the levy, but, instead, would go to HM Treasury. They noted that, historically, this was a major mitigation for the impact of the levy on network operators, and that by removing this mitigation, there would inevitably be a significantly increased cost of the levy being passed down through the value chain to intermediaries and merchants. MCP Insight Ltd supported and agreed with aimm's comments.

### Our decision

12.85 We are confirming our proposal relating to penalties and, in particular, that Ofcom will be unable to use money collected through penalties to offset the amounts of funds to be collected. This is because section 400(2) of the Act imposes a duty on Ofcom to pay any amounts that we receive for penalties imposed under the PRS Order (see section 400(1)(a) of the Act) into the Consolidated Fund. We will therefore transfer all such penalties to HM Treasury.

## Requirement on network operators to retain relevant payments (article 53)

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### Consultation proposals

12.86 We proposed to require network operators to retain relevant payments to another PRS provider for at least 30 days except for payments relating to society lottery services.

### Stakeholder comments

12.87 Action 4 Limited and Mobile UK were both supportive of our proposals.

12.88 aimm and Donr Ltd queried the proposed exclusion for society lottery services. Donr Ltd, in particular, argued that charity donations should benefit from this approach, i.e. that they should also be excluded from the scope of the article, as they were considered to be lower risk. MCP Insight Ltd supported and agreed with aimm's comments.

### Our decision

12.89 We have decided to proceed with our proposals as set out in the draft PRS Order. This requirement performs a vital role in terms of protecting consumers as it deters PRS

providers from engaging in activity which may have the potential of harming consumers. This is because such activities are likely to be detected by consumers or networks within the 30-day time period and, therefore, means that payments can continue to be withheld whilst the suspicious activity is investigated, acting as a deterrent for those PRS providers who may be inclined to harm consumers.

- 12.90 In terms of the exemption for society lottery services, we note this is merely intended to replicate the current exemption from the requirement under Code 15.<sup>128</sup> We note the reasoning for the exemption for society lottery services is to ensure compatibility between requirements for PRS providers to withhold payments and the Gambling Commission’s Licence Conditions and Codes of Practice (“LCCP”).<sup>129</sup> Specifically, rule 11.1.9 of the LCCP requires a promoter of a society lottery to be paid the price for a ticket before prizes can be given or allocated to a person.

## Requirement on operators to keep premium rate number records (article 54)

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### Consultation proposals

- 12.91 We proposed to require network operators to retain records in writing of any PRS number which is being, or has been, transferred from the network operator to another person, or used by another person without direction or control of the network operator.

### Stakeholder comments

- 12.92 aimm requested clarity as to whether our proposed requirement applies to just voice services or whether it also included shortcodes. It noted that, if it did include shortcodes, this may already be covered by the information that is recorded in short-codes.com. MCP Insight Ltd supported and agreed with aimm's comments.

### Our decision

- 12.93 We have decided to proceed with our proposal subject to a drafting amendment to clarify that voice shortcodes are not within the scope of the requirement on networks to keep records.
- 12.94 The article, as proposed in the consultation, defined PRS number as
- “a telephone number—*
- (a) which is or has been used for the provision of a controlled PRS, and*
- (b) which was either—*
- (i) allocated to the network operator by OFCOM, or*
- (ii) transferred to the network operator from another person.”*

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<sup>128</sup> <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/For-business/Does-my-service-benefit-from-an-exemption/Code-15-exemptions/Society-Lottery-Exemption-16-02-2022.ashx>

<sup>129</sup> [Licence conditions and codes of practice \(LCCP\) \(gamblingcommission.gov.uk\)](https://www.gamblingcommission.gov.uk/licence-conditions-and-codes-of-practice)



- 12.95 The term “telephone number” will have the meaning given to it in section 56(5) of the Act<sup>130</sup> and, having considered this matter, we are of the view that keeping this definition would mean that voice shortcodes would be brought within the scope of the article. That is not the policy intention as it would represent a material change in scope from the existing requirements at paragraph 6.2.6 of Code 15 which is based on “PRS numbers” and so there is no requirement to keep voice shortcode records. We see no reasons to include voice shortcodes within the scope of this article.
- 12.96 We have, therefore, used the term “premium rate number”, as set out in article 3(8) of the PRS Order, to reflect the policy intention that voice shortcodes are not within scope of this article.

## Requirements to provide information to Ofcom (Article 55)

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### Consultation proposals

- 12.97 We proposed to include powers for Ofcom to require PRS providers to provide us with information which we consider necessary for the for the purpose of carrying out our functions under, or by virtue of, the PRS Order.
- 12.98 We also set out the purposes for which we proposed Ofcom would be able require information from PRS provider. This included:
- a) ascertaining whether a contravention of a requirement imposed under the draft PRS Order has occurred or is occurring;
  - b) ascertaining or verifying the charges payable by a person under Part 3 of the draft PRS Order;
  - c) obtaining a copy of the results of relevant security testing carried out by intermediaries; and
  - d) assessing any steps taken, or arrangements, made by a PRS provider to comply with the PRS Order, including (without limitation) any written policies, procedures or other written documents recording any such steps or arrangements.

### Stakeholder responses

- 12.99 Action 4 Limited said that the proposed requirements seem to be sensible and should be proficient for industry.
- 12.100 Mobile UK also confirmed that MNOs are content with our proposals.
- 12.101 aimm, BBC Children in Need and Donr Ltd questioned whether our proposals should state that Ofcom may request information that is “reasonable and appropriate” for carrying out its functions, rather than “necessary”. Donr Ltd explained that this would ensure investigations remain fair and that Ofcom has a requirement to make justifiable decisions when requesting information from any parties being investigated. MCP Insight Ltd supported and agreed with aimm’s comments.

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<sup>130</sup> See s.11 of the Interpretation Act 1978 – terms which apply to the relevant parts of the “parent” act that the PRS Order is made under, i.e. the Act, will apply to the Order.

12.102 Telecom2 Ltd queried article 57(3)(a) of the draft PRS Order relating to our proposal that PRS providers may be required to collect or retain any information that the PRS provider would not otherwise collect or retain. It asked for clarity that this requirement will not be imposed retrospectively and only if the provider has the ability to collect such data.

## Our decision

12.103 We have decided to proceed with our proposals subject to some drafting amendments to improve clarity. We do not consider that our proposals will have any material impact on PRS providers as they broadly reflect the breadth of information which can be requested by the PSA under Code 15 and the way in which that information is requested by the PSA.

12.104 We do not agree with responses proposing that we should replace “necessary” with “reasonable and appropriate” for the purposes of requesting information. The test of “necessity” is an objective test meaning that Ofcom will have to objectively justify why any information request is necessary. This is the same limitation placed on our regulatory powers in other sectors.<sup>131</sup> Where Ofcom exercises any function under the PRS Order, our general duties under section 3 of the Act will also apply. Therefore, when making requests for information, section 3(3) of the Act would require Ofcom to have regard to regulatory principles such as proportionality and targeted interventions. In addition, article 55(5)(b) of the PRS Order prevents Ofcom from requiring information under article 55(1) unless the making of a demand for the information is proportionate to the use to which the information will be used to carry out Ofcom’s functions under the PRS Order.

12.105 In relation to Telecom2 Ltd’s comments, we are not sure what is meant by the reference to applying the requirement to collect and retain information “retrospectively”. This provision aims to require providers to retain or collect information that they may not have already collected, for example because they do not have a business need to collect it. Ofcom’s usual approach to gathering information is to send information requests in draft form for providers to comment on before issuing the final notice. In response a draft request, or the final notice itself, providers can say that the information has already been deleted (if that is the case) or provide reasons why it is not possible for the information to be collected (again, if that is the case) as part of their submissions to be considered by Ofcom. It should be noted that providing false information in response to an information request would be a breach of the PRS Order, and therefore such submissions should only be made if they truly apply in the circumstances.

## Record-keeping (Article 56)

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### Consultation proposals

12.106 We proposed to require providers to make and keep a “relevant record” for specific durations. “Relevant record” was defined as a record in writing that was required to be made and kept under the draft PRS Order, as well as any other record that a PRS provider may have kept as a means of demonstrating compliance with other requirements under the draft PRS Order. We proposed to retain the PSA data retention periods of:

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<sup>131</sup> See s135(1) of the Communications Act 2003; s32A (1) of the Wireless Telegraphy Act 2006; and paragraph 1 of Schedule 8 to the Postal Services Act 2011.

- a) 2 years, where a relevant record relates to a requirement imposed on a PRS provider under Parts 2, 3, 5, 6 and 7 of the draft PRS Order; and
- b) 3 years, where a relevant record relates to a requirement imposed on the PRS provider under Part 4 of the draft PRS Order i.e. relating to due diligence and risk assessment requirements.

12.107 We also proposed that providers must preserve relevant records above the normal data retention periods once Ofcom has notified them that an investigation has been opened and for as long as that investigation is ongoing (see paragraphs 11.38 – 11.43 for our proposal and decision on this requirement).

## Stakeholder responses

12.108 Action 4 Limited, British Red Cross and Mobile UK agreed with our proposals.

12.109 aimm, BBC Children in Need, Channel 4, Channel 5, and Telecom2 Ltd requested clarification on whether they could use third-party sub-contractors to retain information on their behalf.

12.110 Donr Ltd said that the PSA did not require any data related to consent to charge to be kept for a period greater than two years. This meant that, for example, a consumer who has been billed for a subscription service for three years would not have the original consent to charge record retained after the first year. It requested that the expectation that the original consent to charge data will be deleted over time should be reflected in our proposals to best capture current working practices.

12.111 TÜV SÜD Limited asked how proposals worked in the context of the Data Protection Act 2018 and how “the right to be erased”<sup>132</sup> would be protected.

## Our decision

12.112 We have decided to proceed with our proposals. In particular, we consider it appropriate to retain the PSA’s data retention periods as they had been consulted upon by the PSA in 2019 and there is no evidence that the retention periods are not sufficient.

12.113 Providers can use third-party sub-contractors to make and keep records on their behalf. However, it remains the providers obligation to make and keep such records. Providers should ensure their contractual arrangements are such that they can require any third parties with whom they have contracted to keep records to produce those records when needed.

12.114 We do not consider there to be a conflict between record retention requirements and data protection legislation (the Data Protection Act 2018 and the UK General Data Protection Regulation). PRS providers will have to consider their data retention obligations under both regimes. The PRS Order will not set out data protection requirements so providers will need to take their own independent legal advice or seek advice from the Information Commissioner’s Office. It is clear from the guidance that the PSA requires data to be retained for a period of at least two years, with data relating to the DDRAC provisions of Code 15 (see section 3.9 of Code 15) needing to be retained for at least three years. There is no requirement by the PSA for such data to be deleted after these periods of time and

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<sup>132</sup> We understand this to be a reference to an individual’s right to erasure under the UK General Data Protection Regulation (also known as the “right to be forgotten”).

therefore, taking Donr's example, a PRS provider can retain such data for longer, if necessary. This position is also reflected in article 56 of the PRS Order as we consider these to be suitable minimal periods for providers to retain such information. It is then up to the PRS providers to determine how long after the expiry of the minimum periods in article 56 they need to retain such information for. Therefore, no change is needed to the article to reflect that some PRS providers may only keep the records for the minimum period.

# 13. Overall conclusions and next steps

- 13.1 In previous sections of this statement, we have set out our considerations of stakeholder comments on our proposed provisions in the draft PRS Order on which we consulted, together with our reasons for reaching our decisions on those specific provisions now contained in the PRS Order.
- 13.2 In light of those detailed matters, this section sets out our overall conclusions on associated matters by reference to applicable statutory duties and legal tests imposed on Ofcom. In so doing, we summarise our views on the regulatory burdens imposed by Ofcom on PRS providers under the PRS Order as part of our impact assessment (“IA”). We also set out our specific IAs on equality and the Welsh language, together with our consideration of stakeholder comments on those specific impacts.
- 13.3 As part of those overall conclusions, we also address stakeholder comments on our proposed implementation period. We conclude this section by explaining our expected next steps as well as what our immediate expectations of PRS providers are in bringing themselves into compliance with the requirements under the PRS Order.

