

Your response

Question	Your response
<p>Q1. Do you agree with our assessment that our proposals will not affect any specific groups of persons (including persons that share protected characteristics under the EIA 2010 or NIA 1998)? Please state your reasons and provide evidence to support your view.</p>	<p>As a membership driven trade association representing commercial businesses operating within the Premium Rate telephony sector, we are starkly aware that effective regulation is intrinsically linked to the good levels of industry and consumer trust, and in turn a buoyant industry. We have worked with the PSA in its various guises since the first Code of Practice and are undeniably aware that only the actual implementation of any regulatory regime will show whether it works in practice or not. Wise people with good judgement, can make a piece of paperwork work well for those who are affected by it. We feel vulnerability is a questionable test, in English law although there is a prescribed definition, in reality all humans are vulnerable in one way or another at some point in their lives.</p>
<p>Q2. Do you agree with our assessment of the potential impact of our proposal on the Welsh language? Do you think our proposal could be formulated or revised to ensure, or increase, positive effects, or reduce/eliminate any negative effects, on opportunities to use the Welsh language and treating the Welsh language no less favourably than English?</p>	<p>Yes, we agree with your assessment.</p>
<p>Q3. Do you have any comments about our proposed definitions in articles 3 to 8 of Part 1 of the draft PRS Order for key service concepts that are used throughout the Order?</p>	<p>We have a few concerns in relation to the changes to regulation, how will the industry receive advise on the operation of services and compliance prior to their operation, which is in place with the current regime? On page 24 you refer to condition 2 (e) which the author can find no reference to in the PRS order. One comment that we have made consistently through our responses to PSA in its various guises, is that it seems 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. The intent of sections 3 to</p>

	<p>8 is fine, although this will only be tested in operation. Our concern is that the first ICSTIS code was ambiguous in its concept, however in reality it worked better in the author's opinion than some following codes of practice – which were not. We believe the difference here is that the new regime will be tested by the courts, except for where you have set the exemption of those that will continue to sit under Code 15.</p>
<p>Q4. Do you have any comments about our proposed definition for PRS regulated providers and regulated activity in article 9 in Part 1 of the draft PRS Order?</p>	<p>Over the years the number of different ways in which networks, SP and IP's have been referred to has varied, it feels like with each variation of the code, in practice a duck is a duck. If it looks like a duck, sounds like a duck, and waddles like a duck, – it is a duck. We notice in the consultation you refer to providers and then in the draft order PRS providers. Whilst intermediaries exist at the moment, we have had aggregators, and so many other connotations over the years. At one point the operator of the service (not a network) would be held responsible for actions that led to consumer harm. Would it not be better to state that the perpetrator of consumer harm will be held liable for this harm, wherever they sit within the value chain of the delivery of services that are billed over the prescribed tariff, which define PRS. Currently set at 5.833ppm or per call. There must be clarity of who is responsible within the value chain.</p>
<p>Q5. Do you have any comments about our proposed approach to registration and registration exemptions in Part 2 of the draft PRS Order?</p>	<p>It appears that Ofcom will do away with a registration scheme, although PSA still proposes in their budget consultation to have a registration scheme in place until the point of the amalgamation of the two entities. Why should the industry have to pay up to the point of amalgamation? In your consultation you state, "senior management" and then in the PRS order section 11 (a) state "directors" for a body corporate, and at 11 (b) each member of the senior management of "not a body corporate" directors can be changed, and members of staff fired. Whilst we understand what you are trying to achieve, which is to have a responsible person in post to be able to make sure that a PRS provider has a person in post, to ensure that the entity they are employed by complies with the PRS order. Surely it would be better to say something such as a PRS provider, wherever in the value chain must have a</p>