## Our overall assessment

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- 13.4 In section 6 of our consultation, we set out our overall assessment of our package of proposals. We asked stakeholders whether they agreed with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent, and we also invited them to provide further information or evidence to support their views. We set out below our considerations of stakeholder comments on this matter.

## Consultation proposals

- 13.5 We said in our consultation that we believed that the combined effect of our proposals will result in significant benefits to all stakeholders having an interest in, or affected by, PRS.
- 13.6 We noted that the draft PRS Order contained consumer protection measures, intended to mitigate the risk of potential significant harms to consumers. Those measures have evolved over the years through the PSA’s regulation and we proposed to largely retain such measures for the reasons they were adopted and approved by Ofcom in the first place.
- 13.7 We also discussed in the consultation, however, instances where we were proposing to make material changes to the position under Code 15 (whether by introducing new requirements, removing previous requirements or materially changing them). To further assist stakeholders’ understanding of such material changes, we included in Annex 8 of the consultation a correlation table showing corresponding requirements as well as changes in the draft PRS Order compared to Code 15.
- 13.8 In reaching our proposals, we explained that we had had regard to our duties under section 3 of the Act and, so far as relevant, section 4 of the Act, which duties we describe in section 2 of this statement. We explained that our belief was, in particular, that the draft PRS Order (the enforcement of which would be supported by our proposed modifications to the PRS

Condition) would be compatible with those duties, not only because our proposals would be in line with Ofcom’s primary duty to further the interests of citizens and consumers, but also because they would promote greater consumer confidence in the PRS market and, as a result, encourage investment and innovation, and promote competition, in the sector.

- 13.9 We also said that we had had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. We considered that both the draft PRS Order and the proposed modifications to the PRS Condition complied with those principles in that we had carefully considered what current provisions in Code 15 were appropriate to retain or (as the case may be) remove, and what other provisions should be either added or changed. We also considered that the draft PRS Order provided clarity and certainty to all parties involved in the PRS sector.

## Stakeholder comments

### Broad support for our overall assessment

- 13.10 We note that stakeholders were broadly supportive of our assessment, although some stakeholders raised some specific concerns. Specifically, aimm<sup>133</sup>, British Red Cross, BT, Fonix, Infomedia, Mobile UK, Telecom2 Ltd and VMO2 said that they agreed with our assessment. MCP Insight Ltd agreed with and supported the comments and suggestions made by aimm.

- 13.11 However, stakeholders raised a few additional points which we deal with below.

### Ofcom’s guidance on how to implement the PRS Order

- 13.12 British Red Cross said that, while our proposals are transparent, it would be helpful if Ofcom prepared and published accompanying guidance as part of implementation of the PRS Order.

- 13.13 We do not intend to publish such guidance at this stage. We expect that PRS providers will already be complying with the majority of the provisions in the PRS Order, since they are largely seeking to retain requirements imposed by Code 15. For new or materially changed requirements compared to Code 15, we consider that the language in the PRS Order is clear and precise as to what PRS providers must do to bring themselves into compliance. We have also responded in previous sections of this statement to specific points raised by stakeholders in their responses, and we believe that our clarifications should assist PRS providers in that regard.

### Future use of self-regulation

- 13.14 BT believed that Ofcom should continue to monitor trends and, in the longer term, consider a more self-regulated approach by players in the value chain.

- 13.15 While we understand that BT’s point about monitoring trends and moving to a self-regulatory model is directed to the future, we have borne in mind the desirability of promoting and facilitating the development and use of effective forms of self-regulation in reaching our conclusions on the PRS Order (as we are required to do under sections 3 and 6 of the Act). However, our view is that the matters which we are required under section 3 of

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<sup>133</sup> aimm’s agreement was subject to specific points noted in their response, where members questioned some of the proposals and suggested alternatives.

the Act to further or to secure are not likely to be furthered or secured by effective self-regulation at this stage.

- 13.16 In particular, we note there has been a history of PRS providers engaging in harmful practices in the PRS sector which has led to both consumer harm and a lack of consumer trust in the marketplace, negatively impacting on compliant providers and the overall growth of the market. We, therefore, consider that removing regulation is not a viable option at this stage. We intend, however, to undertake ongoing supervision and compliance monitoring in order to monitor trends and compliance with the requirements.

### **MNO Codes of Practice**

- 13.17 BT, Mobile UK, VMO2 and Vodafone recommended that the draft PRS Order should be amended to acknowledge the important and vital role of MNO Codes of Practice as part of regulating the PRS sector. They argued that this approach would ensure that any regulatory actions taken by MNOs to reduce risk are not met by a legal challenge.
- 13.18 We note that the MNO Codes of Practice are, in effect, voluntary codes (enforced through contracts by the MNOs and their contracting parties) and, as such, they are a form of self-regulation. We have already explained above why we consider that self-regulation cannot effectively further or secure the matters which we are required under section 3 of the Act to further or to secure at this stage. It is, however, a matter for industry to decide how it wishes to take forward the MNO Codes of Practice under the new regulatory regime, taking account of the requirements set out in the PRS Order. In our view, there is no reason why MNOs cannot continue to operate such codes as they currently do under Code 15, provided that they do so in compliance with the provisions of the PRS Order.

### **Greater Ofcom scrutiny of PRS providers' compliance**

- 13.19 TÜV SÜD Limited argued that, whilst the draft PRS Order updates and replaces the existing PRS regime, it still fails to ensure compliance with the requirements of the PRS Order. In particular, it was concerned that there is no requirement to demonstrate continued compliance to the draft PRS Order and that Ofcom should consider greater scrutiny of PRS providers by either continual monitoring or periodic audits, by Ofcom approved bodies, of the systems and controls used by PRS providers to maintain compliance with the draft PRS Order.
- 13.20 We have considered TÜV SÜD Limited's concerns whether the PRS Order itself fails to ensure compliance with the requirements of the PRS Order, including whether it is necessary to include requirements to demonstrate continued compliance, requiring greater scrutiny of PRS providers. Our view is that effective monitoring of the PRS market will be essential to ensuring compliance with the requirements under the PRS Order. We, therefore, intend to do so through normal audit activity and ongoing supervision and compliance monitoring, periodic reviews of the overall market and trends, as well as regular communication with persons who are likely to be affected by this regulation.

## **Our decision on the PRS Order**

- 13.21 In light of our consideration of stakeholder comments on all matters covered by this statement, we decided on 21 October 2024 to make the PRS Order, which is officially published on <https://www.legislation.gov.uk/>. We discuss below when the requirements under the PRS Order will begin to apply (i.e. commencement), together with associated implementation timings.



- 13.22 Before making the PRS Order, we obtained the consent of the Secretary of State on 17 October 2024, as required under section 122(6) of the Act.
- 13.23 As explained in our consultation, the general effect of the PRS Order is:
- a) to impose requirements with respect to the provision and contents of CPRS, and with respect to the facilities made available in the provision of such CPRS (including provision about pricing);
  - b) to impose requirements with respect to the arrangements made by the providers for the promotion and marketing of those services;
  - c) to make provision for the enforcement of those requirements; and
  - d) to make provision for making other arrangements for the purposes of those requirements.
- 13.24 In doing so, we have relied on our powers to make such provisions as Ofcom thinks fit under sections 122(2) to 122(4) of the Act (as already described in section 2 of this statement), together with our powers under section 403(7) of the Act, namely:
- a) to make different provision for different cases (including different provision in respect of different areas);
  - b) to make provision subject to such exemptions and exceptions as Ofcom thinks fit; and
  - c) to make such incidental, supplemental, consequential and transitional provision as Ofcom thinks fit.
- 13.25 In making this decision, we have also considered the likely impact of implementing the requirements imposed by the PRS Order on businesses as well as on persons with protected characteristics (equality impacts) and the Welsh Language. Our considerations in that regard are set out in more detail below.
- 13.26 Overall, we consider that our making of the PRS Order is appropriate and needed to secure or further the performance of our general duties in section 3 of the Act, as well as for us to act in accordance with the requirements set out in section 4 of the Act. In that regard, we note again that the PRS Order contains consumer protection measures, intended to mitigate the risk of potential significant harms to consumers. We have, therefore, had particular regard to furthering the interests of consumers and to promote the interests of all members of the public in the UK in accordance with the second requirement in section 4(5) of the Act.

## **Our decision on the modifications to the PRS Condition**

- 13.27 We have explained in section 2 of this statement that the purpose of Ofcom's PRS Condition is to secure compliance with directions given in accordance with an approved code (currently, Code 15) by the enforcement authority (here, the PSA) and for the purpose of enforcing its provisions. Indeed, this compliance-type provision is the only provision that may be made by the PRS Condition.<sup>134</sup>
- 13.28 However, if there is no such code, section 120(3)(b) of the Act also envisages that Ofcom makes provision in the PRS Condition requiring the person to whom the Condition applies to comply, to the extent required by the Condition, with the provisions of the order for the time being in force under section 122. The previous PRS Condition already contained such a

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<sup>134</sup> See section 120(3) of the Act.

provision, despite the fact that there is currently no order in force under section 122 of the Act.<sup>135</sup>

- 13.29 We published in our consultation, in accordance with section 120A(3) of the Act, a notification on our proposal to make some modifications to the PRS Condition in light of our proposed draft PRS Order. While we proposed to retain substantively the two compliance-type provisions in the previous PRS Condition, we noted that one main effect of those proposed modifications was to define the persons to whom the new (modified) PRS Condition would apply as PRS providers within the meaning given by the PRS Order for the time being in force under section 122 of the Act.
- 13.30 In other words, we proposed to modify the PRS Condition so that every PRS provider must comply with the provisions of the order for the time being in force under section 122 of the Act. In contrast, the previous PRS Condition applied to “Communications Providers” and “Controlled Premium Rate Service Providers”, respectively, both of which were defined in that Condition.
- 13.31 However, we proposed to continue to apply the PRS Condition to those two separate types of providers (as defined in the previous PRS Condition) to secure compliance with past enforcement directions given by the PSA under its codes (i.e. Code 15 as well as previous versions of a code approved by Ofcom). This compliance requirement (together with certain transitional arrangements proposed under Part 10 of the draft PRS Order) sought to ensure a smooth transition from the PSA to Ofcom, especially so that no regulatory gaps arise.
- 13.32 We are confirming our proposals for making the proposed modifications to the PRS Condition, with only a few minor textual changes. Specifically, as discussed in section 11 of this statement, the main change that we have made is to reflect that every PRS provider (as defined in the PRS Order) must comply with the PRS Order, as opposed to any future amendments to the Order (as per our draft PRS Order). We consider that this change adds legal clarity and certainty. Should we make any amendments to the PRS Order in the future, we expect to also modify the PRS Condition at the same time accordingly.
- 13.33 In making these modifications, we are satisfied that they satisfy the test in section 47(2) of the Act. In particular, we are satisfied that our modifications are:
- a) **objectively justifiable** in that they are necessary for the PRS Condition to secure compliance from the same providers as those who are defined as PRS providers in the PRS Order;
  - b) **not such as to discriminate unduly** against particular persons or against a particular description of persons, since the PRS Condition would apply generally to every person falling within the meaning of a PRS provider (as defined in article 9 of the PRS Order) without being directed to any particular person;
  - c) **proportionate** to what the modifications are intended to achieve in that they are appropriate to address the aim of aligning the definitions in the PRS Condition with the PRS Order, and they are also required to address that aim; and
  - d) **transparent** in relation to what they are intended to achieve, since our modifications are clearly drafted in the PRS Condition itself (when read together with the PRS Order).

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<sup>135</sup> The current PRS Condition states: “1. *The Communications Provider and Controlled Premium Rate Service Provider shall comply with: (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.*”

- 13.34 We also consider that the likely impact of implementing these modifications on stakeholders will be low. This is because our intention is to capture broadly the same persons to whom the current PRS Condition applies.
- 13.35 In making this decision, we have considered and acted in accordance with our general duties set out in section 3 of, and the six requirements set out in section 4, of the Act for reasons that are associated with the making of the PRS Order itself. In that regard, we note that, as a compliance-type only provision, our reasons for making the modifications to the PRS Condition are directly related to the need for securing compliance with the PRS Order.
- 13.36 We have also reflected on whether the growth duty (as introduced by the Deregulation Act 2015) affects our conclusions on the matters discussed in this statement. While the duty does not apply in this context,<sup>136</sup> we have considered the statutory guidance.<sup>137</sup> As envisaged by that guidance, we have considered whether the measures set out in the PRS Order strike the right balance between competing priorities. This approach is also in line with our other duties which are discussed above. While the measures in the PRS Order are fundamentally concerned with the objective of consumer protection, we have explained in our IA why we consider those measures to be necessary and proportionate. For example, we have sought to reduce the regulatory burden compared to Code 15, where appropriate, while minimising the cost to PRS providers of complying with our regulatory requirements. This includes reducing and simplifying requirements relating to registration (see section 4), streamlining requirements relating to DDRAC (see section 5) and streamlining requirements relating to systems and platforms (see also section 5). In relation to our approach to enforcement of the PRS Condition, we have amended our existing enforcement guidelines to provide as much clarity as possible for stakeholders. We consider that acting to support consumers in the way outlined in this statement supports sustainable economic growth.
- 13.37 To the extent that this decision is relevant to telecommunications, in making the modifications to the PRS Condition, we have also had regard to the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for the purposes of section 2A of the Act on 29 October 2019 (SSP).<sup>138</sup> Indeed, the Government’s strategic priorities in the SSP include tackling harmful industry practices and improving the support available to vulnerable consumers, who can pay more than others, and addressing the difficulties that consumers experience in navigating the communications market by giving them the right data, information and support to boost their engagement.
- 13.38 Our statutory notification making the above-mentioned modifications to the PRS Condition in accordance with section 120A(1) of the Act is published in Annex 1 to this statement.

## **Our decision to withdraw our approval of Code 15**

- 13.39 As a result of our above-mentioned decisions, we have also decided that it would not be appropriate to continue to give our approval to Code 15 for the purposes of section 121 of

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<sup>136</sup> The PRS Order is subordinate legislation and is therefore excluded under article 2 of The Economic Growth (Regulatory Functions) Order 2017, and the PRS Condition plays a unique role in that it only requires compliance with the PRS Order.

<sup>137</sup> [https://assets.publishing.service.gov.uk/media/66476caebd01f5ed32793e09/final\\_growth\\_duty\\_statutory\\_guidance\\_2024.pdf](https://assets.publishing.service.gov.uk/media/66476caebd01f5ed32793e09/final_growth_duty_statutory_guidance_2024.pdf)

<sup>138</sup> [https://assets.publishing.service.gov.uk/media/60016add8fa8f55f6156b4a4/SSP\\_-\\_as\\_designated\\_by\\_S\\_of\\_S\\_V2.pdf](https://assets.publishing.service.gov.uk/media/60016add8fa8f55f6156b4a4/SSP_-_as_designated_by_S_of_S_V2.pdf)

the Act. In this context, the general policy rationale is that responsibility for the day-to-day regulation of PRS will be transferred from the PSA to Ofcom. Therefore, we are satisfied that there is no longer an appropriate person having the function of administering and enforcing a code for regulating the provision and contents of PRS, and the facilities made available in the provision of such services. Indeed, this is overriding aim of the PRS Order.

- 13.40 We have decided that this withdrawal will take effect immediately before the day on which the PRS Order comes into force. However, enforcement directions given in accordance with Code 15 by the PSA will continue to apply, and therefore be unaffected by this withdrawal. As such, as explained in our consultation, Ofcom will now continue to have powers to secure compliance with such directions by enforcing the PRS Condition.
- 13.41 Our statutory notification withdrawing our approval from Code 15 in accordance with section 121(7) of the Act is published in Annex 2 to this statement.

## General impact assessment

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### Our approach

- 13.42 IAs provide a valuable way of assessing the potential impact of our policy decisions before we make them. More generally, IAs form part of good policy-making and we expect to carry them out in relation to a large majority of our proposals. They help us to explain the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties and objectives in the least intrusive way.
- 13.43 Specifically, pursuant to section 7 of the Act, an IA must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, or in relation to, what we propose. However, on this occasion, we consider that we do not have a duty to publish an IA as such under that section 7 in relation to the decisions reached in the statement. This is because our proposals as set out in our consultation are not important within the meaning given in section 7(2) of the Act.<sup>139</sup>
- 13.44 We have, however, decided to assess the likely impacts of the PRS Order in line with our IA guidance (as updated in July 2023) that sets out our general approach to how we assess the impact of our proposed decisions.<sup>140</sup>

### Our general assessment

- 13.45 The analysis which we present in this statement constitutes an IA on our decisions to absorb the regulatory functions of the PSA into Ofcom. This analysis also supplements the assessment of impacts contained in the Explanatory Memorandum accompanying the publication of the PRS Order, as prepared by DSIT.<sup>141</sup>
- 13.46 We have already explained in section 1 of this statement that our overall objective in the context of the proposed transfer of regulatory responsibilities from the PSA to Ofcom is to

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<sup>139</sup> Our view is that, since the PRS Order largely seeks to retain requirements imposed by Code 15, the Order is unlikely to have a significant impact on PRS providers or the general public. Also, while we are taking over the day-to-day regulatory responsibility for PRS regulation, we consider that this is unlikely to involve a major change in our activities because we already had regulatory oversight for PRS regulation.

<sup>140</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/draft-impact-assessment-guidance>

<sup>141</sup> [https://www.legislation.gov.uk/ukxi/2024/1046/pdfs/ukxiem\\_20241046\\_en\\_001.pdf](https://www.legislation.gov.uk/ukxi/2024/1046/pdfs/ukxiem_20241046_en_001.pdf)

secure an effective and efficient transfer of the PRS regime to Ofcom and ensure that there are no gaps in regulation and enforcement as part of the transfer of responsibilities. To that end, the PRS Order maintains many of the key principles and outcomes of Code 15 in order to achieve broadly the same outcomes for consumers and stakeholders. In this respect, our assessment is that our proposals continue to further the interests of consumers in respect of the PRS market and maintain a proportionate regulatory burden on providers.

- 13.47 In particular, we consider that many of our decisions will result in little difference in practice for providers compared to current arrangements under Code 15. This is because our decisions largely replicate, or are very similar to, current arrangements. In the main, we have sought to ease the regulatory burden on industry, where appropriate. Where we have strengthened regulations, we consider that the regulatory burdens are objectively justifiable and necessary to ensure consumers are protected across their entire PRS journey. Consistent with our statutory duties, we have explained the impacts of our decisions on industry and consider them to be proportionate, reflecting the need to ensure that consumers continue to be protected from the potential harms arising from the use of CPRS.
- 13.48 Specifically, we consider that the following three additional requirements in the PRS Order (as compared to Code 15) represent the most significant changes, which are likely to have the greatest impact, and they are objectively justifiable and necessary to protect consumers using PRS:
- a) the removal of registration exemptions for merchants operating PRS numbers starting with 087 and voice shortcodes costing 20p or less;
  - b) changes to notification requirements for exempted merchants whereby merchant exemptions from registration will only apply where the qualifying intermediary has given a general undertaking that they meet the conditions, including retaining relevant records of any exempted merchants and providing these records to Ofcom on request; and
  - c) extending requirements to all PRS providers that they are unable to engage in any regulated activity unless they comply with the requirements in article 39 in relation to vulnerable consumers.
- 13.49 Also, as mentioned in the Explanatory Memorandum accompanying the publication of the PRS Order, we have also quantified the following industry-wide costs and benefits:
- a) a one-off transition cost of £800,000;
  - b) registration fee savings of £120,000 per year;
  - c) a one-off time cost of approximately £1,000 for the small number of 087 providers who now need to provide registration information; and
  - d) familiarisation costs to PRS providers of understanding the provisions of the PRS Order (as compared to Code 15) of approximately £270,000.

## Equality impact assessment

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### Our approach

- 13.50 Section 149 of the Equality Act 2010 (“EA 2010”) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected

characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

- 13.51 The EA 2010 also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share a protected characteristic and those who do not.
- 13.52 Section 75 of the Northern Ireland Act 1998 (“NIA 1998”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity<sup>142</sup> and to also have regard to the desirability of promoting good relations across a range of categories outlined in the NIA 1998. Ofcom’s Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the NIA 1998.<sup>143</sup>
- 13.53 To help us comply with our duties under the EA 2010 and the NIA 1998, we assess the impact of our proposals on persons sharing protected characteristics and, in particular, whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 13.54 When thinking about equality, we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our IA guidance).
- 13.55 In particular, section 3(4) of the Act also requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:
- a) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
  - b) the needs of persons with disabilities, older persons and persons on low incomes; and
  - c) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.

## Consultation proposals

- 13.56 We said in our consultation that we did not consider that our proposals for the draft PRS Order would affect any specific groups of persons (including persons that share protected characteristics under the EA 2010 or NIA 1998) differently to the general population. This was because our proposals, which seek to transfer regulation from the PSA to Ofcom, are aimed at delivering improved outcomes, including enhanced consumer protection, for all UK consumers and citizens, all of whom have access to PRS.

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<sup>142</sup> This is a duty to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependents and persons without.

<sup>143</sup> Ofcom, 2014 (updated 2019). [https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/123737/Revised-NI-Equality-Scheme.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/123737/Revised-NI-Equality-Scheme.pdf)

## Stakeholder comments

- 13.57 aimm, British Red Cross, Channel 4, BBC Children in Need, Donr Ltd, Fonix, Infomedia, MCP Insight Ltd, Mobile UK, Telecom2 Ltd, TÜV SÜD Limited and VMO2 agreed that our proposals would not affect any specific groups of persons.
- 13.58 The BBC said that their experience is that older and lower socio-economic groups use PRS to engage with the BBC proportionately more than other audience groups. The BBC expressed concern that our consultation notes at several points the new regulatory approach would increase the burden upon merchants (in both terms of costs and time). It said that, whilst reasonable, this increased regulatory burden would increase pressure on its productions and that there may come a point when it considers removing PRS, particularly from voting programmes. It argued that this outcome could negatively impact the older and lower socio-economic groups who enjoy engaging with their programmes that include PRS.

## Our decision

- 13.59 We note that the majority of respondents agreed with our assessment in relation to the impact of our proposals on equality.
- 13.60 We have had regard to the BBC's comments relating to negative impacts on specific groups of persons as a result of our proposals. However, as we have set out in this statement, we do not consider that our regulatory approach will significantly increase the burden upon merchants. Indeed, and contrary to that, we consider that many of our decisions will result in little difference in practice for providers (including merchants) compared to current arrangements. This is because generally our proposals largely replicate, or are very similar to, current arrangements under Code 15. Therefore, taking account of stakeholder comments, we do not consider that our decision to make the PRS Order will affect any specific groups of persons (including persons that share protected characteristics under the EA 2010 or NIA 1998).

## Welsh language impact assessment

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### Our approach

- 13.61 The Welsh Language (Wales) Measure 2011 made the Welsh language an officially recognised language in Wales. This legislation also led to the establishment of the Office of the Welsh Language Commissioner, who regulates and monitors our work. Ofcom is required to comply with Welsh language standards<sup>144</sup> in relation to the use of Welsh and we consider these are engaged when formulating, reviewing or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK). This includes the general principle that Welsh should not be treated less favourably than English in Wales.
- 13.62 Where the Welsh Language Standards are engaged, we consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating

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<sup>144</sup> See, in particular, Standards 84 – 93. In addition to policy proposals, the Welsh Language Standards may also be engaged when Ofcom is carrying out market research or public facing activities. Further information on our work in the Welsh language is available on our website.



the Welsh language no less favourably than the English language. We also consider how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.

## Consultation proposals

13.63 We said in our consultation that we had considered our proposals on transferring regulatory responsibilities from the PSA to Ofcom under the Welsh Language Policy Making Standards. Our proposals were aimed to deliver improved outcomes, including enhanced consumer protection, for all consumers of PRS. Our proposed assessment was that the implementation of these proposals would not have any adverse effects on the use and treatment of the Welsh language.

## Stakeholder comments

13.64 Action 4 Limited, aimm, BT, BBC Children in Need, Donr Ltd, Fonix, MCP Insight Ltd, Mobile UK, Telecom2 Ltd, TÜV SÜD Limited and VMO2 agreed with our assessment.

## Our decision

13.65 We note that several respondents agreed with our assessment in relation to the potential impact of our proposals on the Welsh language.

13.66 We do not consider the PRS Order, once implemented, would have any impact on opportunities for persons to use the Welsh language or treat the Welsh language less favourably than the English language. We also do not think there are ways in which our proposals could be formulated to have, or increase, a positive impact.

## Implementation timings

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### Consultation proposals

13.67 We explained in our consultation that, subject to our consideration of responses and Ofcom obtaining the consent of the Secretary of State, we intended to make the PRS Order and for DSIT to lay it before Parliament in or around Spring 2024. It would then be subject to Parliamentary scrutiny. We also said we were working to bring the PRS Order into force on 1 October 2024 on the timings anticipated at that time. We noted that this commencement date for the PRS Order would also be aligned with Government policy on so-called ‘Common Commencement Dates’, which are 6 April and 1 October each year.

13.68 We also intended to publish our statement in or around the same time as making the PRS Order, with the final version of the PRS Order being published on the Government’s official website for legislation.<sup>145</sup>

13.69 We considered these anticipated timings between us making the PRS Order (and publishing our statement) and its commencement on 1 October 2024 would mean that stakeholders would have ample time to make the necessary preparations to comply with the requirements under the PRS Order.

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<sup>145</sup> Namely, <http://www.legislation.gov.uk/>

- 13.70 In case there would be a delay in us making the PRS Order, our view was that a period of around 3 months between us making the PRS Order and its commencement should be enough time for affected parties to bring their activities (including any contractual arrangements with each other) into compliance.
- 13.71 In that regard, we considered various aspects in the draft PRS Order and the steps that PRS providers might need to take to be ready to comply with its requirements. In particular, we had regard to the following matters:
- a) **Registration:** PRS providers who were carrying out activities in compliance with Code 15 (including its registration requirements) were likely to benefit from our proposed provision in article 13 of the draft PRS Order about registration in transitional cases. Such providers only needed to provide some limited information (as set out in Schedule 2 to the draft PRS Order) to Ofcom and they would have up to 3 months after the Order's commencement to provide this information. For other PRS providers, article 10 required that they first register with Ofcom and, in effect, do not start carrying out their activities until at least 5 working days later. Article 10 also required (like Code 15) that PRS providers need to appoint a "generally authorised person" to undertake various steps, including to approve various policies under the draft PRS Order. We considered that our proposed 3-month implementation period should be sufficient time for such appointments, including for PRS providers to take any governance steps in that regard. We also noted that the exemption for some merchants in article 11 of the draft PRS Order meant that merchants would need some time to provide information for the purpose of "relevant records" (as defined in that article) to the intermediaries that they are dealing with. Again, we considered that the 3-month implementation period should be enough time to make preparations in that regard. Relevant intermediaries would then have up to one month to notify Ofcom that they had complied with the requirements specified in article 13(3) of the draft PRS Order in respect of a previously exempt merchant under Code 15 or, in other cases, to notify Ofcom at least 5 working days before the start of the merchant's provision of the CPRS in question.
  - b) **Administrative charges:** Liable network operators would not be required to pay our administrative charges under article 14 of the draft PRS Order until after Ofcom has collected the necessary information using our information gathering powers under article 57 of the draft PRS Order and then sent our invoices to them – see article 14(4) of the draft PRS Order for timings to pay these charges depending on the amounts involved. In other words, our assessment was that no prior implementation period will be required in this context.
  - c) **Due diligence measures:** The due diligence and risk assessment requirements in articles 15 and 16 of the draft PRS Order mainly involved PRS providers reviewing the PSA's and Ofcom's registers to ensure that they are not dealing with unregistered PRS providers or persons on whom sanctions have been imposed. We considered that no implementation period would be required in this context. At the time the PRS Order comes into force, Ofcom would not have imposed any sanctions, so PRS providers would simply need to review the PSA's register (as they should currently do under Code 15). Article 20 also deems compliance with certain arrangements entered into before the PRS Order's commencement.

- d) **Risk assessments:** Article 20 of the draft PRS Order also deemed compliance with certain arrangements entered into before the PRS Order’s commencement relating to risk assessments, but some PRS providers may be subject to carrying out risk assessments under article 17 of the draft PRS Order immediately on the PRS Order’s commencement. In that case, we considered our proposed 3-month implementation period should be enough time to prepare for such risk assessments.
- e) **Suspended arrangements:** While we considered that articles 18 and 19 of the draft PRS Order would not require any implementation period as such, we anticipated that some PRS providers may wish to use our proposed 3-month implementation period to ensure that they have the necessary contractual arrangements in place to suspend any arrangements covered by these articles.
- f) **Security testing:** Under article 21 of the draft PRS Order, intermediaries must carry out security testing within 12 months ending with the day on which any regulated activity began (and at annual intervals from the most recent test). For example, we said that, if an intermediary began the regulated activity on 1 October 2023 (or earlier), the intermediary would have to carry out security testing in accordance with article 21 of the draft PRS Order by 1 October 2024 (i.e. the day on which we anticipated that the PRS Order would come into force). In contrast, if an intermediary began the regulated activity on (say) 17 November 2023, that intermediary would have to carry out security testing in accordance with article 21 of the draft PRS Order by 17 November 2024. We considered that our proposed 3-month implementation period should be enough time for intermediaries to carry out these security tests or to plan for new tests to be carried out (where they are due shortly after the Order’s commencement).
- g) **Consumer protection:** We did not expect that PRS providers (especially merchants) would require any implementation period for most requirements under Part 6 of the draft PRS Order, since corresponding requirements already applied under Code 15. However, we recognised that we were proposing to introduce some new provisions under Part 6 of the draft PRS Order and, to that extent, we considered that our proposed 3-month implementation period should be enough time to prepare for compliance. In particular, we noted that the proposed express consent provisions under articles 27 to 29 of the draft PRS Order may require merchants to review and ensure that their systems are set up appropriately, so that they can obtain express consent from consumers as proposed by these articles.<sup>146</sup> This may also have included reviewing subscription contracts that they have already entered into with consumers, including to ensure that it is clear to consumers that they will have a right to terminate subscription

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<sup>146</sup> We explained that the express consent rules for ICSS as proposed in the draft PRS Order (in relation to merchants of ICSS needing to provide pre-contractual information to consumers for free) would be likely to involve the implementation of new service charges. We noted that Ofcom decided that four months was sufficient to implement service charge changes following the Directory Enquiries 118 Review, following consultation with industry, see section 6 of Ofcom’s Directory Enquiries 118 Review, 2019 ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/128420/Directory-Enquiries-118-Review-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/128420/Directory-Enquiries-118-Review-statement.pdf)). We went on to say that given that only two service charges changes were likely to have been required (99% of ICSS use only two service charges - £3.60/min or £6/call, see page 5 of the PSA’s Thematic Review of ICSS) (<https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/News/News/2023/PSA-ICSS-thematic-review-summary-findings-2-Feb-2023.ashx>), it was our view that industry will have sufficient time to make the necessary changes. This proposed requirement for free pre-contractual information has not been carried through to the PRS Order.

contracts under article 33 of the draft PRS Order. Merchants offering professional advice services may also have wished to use this implementation period to take the steps required by article 53 of the draft PRS Order to ensure that the individuals giving the advice to consumers have the necessary qualifications and experience.

- h) **Record-keeping:** We also considered that our proposed implementation period is sufficient for PRS providers to ensure that their systems are ready to comply with the general record-keeping requirement in article 58 of the draft PRS Order. We also suggested that PRS providers use this implementation period to review and ensure that their contractual arrangements with third parties enable them to obtain and keep records that may be relevant to preserving any records for investigation purposes under article 60 of the draft PRS Order.

## Consultation responses

### Implementation timelines

- 13.72 Action 4 Limited, British Red Cross, Channel 5 and Fonix agreed with our proposed implementation period. British Red Cross also welcomed the proposed transitional arrangements for existing providers.
- 13.73 A2B Telecoms Ltd, aimm, BT, BBC Children in Need, Cancer Research UK and Mobile UK believed that a minimum of three months would be required for implementation and, should it fall over the summer holiday period, then this would not be enough time (due to staff absence and much lower resource levels).
- 13.74 The BBC believed that three months is shorter than would be needed and that six months or longer would have been preferred. It noted that this is more than a PSA code iteration and it would need time to prepare ahead of their busy PRS period - September to December (including several voting programmes and BBC Children in Need). It also said it understood there is an issue around new tariff provision, as highlighted by aimm, which contributes to its view that the implementation window would not be long enough.
- 13.75 Google said it would welcome further discussions with Ofcom on implementation timelines and allowing sufficient time for companies to make the necessary systems and process changes to be able to comply with the new requirements once they are finalised.
- 13.76 Infomedia broadly agreed with our timetable. However, it said that it is not clear when the final version of the draft PRS Order would be published, and how that would impact on the implementation period if it coincided with the UK holiday period. It argued this may be challenging and it suggested moving the commencement date to 1st December which may be more conducive to a smooth transition.
- 13.77 Telecom2 Ltd believed that six months could be required to implement the PRS Order. While it noted much of the draft PRS Order largely replicates Code 15, it said the requirement about the provision of the pre contract information being free of charge is a significant concern. It noted that its implementation would require significant work by the MNOs and fixed operators.
- 13.78 Vodafone argued the proposed implementation timescales are unrealistic. It said delivery schedules and budgets for FY2024/25 were locked prior to this consultation and it does not include resource or funding for ICSS. It, therefore, did not agree, that it was possible to accommodate this additional unfunded development in October 2024 and that, instead,

Ofcom should remove an implementation date from the draft PRS Order or allow a longer implementation period from April 2025, rather than October 2024.

- 13.79 aimm, CCL, Mobile UK, Telecom2 Ltd, VMO2 and Vodafone all raised concerns about the need to create additional price points in relation to proposal for a free call period for ICSS (see paragraphs 6.49 to 6.51). aimm, Mobile UK and VMO2 said it was not possible to confirm that this could be done in three months and CLL asked for a four-month period to implement new price points.

### Feedback loop

- 13.80 aimm, Donr Ltd and Global raised concerns with Ofcom's proposed approach to reviewing the consultation responses. In particular, they argued that there needs to be a further draft and consultation period with industry before the process continues to Parliament and into law. aimm, in particular, proposed a six-week review and feedback loop of responses received, and proposed revisions to the draft PRS Order. MCP Insight Ltd agreed with and supported the comments and suggestions made by aim.

## Our decision

### Implementation timelines

- 13.81 We note that there were differing views relating to the implementation timelines. Most respondents generally considered that three months would be appropriate, although some argued that if the implementation period is during summer, then a longer implementation period may be necessary. A number also argued that three months is too short although did not provide supporting evidence as to why this would be the case.
- 13.82 We note that a major factor as to why a longer implementation was considered necessary by stakeholders was in relation to our ICSS proposals and, in particular, the need for additional price points to be established. However, as set out in paragraphs 6.52 to 6.58 of this statement, we have decided not to proceed with our proposals for the pre-contractual information for ICSS to be provided to consumers for free and, therefore, the requirement for additional price points for ICSS falls away.
- 13.83 Accordingly, having taken account of stakeholder comments in relation to implementation periods, we have decided that an implementation period of three months is appropriate and it should be enough time for PRS providers to bring themselves into compliance with the requirements imposed by the PRS Order.
- 13.84 We did not anticipate at the time of publishing our consultation that a UK general election would take place on 4 July 2024, with the dissolution of Parliament happening on 30 May. This unforeseen circumstance resulted in a delay in making and laying the PRS Order before Parliament. As noted above, we made the PRS Order on 21 October 2024, with a commencement date for 1 February 2025. In other words, that commencement date allows for the above-mentioned three-month implementation period, even though we note that PRS providers would have had the period since we published our consultation to anticipate and prepare for any changes in their activities. We conclude this section below, in describing next steps, by highlighting certain timings to which we draw stakeholders' attention.

### Feedback loop

- 13.85 We are very grateful for the responses which we received from stakeholders in response to our consultation. Those responses were detailed and allowed us to have another careful

look at our proposals. We have also discussed many of those detailed responses with the PSA. As set out in previous sections of this statement, we have made some changes to some of the provisions in the draft PRS Order to reflect responses that we received and we have provided further clarity throughout this statement on issues raised by stakeholders. As such, we decided that it was unnecessary to have an additional feedback loop with stakeholders.

## Other implementation-related matters

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13.86 In response to our consultation, some stakeholders took the opportunity to comment on matters that are related more broadly to implementation, but which are not relevant to complying with the requirements imposed by the PRS Order as such. We deal with those comments below.

### Compliance advice

13.87 aimm, BT, FCS, Mobile UK and Telecom2 Ltd queried our proposal to remove the facility to request compliance advice. In particular, aimm, noted that Code 15 had attracted more requests for compliance advice than expected and that it seemed counterproductive to remove the availability of advice when it has been proven to work. MCP Insight Ltd supported and agreed with aimm's comments.

13.88 While we recognise that compliance advice might have provided a role under Code 15 in terms of supporting PRS providers in their compliance activities, as we explained in paragraphs 4.5 and 4.6 of our consultation, we consider that this approach is specific to how the PSA regulates the sector under Code 15. We have decided not to adopt a similar approach in enforcing requirements imposed by the PRS Order.

### Registration tool

13.89 A2B Telecom Ltd, aimm, Channel 5 and Telecom2 Ltd asked for confirmation whether the registration tool would remain the same. In particular, aimm noted that significant changes to the tool had often caused issues in the past. MCP Insight Ltd supported and agreed with aimm's comments.

13.90 We recognise the important role the registration tool plays under Code 15 and are retaining a similar functionality in order to support PRS providers' obligations relating to registration and make registering numbers and services as simple as possible. As under the PSA's current registration tool, this will be an online tool and accessible from within PRS providers' accounts once they have registered as an organisation/provider. Once registered, they will be able to input all the information required under schedules 1 and 2 of the PRS Order.

### Service checker

13.91 aimm, BT, Children in Need and Telecom2 Ltd and Channel 5 sought clarification about the status of the service checker which the PSA currently operate and whether it would still be available to consumers post transfer. In particular, it was noted that the service checker provides a valuable service to consumers and assists OCP's in dealing with their customers. MCP Insight Ltd supported and agreed with aimm's comments.

- 13.92 We agree that the PSA service checker plays an important role in ensuring that consumers are provided with relevant information about the PRS. The current service checker, which is populated with up-to-date information provided directly by PRS providers, enables anyone to enter a PRS number onto the PSA website and receive information about that number, such as an appropriate telephone number to call with an enquiry (a customer service phone number). We will retain a similar functionality as part of our regulation of PRS and consumers will be able to obtain relevant information about the PRS from Ofcom's website.

## Stakeholder engagement

- 13.93 aimm and ITV said that it is important that Ofcom continues to engage with industry on an informal basis. They noted that the PSA maintains good relationships with the industry both bilaterally and via the PSA's Industry Liaison Panel (ILP). aimm said that it and their ILP members intend to continue these meetings, which they believe are invaluable for the sector and would like to invite Ofcom to attend or would be keen to take part in any industry forums/meetings that Ofcom intends to operate in the future. Strategic Brief also requested clarity on how Ofcom will work with PRS providers under the new regime.
- 13.94 CCP/ACOD also made a number of comments related to stakeholder engagement, including that it is supportive of Ofcom's proposals and hopes that the strong links that it has built with the PSA will continue with the Ofcom policy teams responsible for this work. It encouraged Ofcom to take firm action against bad players in the PRS market and to work with consumer groups - both to raise consumer awareness of risks and to help to identify who is more vulnerable, so that they can be protected and empowered.
- 13.95 We agree that it is vital to ensure there is effective dialogue between the regulator and regulated parties and, as such, we will retain stakeholder engagement as a key feature of our approach to regulation of the PRS sector.

## Next steps

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- 13.96 We conclude this statement by drawing stakeholders' attention to some critical dates on which action may need to be taken by PRS providers.

## Time when the provisions in the PRS Order comes into force

- 13.97 We have explained above that the PRS Order comes into force on 1 February 2025, known as its 'commencement' date. In other words, this is the date on which the provisions in the PRS Order will begin to have legal effect and become actionable.
- 13.98 We therefore strongly urge PRS providers to take all necessary steps during the implementation period between now and the commencement date to bring themselves, and their activities, into compliance with the requirements of the PRS Order. Those steps include, in particular, those mentioned in paragraph 13.70 above.

## Future dates on which some PRS providers may need to take action with respect to registered information

- 13.99 We also highlight in the following table some future dates that may require action from some PRS providers with respect to information to be given to Ofcom for our registration purposes.



Date	Action	Article reference
3 March 2025	Previously exempted merchants will no longer be exempt from the registration requirements in article 10, so they are required to either register in accordance with those requirements from this date, including the information specified in Schedule 1 to the PRS Order, or work with a qualifying intermediary under article 11 to provide a CPRS.	Art 11(8)
2 May 2025	Providers relying on the provisions for registration in transitional cases must give Ofcom the information specified in Schedule 2 to the PRS Order by this date.	Art. 13(3)-(4)
2 June 2025	Providers relying on the provisions for registration in transitional cases must review Ofcom’s registered information about them by this date and update us of any changes within 5 working days	Art. 13(6)

## Financial information for calculating administrative charges

- 13.100 Finally, we set out our expected timings relating to the payment of our administrative charges in accordance with article 14 of the PRS Order.
- 13.101 As explained in section 12 of this statement, article 14(1) of the PRS Order imposes an obligation on a ‘liable network operator’ to pay to Ofcom its share of our administrative charges for our expenditure in connection with the regulation imposed by the PRS Order for each charging year.
- 13.102 The formula for calculating our administrative charges is set out in article 14(2). One key element of that formula is the total amount of “outpayments” (as defined in article 14(7)) of the liable network operator in question. We, therefore, need to collect annually that financial information from all liable network operators.
- 13.103 The way in which we will collect this information is by making a request under article 55 of the PRS Order. Our request for this information will take the form of a so-called “general demand” in accordance with article 55(7). This means, in practice, that we will not demand this information annually by sending individual requests to named operators, but rather we will publish our formal request for this information on Ofcom’s website. We suggest that stakeholders subscribe to our email updates<sup>147</sup> to get alerts updates on the PRS sector and that they also regularly check our website for any developments.
- 13.104 We expect to publish our general demand on our website the week commencing 3 February 2025. The financial information requested in the general demand will need to be submitted to Ofcom by 5pm on 17 March 2025 at the latest for the charging year 2025/26 (note that in respect of payments for February and March 2025, we expect to utilise PSA reserves rather than invoicing stakeholders). We will then calculate the administrative charges with a view to issuing our invoices in or around the week commencing 28 April 2025. Our invoiced

<sup>147</sup> <https://www.ofcom.org.uk/email-updates/>

amounts must be paid within the timings required by article 14(4) of the PRS Order, namely:

- a) where the invoiced amount is equal to or less than £75,000, it must be paid in full within 30 days after receipt of our invoice;
- b) where the invoiced amount is more than £75,000, it must be paid in 12 equal monthly instalments, with the first instalment to be paid by the date falling one calendar month after the date of our invoice and subsequent instalments payable at calendar monthly intervals after that.

# A1. Notification: Modifications to the PRS Condition

## NOTIFICATION OF MODIFICATIONS TO THE PREMIUM RATE SERVICES (PRS) CONDITION PURSUANT TO SECTION 120A OF THE COMMUNICATIONS ACT 2003

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### BACKGROUND

- (A) Since Ofcom's inception on 29 December 2003, Ofcom has had the overall responsibility for ensuring that certain premium rate services as defined in section 120(7) of the Act ("**PRS**") are being appropriately regulated to ensure that consumers are adequately protected from harms that may arise from the misuse of PRS.
- (B) Ofcom has taken that overall responsibility by imposing a regulatory condition under section 120 of the Act. On 19 December 2018, following consultation, Ofcom published a statement<sup>148</sup> entitled 'Review of the Premium Rate Services Condition – Statement on extending the definition of Controlled Premium Rate Services to include all Information, Connection or Signposting Services' setting out its decision to modify that regulatory condition. That statement contained the latest version of the condition immediately before Ofcom made the decision set out in paragraph 1 below of this Notification ("**PRS Condition**").
- (C) Two broad categories of providers are currently bound by the PRS Condition, namely 'Communications Providers' and 'Controlled Premium Rate Service Providers'. Under the PRS Condition, they are required to comply with "...*(a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.*"
- (D) In that regard, the Phone-paid Services Authority ("**PSA**") has made a code of practice for the purposes of its day-to-day regulation of PRS. The PSA's code of practice for the time being in force (since 5 April 2022) is entitled 'Code of Practice 2021 (Fifteenth Edition)'<sup>149</sup> (known as "**Code 15**"). On 20 October 2021, Ofcom approved Code 15 under section 121 of the Act.<sup>150</sup>
- (E) On 24 May 2022, Ofcom announced<sup>151</sup> that, subject to further approval by the Department for Digital, Culture, Media and Sport, responsibility for the day-to-day regulation of PRS is likely to be transferred to Ofcom.

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<sup>148</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf)

<sup>149</sup> [PSA Code of Practice 15th.ashx \(psauthority.org.uk\)](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf)

<sup>150</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf)

<sup>151</sup> <https://www.ofcom.org.uk/news-centre/2022/ofcom-to-take-on-responsibility-for-regulating-phone-paid-services>

- (F) On 21 November 2023, Ofcom published a consultation entitled *'The future regulation of phone-paid services – Consultation on Ofcom's proposed Order under s122 of the Communications Act 2003 and proposed changes to the Premium Rate Services Condition'* setting out its proposals to take over the PSA's regulation by making an order under section 122 of the Act. Ofcom published a notice under section 403(4) of the Act of the proposed order in annex 5 to that consultation document. In light of that proposed order, Ofcom also proposed in a notification published in annex 9 to the consultation document to make modifications to the PRS Condition as part of the new package of measures to regulate PRS going forward.
- (G) A copy of the consultation document was sent to the Secretary of State for Science, Innovation and Technology on 20 November 2023 in accordance with sections 24A(1) and 120A(7) of the Act.
- (H) Ofcom invited representations about the proposals set out in the consultation document by 23 January 2024. Ofcom received responses from several stakeholders. Ofcom has considered every such representation. In accordance with section 120A(5), Ofcom has made the decision set out below to give effect, with some minor textual changes, to its proposed modifications to the PRS Condition. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of Ofcom giving effect to those proposals in that regard.

#### **DECISION**

1. Ofcom hereby decides, in accordance with section 120A(1) (and pursuant to its powers under section 120) of the Act, to modify the PRS Condition in order to make provisions for matters set out in that section 120.
2. Those modifications to the PRS Condition—
  - (a) are specified in the Schedule to this Notification, by replacing the text in the PRS Condition in its entirety with the text specified in that Schedule, and
  - (b) take effect on the commencement of the PRS Order on 1 February 2025.
3. The effects of, and Ofcom's reasons for making, this decision are set out in the accompanying statement.

#### **OFCOM'S DUTIES AND LEGAL TESTS**

4. Ofcom is satisfied that this decision satisfies the test in section 47 of the Act for modifying conditions, which test applies to this decision by virtue of section 120(5) of the Act.
5. In making this decision, Ofcom has considered and acted in accordance with its general duties set out in section 3, and the six requirements set out in section 4, of the Act. To the extent that this decision is relevant to telecommunications, Ofcom has also had regard to the Statement of Strategic Priorities in making the modifications set out in this Notification.

#### **INTERPRETATION**

6. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purposes of Ofcom's functions under Chapter 1 of Part 2 of the Act, including (in particular) section 120.

7. In this Notification—
- (a) “**Act**” means the Communications Act 2003 (c.21),
  - (b) “**Ofcom**” means the Office of Communications,
  - (c) “**PRS Condition**” has the meaning given to it in **recital (B)** to this Notification,
  - (d) “**PRS Order**” means the Regulation of Premium Rate Services Order 2024 (S.I. 2024/1046), and
  - (e) “**Statement of Strategic Priorities**” means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for the purposes of section 2A of the Communications Act 2003.
8. For the purpose of interpreting this Notification—
- (a) headings and titles shall be disregarded,
  - (b) expressions cognate with those referred to in this Notification shall be construed accordingly, and
  - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
9. The Schedule to this Notification shall form part of this Notification.
10. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with sections 24A(1) and 120A(7) of the Act.

Signed by:



**Lindsey Fussell**

**Group Director, Online Safety (Interim)**

*A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002*

**21 October 2024**

## SCHEDULE

### PREMIUM RATE SERVICES (PRS) CONDITION

#### Compliance with the provisions of the PRS Order

1. Every PRS provider must comply with the provisions of the PRS Order.

#### Compliance with directions given before in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions

2. Every Communications Provider and Controlled Premium Rate Service Provider must comply with directions that have been given before 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 despite the withdrawal by Ofcom of its approval for an approved code in a notification given in accordance with section 121(6) and (7) of the Act.

#### Interpretation

3. For the purposes of interpreting this Schedule—
  - (a) “**Act**” means the Communications Act 2003 (c.21),
  - (b) “**Communications Provider**” has the meaning given in paragraph 2(c) of the Schedule to the Previous PRS Condition Notification,
  - (c) “**Controlled Premium Rate Service Provider**” has the meaning given in paragraph 2(g) of the Schedule to the Previous PRS Condition Notification,
  - (d) “**Ofcom**” means the Office of Communications,
  - (e) “**Previous PRS Condition Notification**” means the notification of a modification to the Premium Rate Services Condition under section 120A of the Act, as published on 19 December 2018 by Ofcom in Annex 2 to its statement entitled ‘*Review of the Premium Rate Services Condition – Statement on extending the definition of Controlled Premium Rate Services to include all Information, Connection or Signposting Services*’,
  - (f) “**PRS Order**” means the Regulation of Premium Rate Services Order 2024 (S.I. 2024/1046),
  - (g) “**PRS provider**” has the meaning given in article 9 of the PRS Order,
  - (h) except in so far as the context otherwise requires, otherwise any word or expression in this Schedule shall have the same meaning as it has been ascribed for the purposes of Chapter 1 of Part 2 of the Act, including (in particular) section 120 of the Act,
  - (i) headings and titles shall be disregarded,
  - (j) expressions cognate with those referred to in this Schedule shall be construed accordingly, and
  - (k) the Interpretation Act 1978 (c. 30) shall apply as if this Schedule were an Act of Parliament.

# A2. Notification: Withdrawing Ofcom's approval of Code 15

## NOTIFICATION OF OFCOM'S WITHDRAWN APPROVAL OF THE APPROVED CODE FOR THE PURPOSES OF REGULATING PREMIUM RATE SERVICES PURSUANT TO SECTION 121 OF THE COMMUNICATIONS ACT 2003

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### BACKGROUND

- (A) Since Ofcom's inception on 29 December 2003, Ofcom has had the overall responsibility for ensuring that certain premium rate services as defined in section 120(7) of the Act ("**PRS**") are being appropriately regulated to ensure that consumers are adequately protected from harms that may arise from the misuse of PRS.
- (B) Ofcom has taken that overall responsibility by imposing a regulatory condition under section 120 of the Act. On 19 December 2018, following consultation, Ofcom published a statement<sup>152</sup> entitled 'Review of the Premium Rate Services Condition – Statement on extending the definition of Controlled Premium Rate Services to include all Information, Connection or Signposting Services' setting out its decision to modify that regulatory condition. That statement contained the latest version of the condition immediately before Ofcom made the decision set out in paragraph 1 of the notification published in annex 1 to the statement accompanying the publication of this Notification ("**PRS Condition**").
- (C) Two broad categories of providers are currently bound by the PRS Condition, namely 'Communications Providers' and 'Controlled Premium Rate Service Providers'. Under the PRS Condition, they are required to comply with "...*(a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.*"
- (D) In that regard, the Phone-paid Services Authority ("**PSA**") has made a code of practice for the purposes of its day-to-day regulation of PRS. The PSA's code of practice for the time being in force (since 5 April 2022) is entitled 'Code of Practice 2021 (Fifteenth Edition)'<sup>153</sup>(known as "**Code 15**"). On 20 October 2021, Ofcom approved Code 15 under section 121 of the Act.<sup>154</sup>

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<sup>152</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf)

<sup>153</sup> [PSACodeofPractice15thDigital-19-10-10-2023.ashx \(psauthority.org.uk\)](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf)

<sup>154</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/226951/statement-approval-of-phone-paid-services-authority-code-of-practice-fifteenth-edition.pdf)



- (E) On 24 May 2022, Ofcom announced<sup>155</sup> that, subject to further approval by the Department for Digital, Culture, Media and Sport, responsibility for the day-to-day regulation of PRS is likely to be transferred to Ofcom.
- (F) On 21 November 2023, Ofcom published a consultation entitled '*The future regulation of phone-paid services – Consultation on Ofcom's proposed Order under s122 of the Communications Act 2003 and proposed changes to the Premium Rate Services Condition*' setting out its proposals to take over the PSA's regulation by making an order under section 122 of the Act. Ofcom published a notice under section 403(4) of the Act of the proposed order in annex 5 to that consultation document. In light of that proposed order, Ofcom also proposed in a notification published in annex 10 to the consultation document to withdraw Ofcom's approval of Code 15. To give effect to both proposals, Ofcom also proposed in a notification published in annex 9 to the consultation document to make modifications to the PRS Condition as part of the new package of measures to regulate PRS going forwards.
- (G) A copy of the consultation document was sent to the Secretary of State for Science, Innovation and Technology on 20 November 2023 in accordance with sections 24A(1) and 120A(7) of the Act.
- (H) Ofcom invited representations about the proposals set out in the consultation document by 23 January 2024. Ofcom received responses from several stakeholders. Ofcom has considered every such representation.

#### **DECISION**

1. Ofcom hereby decides, in accordance with section 121(7) (and pursuant to its powers under section 121(6)) of the Act, to withdraw its approval of Code 15 with immediate effect on the commencement of the PRS Order on 1 February 2025, except for directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions.
2. The effects of, and Ofcom's reasons for making, this decision are set out in the accompanying consultation document.

#### **OFCOM'S DUTIES**

3. In making this decision, Ofcom has considered and acted in accordance with its general duties set out in section 3, and the six requirements set out in section 4, of the Act. To the extent that this decision is relevant to telecommunications, Ofcom has also had regard to the Statement of Strategic Priorities in making the modifications set out in this Notification.

#### **INTERPRETATION**

4. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purposes of Ofcom's functions under Chapter 1 of Part 2 of the Act, including (in particular) section 120.

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<sup>155</sup> <https://www.ofcom.org.uk/news-centre/2022/ofcom-to-take-on-responsibility-for-regulating-phone-paid-services>

5. In this Notification—
- (a) “**Act**” means the Communications Act 2003 (c.21),
  - (b) “**Code 15**” has the meaning given to it in recital (D) to this Notification,
  - (c) “**Ofcom**” means the Office of Communications,
  - (d) “**PRS Order**” means the Regulation of Premium Rate Services Order 2024 (S.I. 2024/1046),
  - (e) “**PSA**” has the meaning given to it in recital (D) to this Notification, and
  - (f) “**Statement of Strategic Priorities**” means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for the purposes of section 2A of the Communications Act 2003.
6. For the purpose of interpreting this Notification—
- (a) headings and titles shall be disregarded,
  - (b) expressions cognate with those referred to in this Notification shall be construed accordingly, and
  - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 24A of the Act.

Signed by:



**Lindsey Fussell**

**Group Director, Online Safety (Interim)**

*A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002*

**21 October 2024**

# A3. Table of drafting changes to the PRS Order

## Introductory notes

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- A3.1 The table below lists material drafting changes made in our final PRS Order as compared to our proposed draft PRS Order contained on our notice published in Annex 5 to our consultation.
- A3.2 The first column in the table refers to the numbering of the provisions as they were in the draft PRS Order. The second column explains the corresponding numbering in the final PRS Order. The third column sets out brief remarks of more extensive drafting changes made to the Order. Other minor drafting changes are simply noted.

## Definitional overlaps

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- A3.3 We have noted from consultation responses that, in some cases, the way in which we proposed in the draft Order to deal with when one service should be treated as falling within a particular definition and, as a consequence, how that defined service should then be treated under various provisions, may cause unnecessary complexity. Such complexity appears to arise in particular from various definitions in the draft Order where services are defined as ‘consisting in’ or ‘having the principal feature’ of something – for example, sexual content.
- A3.4 We have therefore reviewed all such definitions together with the provisions in which they are used. Our general approach has been to replace such language with the word ‘includes’ in most cases. For example, in relation to a sexual content service, the policy intention is that services providing any such content must be classed as this type of service so as to protect against children from accessing it.
- A3.5 In making these changes, we note that it is possible for a particular service to also satisfy the definitions of other services. We consider that this raises no practical issues in terms of clarity of requirements under the Order. The policy intention is that the following scenarios will apply in these cases:
- a) services will be subject to the same rules under the Order such that it does not matter which definition of the two services applies. For example, chatline, sexual content and live entertainment services are all subject to articles 25, 46, 47 and 48, or
  - b) services will be subject to different rules under the Order but having to comply with both sets of rules will not lead to any practical issues. This is because the rules are compatible – for example, see article 50, where the policy intention is that an ICSS provided to a child will have to comply with the lower charging cap in article 49 rather than article 50. Article 50 therefore contains an appropriate exclusion for ICSS provided to children. A second example is that a competition or voting service that is aimed at, or could reasonably appeal to a child, will need to comply with article 23, as well as with the competition or voting rules in chapter 6 of Part 6.

A3.6 However, there are three exceptions to that approach. One is in relation to the definition of “live entertainment service” in article 25 of the Order, which has a reference to “excluded services” (also defined in article 25). This is because we note there is potential for a number of threshold services<sup>156</sup> to be said to also be for the purposes of entertaining a consumer. To avoid any practical issues (e.g., a conflict between requirements in the Order), we have therefore set out what threshold services are excluded from this definition. The other exceptions concern society lottery services and betting tipster services. In both cases, these services are generally used to exclude their application from relevant rules. To achieve this aim, we have used the language of ‘solely’ (as opposed to ‘includes’) to draw the necessary definitional boundaries.

## Table of changes

Draft Order	Final Order	Remarks
Art 1	Art 1	Drafting added to positively state territorial extent to follow current legislative practice.
Art 2	Art 2	Redrafted the definition of “SMS” to “SMS message”, and aligned the definition with the definition of the same in section 55(12) of the Online Safety Act 2023. Other defined terms such as “Code 15” have been moved to this article from other articles in the draft Order and we have included a new definition for “charity” to reflect that this is referred to a number of times in the Order.
Art 3	Art 3	Amended the definition of “premium rate number” in article 3(8) to remove reference to ‘084’ and ‘098’ from the definition. Minor drafting changes elsewhere.
Art 4	Art 4	Minor drafting changes.
Art 5	Art 5	The words “has as its principal feature” have been removed, with some minor drafting, so that any service making available a facility enabling at least three consumers to participate in a call immediately prior to which no participant knows which other consumers will participate will be caught by that definition. Removed references to services that should be treated as excluded from chatline services. Such services were included to deal with definitional overlaps but see paragraphs A3.3-A3.6 above. Added an exemption reflecting the corresponding exemption at article 3(5).

<sup>156</sup> Defined in article 4 of the Order.

Draft Order	Final Order	Remarks
Art 6	Art 6	The words “consists in, or has as its principal feature” have been substituted for “includes”, so that any service providing any sexual content whatsoever will be caught by that definition. See paragraphs A3.3-A3.6 above. Added an exemption reflecting the corresponding exemption at article 3(5).
Art 7	Art 7	The words “has as its principal feature” have been substituted for “includes”, so that any service providing an onward connection facility and using a relevant telephone number beginning with the specified digits (apart from the excepted case) will be caught by that definition. See paragraphs A3.3-A3.6 above. Added an exemption reflecting the corresponding exemption at article 3(5).
Art 8	Art 8	We have simplified the drafting by listing the types of services that should be treated as a subscription service, where the conditions in paragraphs (3) or (4) (or both) apply, for the purposes of applying relevant rules under the Order. We have also removed text about the consumer’s right to terminate the contract because article 33 confers such a right on the consumers. Minor drafting changes elsewhere.
Art 9	Art 9	Minor drafting changes.
Art 10	Art 10	Minor drafting changes including, in particular, to clarify that a PRS provider may have more than one generally authorised person for different or the same purposes.
Art 11	Art 11	Redrafted to label intermediaries to whom the article applies as “qualifying intermediaries” and to clarify that qualifying intermediaries undertake to do the things mentioned in paragraph (5) and then notify OFCOM accordingly without having to notify OFCOM in respect of individual merchants. Clarified the meaning of “relevant record” to make clear what information should be required depending on the corporate status of an affected merchant including for overseas affected merchants. Minor drafting changes elsewhere.
Art 12	Art 12	Amended to include a new sub-paragraph (h) to refer to every direction or decision given under Schedule 4 by virtue of article 66. Minor drafting changes elsewhere.
Art 13	Art 13	Minor drafting changes including, in particular, to clarify that the article only applies to exempt PRS providers from the condition in article 10(3) (to provide OFCOM with certain information).

Draft Order	Final Order	Remarks
Art 14	Art 14	Amended the definition of “PRS revenue” in article 14(7) to clarify that this does not include charity donations. Also amended the definition of “charging year” to begin with 1 <sup>st</sup> February 2025 and end on 31 <sup>st</sup> March 2025 Minor drafting changes elsewhere.
Art 15	Art 15	Amended to clarify that PRS providers must consider another PRS provider’s details in OFCOM’s register maintained under article 12. Minor drafting changes elsewhere.
Art 16	Art 16	Amended to clarify that the prohibition only applies where the arrangement would contravene the relevant previous direction, decision or sanction. Amended to also clarify the OFCOM decisions to which this article applies in respect of, and that sanctions imposed by PSA are ones that are published on the PSA’s website. Minor drafting changes elsewhere.
Art 17	Art 17	Amended following a consultation response to ensure that the PRS provider must also have regard to the provision, content and promotion and marketing of the controlled PRS that is the subject of the arrangement. As regards the use of sub-contractors, we have clarified that PRS providers only need to consider “registered information” for sub-contractors. This concept has been defined to align with the definition of “relevant record” (see article 11). We have also clarified that the PRS provider is only required to have regard to information from public sources. Also amended to clarify that “relevant compliance history” includes other requirements imposed by OFCOM (and not just those relating to PRS). Minor drafting changes elsewhere.
Art 18	Art 18	Amended to capture an arrangement between a network operator and a merchant as well as an arrangement between a network operator and an intermediary. Minor drafting changes elsewhere.
Art 19	Art 19	Minor drafting changes.
Art 20	Art 20	Minor drafting changes.

Draft Order	Final Order	Remarks
Art 21	Art 21	<p>Amended to specify that the relevant security testing must be approved by the generally authorised person (see article 10(1)(b)). Further amended following consultation responses to mandate that relevant security testing results are sent by the intermediary to the network operator.</p> <p>Clarified the definition of “operator billing” and included a new definition of “relevant operator billing” which refers to “internet access service”.</p> <p>Minor drafting changes elsewhere.</p>
Art 22	Art 22	Minor drafting changes.
Art 23	Art 23	<p>In the definition of “children’s service”, the words “consists in, or has as its principal feature” have been substituted for “includes”, so that any service that is aimed at or could reasonably be expected to appeal to a child will be caught by that definition. See paragraphs A3.3-A3.6 above.</p> <p>We have also deleted the references to a competition or voting service and a recurring donation service. Any service meeting the definition of “children’s service” will need to comply with rules specific to such services but other rules may also apply where (say) a competition or voting service would also be provided as part of the children’s service. See paragraph A3.5 above.</p>
Art 24	Art 24	Minor drafting changes.
Art 25	Art 25	<p>In the definition of “live entertainment service”, the words “consists in, or has as its principal feature” have been substituted for “includes”, so that any service with content solely or principally for the purposes of entertaining a consumer (and provided by means of a call between two persons) will be caught by that definition. See paragraphs A3.3-A3.6 above. The definition also now refers to “excluded services” to set out what other threshold services are excluded from the scope of this definition. A definition for “excluded services” is now included in this article.</p> <p>We have also amended to clarify that the call must be between at least two persons in order to meet the definition.</p> <p>Minor drafting changes elsewhere.</p>
Art 26	Art 26	No changes.



Draft Order	Final Order	Remarks
Art 27	Art 27	<p>Amended the heading and paragraph (1) to refer to contracts entered into by means of an internet access service, rather than “online and remotely”.</p> <p>Corresponding change by removing paragraph (7) which explained the concept of “remotely”.</p> <p>Amended following consultation response stating that recurring donation services and society lottery services should be treated the same, with effect that this article applies to both society lottery services and recurring donation services.</p> <p>Minor drafting changes elsewhere.</p>
Art 28	Art 28	<p>Amended to clarify the information to be given by means of a mobile text message and the information to be given either by means of a mobile text message or by means of a link to a webpage provided in that mobile text message.</p> <p>Minor drafting changes elsewhere.</p>
Art 29	Art 29	<p>Amended following consultation responses to remove the requirement to provide in effect certain information during a free minute (so that the position under Code 15 is now carried over to the Order).</p> <p>Amended to also clarify that the information in paragraph (3) must be provided without delay after a connection between the merchant and the consumer has been established and the consumer has informed the merchant who it is they are wishing to be connected to.</p> <p>Minor drafting changes elsewhere.</p>
Art 30	Art 30	<p>Amended to simply impose a requirement on the merchant rather than implying a term into the contract.</p>
Art 31	Art 31	<p>The words “has as its principal feature” have been substituted for “includes”, with some minor drafting changes, so that any service making available a facility enabling at least two consumers to participate in an electronic communication for sending or receiving mobile text messages or visual images, immediately prior to which no participant knows which other consumers will participate, will be caught by that definition.</p> <p>Removed references to services that should be treated as excluded from virtual chat services. Such services were included to deal with definitional overlaps but see paragraphs A3.3-A3.6 above.</p> <p>Amended to also ensure consistency with Schedule 3 and clarify the reminders which need to be sent in respect of subscription contracts and what these need to set out.</p> <p>Minor drafting changes elsewhere.</p>

Draft Order	Final Order	Remarks
Art 32	Art 32	Minor drafting changes.
Art 33	Art 33	Minor drafting changes.
Art 34	—	Deleted.
Art 35	Art 34	Amended following consultation response stating that recurring donation services and society lottery services should be treated the same, with effect that this article excludes both society lottery services and recurring donation services. Also amended paragraph (4)(b) to clarify the timeframe in which reminder notices must be sent. Minor drafting changes elsewhere.
Art 36	Art 35	Minor drafting changes.
Art 37	Art 36	Minor drafting changes.
Art 38	Art 37	Minor drafting changes.
Art 39	Art 38	Amended to remove reference to the time period for the refund to be paid to the consumer as this is made clear in paragraph (5)(a). Minor drafting changes elsewhere.
Art 40	Art 39	Minor drafting changes including clarifying the definition of “vulnerable consumers”.
Art 41	Art 40	Minor drafting change.
Art 42	Art 41	In the definition of “competition or voting service”, the word “includes” has been added, so that any service that includes the making available of a facility for entering a competition, claiming a prize, registering a vote or recording a preference, other than a remote gambling service or society lottery service, will be caught by that definition. See paragraphs A3.3-A3.6 above. We have also deleted the reference to a “children’s service making available a facility comprised in...”. Any service meeting the definition of “competition or voting service” will need to comply with rules specific to such services but other rules may also apply where (say) a competition or voting service is aimed at or may reasonably be expected to appeal to children. See paragraph A3.5 above Minor drafting changes elsewhere.
Art 43	—	Deleted.

Draft Order	Final Order	Remarks
Art 44	Art 42	Amended following consultation responses about not receiving the consumer's entry due to technological or other reasons. Added clarification that consumers are entitled to a refund in circumstances where merchants become aware (if at all) about consumers' attempts, noting that a similar entitlement is given under article 45 where consumers are seeking to use a service after the time limit has expired. In addition, there is now added detail about how such refunds are to be paid to consumers. Minor drafting changes elsewhere.
Art 45	Art 43	Minor drafting changes.
Art 46	Art 44	Minor drafting changes.
Art 47	Art 45	Amended to clarify how refunds to consumers are to be paid. Minor drafting changes elsewhere.
Art 48	Art 46	Minor drafting changes.
Art 49	Art 47	Minor drafting changes.
Art 50	Art 48	Minor drafting changes.
Art 51	Art 49	We have amended this article to apply to a merchant providing a controlled PRS to a child. Minor drafting changes elsewhere.
Art 52	Art 50	Amended to simply impose a requirement on the merchant rather than implying a term into the contract. The article also includes an exclusion for merchants providing an ICSS to a child and states that in that case, merchants will need to follow article 49.
Art 53	Art 51	The words "consists in, or has as its principal feature" have been substituted for "includes", with some minor drafting changes, so that any service including the provision of advice or assistance by an individual who has the qualifications and experience required and necessary to give, or offer to give, such advice or assistance, will be caught by that definition. See paragraphs A3.3-A3.6 above. Minor drafting changes elsewhere.
Art 54	Art 52	In the definition of "remote gambling service", the word "includes" has been added, so that any service that includes the making available of a facility for gaming or betting (unless it is a betting tipster service or a society lottery service), will be caught by that definition. See paragraphs A3.3-A3.6 above. Also amended definition of "betting tipster service". See paragraph A3.6 above. Minor drafting changes elsewhere.

Draft Order	Final Order	Remarks
Art 55	Art 53	Amended definition of “society lottery service”. See paragraph A3.6 above. Minor drafting changes elsewhere.
Art 56	Art 54	Amended following consultation responses to refer to “premium rate number” (as defined in article 3). instead of “PRS number”. Minor drafting changes elsewhere.
Art 57	Art 55	Minor drafting changes.
Art 58	Art 56	Minor drafting changes.
Art 59	Art 57	Minor drafting changes.
Art 60	Art 58	Amended to make clear that P must “take all reasonable steps” to obtain and keep relevant or potentially relevant evidence from another person. Minor drafting changes elsewhere.
Art 61	Art 59	Minor drafting changes including, in particular, that the article applies in respect of requirements imposed by Parts 2 to 9 of the Order.
Art 62	Art 60	Minor drafting changes.
Art 63	Art 61	Minor drafting changes.
Art 64	Art 62	Minor drafting changes including, in particular, that the article applies in respect of requirements imposed by Parts 2 to 9 of the Order.
Art 65	Art 63	Minor drafting changes.
Art 66	Art 64	Minor drafting changes including, in particular, that the article applies in respect of requirements imposed by Parts 2 to 9 of the Order.
Art 67	Art 65	Minor drafting changes.
Art 68	Art 66	Minor drafting changes.

Draft Order	Final Order	Remarks
Schedule 1	Schedule 1	<p>Amended to include a definitions paragraph at signposting definitions which can be found elsewhere in the Order.</p> <p>Also amended paragraph 1 to make clear what information should be required depending on the corporate status of a PRS provider including for overseas PRS providers. See linked changes made to article 11.</p> <p>Removed the requirement to give an email address for the generally authorised person for the purposes of receiving notifications and documents transmitted by OFCOM in electronic form – this will be covered by the requirement at paragraph 7 to give the email address of the generally authorised person(s).</p> <p>Removed reference to requirement to provide a “specimen signature” following consultation responses.</p> <p>Minor drafting changes elsewhere.</p>
Schedule 2	Schedule 2	Similar changes to Schedule 1.
Schedule 3	Schedule 3	<p>Amended paragraph (1) to include a definition of “controlled PRS contract”.</p> <p>Amended paragraph 2 (e) to ensure consistency with paragraph 2 (d).</p> <p>Amended paragraph 2 (f) and (h) following consultation responses to clarify what pre-contract information is required in relation to subscription contracts.</p> <p>Minor drafting changes elsewhere.</p>
Schedule 4	Schedule 4	Minor drafting changes.



# A4. Annex for Enforcement Guidelines – PRS Order

## Compliance with requirements of an order made under section 122 of the Communications Act 2003

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### Regulatory requirements

A4.1 Ofcom made an order under section 122 of the Communications Act 2003 on 21 October 2024 (SI 2024 No. 1046), The Regulation of Premium Rate Services Order 2024 (“the PRS Order”). It came into force on 1 February 2025. The PRS Order imposes various requirements on ‘PRS providers’ (as defined in article 9 of the PRS Order). These include requirements for PRS providers to comply with enforcement decisions taken by Ofcom under Part 10 of the PRS Order.

### Enforcement

A4.2 The Regulatory Enforcement Guidelines set out our general approach to enforcement. We identify below the key provisions supporting enforcement under the PRS Order and some notable additional points and exceptions relating to this process.

Area of guidelines	Provisions and additional information
<b>Why and how Ofcom opens cases</b>	<p>Ofcom may take enforcement action using powers conferred on Ofcom under Part 10 of the PRS Order.</p> <p>We normally publish our case opening announcements on Ofcom’s website (see paragraphs 3.33 and 3.34 of the Enforcement Guidelines). Article 57 of the PRS Order contains a power for Ofcom to publish a notice of investigation, like our conventional case opening announcements. Article 57 also empowers Ofcom to impose any requirements on the PRS provider who is being investigated to preserve evidence in accordance with article 58, as part of our notification given to the provider.</p>
<b>Investigating</b>	<p><b>Information gathering</b></p> <p>Ofcom can require that evidence is preserved during an investigation under article 58 of the PRS Order. We would usually expect to obtain such evidence from the investigated provider when we exercise our information gathering powers under article 55 of the PRS Order.</p> <p><b>Confidentiality</b></p> <p>There are restrictions on disclosure contained in section 393 of the Communications Act.</p>



Area of guidelines	Provisions and additional information
<p><b>Outcomes of regulatory investigations</b></p>	<p><b>Provisional decision</b></p> <p>Where Ofcom decides that there are reasonable grounds for believing that the subject of the investigation is contravening or has contravened a requirement in the PRS Order, Ofcom will issue a provisional enforcement notice under article 59 of the Order. The provisional enforcement notice will specify the contravention, specify the steps the subject should take to comply with the requirement and remedy the consequences of the contravention and the period in which those steps should be taken.</p> <p>Where Ofcom is minded to impose a financial penalty in accordance with article 60 of the PRS Order, it is required to include a provisional determination of that penalty in the provisional decision under article 59 of the PRS Order.</p> <p><b>Written and oral representations</b></p> <p>No additional points to the main Regulatory Enforcement Guidelines.</p> <p><b>Final decision</b></p> <p>Where Ofcom remains satisfied that the subject of the investigation is contravening or has contravened any of the requirements of the Order, Ofcom will issue a final decision under article 61 of the PRS Order.</p> <p><b>Directions for serious contraventions</b></p> <p>Ofcom is able to direct the prohibition, suspension or restriction of a service or that a payment is withheld by a provider other than the subject of the enforcement notice under article 64 of the PRS Order. Ofcom can only do this where:</p> <ol style="list-style-type: none"> <li>1. it is appropriate and proportionate to the contravention;</li> <li>2. the provider is in serious contravention of a requirement of the Order; and</li> <li>3. the provider either: <ol style="list-style-type: none"> <li>a. knowingly contravened the requirement;</li> <li>b. was reckless as to whether its conduct complied with the requirement; or</li> <li>c. where it was reasonably practicable for the provider to comply with the requirement, failed to take all reasonable steps to prevent the serious contravention.</li> </ol> </li> </ol> <p><b>Penalty</b></p> <p>The amount of penalty proposed must be appropriate and proportionate to the contravention. See article 60 of the PRS Order.</p> <p>Ofcom will determine the amount of the penalties which it imposes in accordance with its Penalty Guidelines.</p>
<p><b>Settlement procedure</b></p>	<p>No additional points to the main Regulatory Enforcement Guidelines.</p>

Area of guidelines	Provisions and additional information
<p><b>Urgent actions (interim measures)</b></p>	<p>Ofcom has the power to take urgent action (interim measures) under article 62 of the PRS Order for contravention of a regulatory requirement imposed by the PRS Order.</p> <p>Ofcom can make a decision to prohibit, suspend or restrict a provider’s working in connection with a regulated PRS activity or to direct a provider withhold payments from another provider where:</p> <ol style="list-style-type: none"> <li>1. the giving of such a direction is appropriate and proportionate to the contravention;</li> <li>2. there are reasonable grounds for suspecting that the provider is contravening, or has contravened, a requirement; and</li> <li>3. either <ol style="list-style-type: none"> <li>a. there are reasonable grounds for suspecting that the provider is unable, or is likely to be unable, to pay its debts as they fall due; or</li> <li>b. there are reasonable grounds for suspecting that the case is an urgent case; and</li> </ol> </li> <li>4. the urgency of the case makes it appropriate for us to give an urgent action direction.</li> </ol> <p>Ofcom is required, as soon as reasonably practicable after giving an urgent action direction to give the provider an opportunity of making written representations to Ofcom about the grounds on which it was given and its effect, and an opportunity of proposing steps to remedy the situation under article 63 of the PRS Order.</p> <p>If Ofcom decides that the contravention occurred and the direction was justified, we may confirm the direction; but if not, we must revoke it. See article 63 of the PRS Order.</p>

# A5. Annex for Enforcement Guidelines – PRS Condition (also for SMP apparatus conditions)

## Compliance with premium rate services (PRS) Condition under section 120 of the Communications Act 2003 (as well as with SMP apparatus conditions under section 93 of the Communications Act 2003)

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### Regulatory requirements in a PRS Condition

- A5.1 Ofcom has the power to set conditions under section 120 of the Communications Act for the purpose of regulating the provision, content, promotion and marketing of premium rate services (“PRS”). The only provision that may be made by a PRS Condition is a provision requiring the person to whom the PRS Condition applies to comply, to the extent required by the Condition, with (i) the provisions of a code for the time being approved by Ofcom under section 121; (ii) directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and (iii) if there is no such code, the provisions of the order for the time being in force under section 122.
- A5.2 Section 123 of the Communications Act sets out that contraventions of a PRS Condition should be addressed in accordance with sections 94 to 96 (which contain the process for enforcing SMP<sup>157</sup> apparatus conditions, discussed below). Section 123 also modifies the application of section 94 to 96 to the PRS Condition in some respects, such as the maximum penalty that may be imposed for a contravention of the PRS Condition.

### Regulatory requirements in an SMP apparatus Condition

- A5.3 Ofcom has the power to set SMP apparatus conditions under section 93 of the Communications Act, where it has made a determination that a person has significant market power in an identified apparatus market.
- A5.4 The process for enforcing an SMP apparatus condition is set out in sections 94 to 96 of the Communications Act.

### Enforcement

- A5.5 The Regulatory Enforcement Guidelines set out our general approach to enforcement. We identify below the key provisions supporting enforcement under sections 94 to 96 of the Communications Act and some notable additional points and exceptions relating to this process.

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<sup>157</sup> Significant market power.

Area of guidelines	Provisions and additional information
<b>Why and how Ofcom opens cases</b>	<p>Ofcom can enforce compliance with PRS conditions and SMP apparatus under sections 94 to 96 of the Communications Act.</p> <p>Before exercising our enforcement powers under section 94 of the Communications Act, we must consider if a more appropriate way of proceeding would be under the Competition Act. Where we decide that it is more appropriate to proceed under the Competition Act, we will state our reasons for doing so. Given that the PRS Order (made under section 122 of the Communications Act) contains requirements ultimately to protect consumers and the purpose of the PRS Condition is to secure compliance with provisions under the Order, it is unlikely that Ofcom would consider it more appropriate to proceed under the Competition Act in most cases.</p>
<b>Investigating</b>	<p><b>Information gathering</b></p> <p>Ofcom has wide powers to require the provision of information under section 135 of the Communications Act. Ofcom has powers to impose financial penalties and give directions to secure compliance with a statutory information request, as well as criminal sanctions for non-compliance under sections 138 to 144 of the Communications Act.</p> <p><b>Confidentiality</b></p> <p>There are restrictions on disclosure contained in sections 26 and 393 of the Communications Act.</p>

Area of guidelines	Provisions and additional information
<p><b>Outcomes of regulatory investigations</b></p>	<p><b>Provisional decision</b></p> <p>Where Ofcom decides that there are reasonable grounds for believing that the subject of the investigation is contravening, or has contravened, the requirements of a PRS Condition (or, as the case may be, an SMP apparatus Condition), Ofcom will issue a provisional decision under section 94 of the Communications Act.</p> <p>The provisional decision will set out the contravention and specifies the period within which the subject can make representations, comply with the notified condition and remedy the consequences of the contravention. The period for doing these things will be a period of one month, unless Ofcom specifies a longer period or otherwise extends the period. Ofcom can specify a shorter period in the notification where it has reasonable grounds for suspecting the contravention is a repeated one.</p> <p><b>Written and oral representations</b></p> <p>No additional points to the main Regulatory Enforcement Guidelines.</p> <p><b>Final decision</b></p> <p>Where Ofcom remains satisfied that the subject of the investigation is contravening or has contravened the notified requirement and has not taken appropriate steps to comply or remedy the consequences of the contravention, Ofcom will issue a final decision under section 95 of the Communications Act.</p> <p><b>Penalty</b></p> <p>Under section 96 of the Communications Act, Ofcom can impose a financial penalty along with the final decision.</p> <p>For penalties imposed for contraventions of an SMP apparatus Condition, section 97 of the Communications Act applies (with maximum penalties of 10% of relevant turnover). For penalties imposed for contraventions of the PRS Condition, section 123 of the Communications Act allows Ofcom only to impose a penalty of up to £250,000 for each contravention. Ofcom may also issue a separate penalty in respect of all the contraventions or separate penalties in respect of each contravention.</p> <p>The amount of any penalty imposed must be appropriate and proportionate to the contravention.</p> <p>Ofcom will determine the amount of the penalties which it imposes in accordance with its Penalty Guidelines.</p>
<p><b>Settlement procedure</b></p>	<p>No additional points to the main Regulatory Enforcement Guidelines.</p>
<p><b>Urgent actions (interim measures)</b></p>	<p>There are no powers to take urgent action in relation to SMP apparatus Conditions.</p> <p>Ofcom has the power under section 124 of the Communications Act to give directions to suspend or restrict a PRS provider in relation to a contravention of a requirement where we think it is urgently required for reasons of public policy.</p>