	<p>responsible, nominated or identified person in charge of compliance. At points the author feels that the PRS order is drafted to allow lawyers to get rich and fraudsters to just fire their senior managers. Why at 11 (4) (h) (vi) you require “a specimen signature for the merchant’s generally authorised person” we do not understand, what purpose does this serve? How can you prove whom this person is? We urge that there are no exemptions or differences in registration or regulation for the different players involved in this industry. In our experience regulation works best with a level playing field for all. Differences in timescales may lead to confusion. Who in the value chain will be required to pay refunds? We also worry that clause 14 (4) (a) and (b) inclusive you expect companies to pay fines within 30 days – presumably if they don’t pay within this timeframe, you will seek a winding up petition. How would such an action result in getting a fine from a non-existent entity – PSA has suffered in its various guises from this problem.</p>
<p>Q6. Do you have any comments on our proposed requirements relating to due diligence and risk assessment in Part 4 of the draft PRS Order?</p>	<p>On page 38 you set out from (a) to (e) obligations on a contracting party, we would question some of these requirements as being compatible in English company law – who determines that a company can pay its debts. A chartered accountant? Surely this should be re-worded to be something along the lines of “as reasonably expected to be able to settle its debts upon commencement of service/s.” Onerous burdens on day-to-day operations will lead to non-compliance, sensible pragmatic law that protects the industry and consumer is required. Law that as far as is possible cannot be tested and questioned, is what the industry now requires. We believe that you have sought to try in essence to achieve this, but there are sections in your consultation and draft PRS order that may be tested in court.</p>
<p>.Q7. Do you have any comments about our proposed approach to security testing in Part 5 of the draft PRS Order?</p>	<p>You state that this process must be “technically robust and secure”, as we have seen with the post office debacle what is technically robust to one is not to another. You suggest a head of security and such a position may be affordable and acceptable in a large company, but not in a smaller company. Why not say a responsible/qualified appointed person has to</p>

	<p>be in post/in charge of security and process/regulation in all PRS providers organisations. If a system was to be faulty whose fault is this, the manufacturer, or the head of security? Rules must be fair and level to all - surely the key thing here is to protect those that wish to provide and those that wish to access services do so in a fair and transparent way.</p>
<p>Q8. Do you have any comments about our proposed approach to misleading information and/or the promotion and marketing of PRS in Part 6, Chapters 1 and 2 of the draft PRS Order?</p>	<p>Again, we ask what is the average vulnerable consumer? There is a definition in law of vulnerability, however all consumers/humans can be vulnerable at some point in their lives. Who will be the arbitrator of what is the determination of the word “reasonably”? As described at clause 22 (5) (a, b, c) the key thing here is that all parts of the operation of all PRS providers, whatever services and by whatever mode of delivery, should operate in a fair and transparent way and be clear in what they are describing and advertising to a potential consumer. We fail to understand why virtual chat has now been grouped with live 1:1 service’s when complaints would not seem to support different treatment of this type of service. However, in practice all reputable providers already go above and beyond these requirements. We fail to see why consumer credit services are not caught in this and also fail to see the reason that they are less used than other services as a justification for such a move.</p>
<p>Q9. Do you have any comments about our proposed approach to pre-contract information and express consent for imposing certain charges in Part 6, Chapter 3 of the draft PRS Order?</p>	<p>On page 55 you state at clause (i) that geographical addresses of the place of business should be provided. We urge against this as we know of consumers who have turned up at “SP’s” places of operation to attack employees. Whilst we note that this would only be if a provider does not have a website. We agree with your approach to ICSS services and trying to seek clarity for their operation and see this as a positive step forward.</p>
<p>Q10. Do you have any comments about our proposed approach to provision of CPRS in Part 6, Chapter 4 of the draft PRS Order?</p>	<p>Whilst we fully support customer clarity and simplicity, we worry about giving notifications free of charge, which are possible on SMS via a mobile device but aren’t available on all platforms, and we believe are not available on all voice platforms. For instance, if a customer is engaging in such a service as a live 1:1 or a virtual chat service they would not be able to</p>

	<p>receive these free warnings whilst on a fixed line voice, virtual chat service.</p>
<p>Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?</p>	<p>We feel vulnerability is a questionable test, in English law although there is a prescribed definition, in reality all humans are vulnerable in one way or another at some point, in their lives. No PRS provider forces anyone to call their services, and whilst all those I have known in the industry will gladly refund any caller who has genuinely called in error or has not received what they expected. For an industry to be held accountable for those consumers who are not genuine in their actions seem unfair. This is not to say that we do not support consumer refunds, and therefore in principle we agree with this section.</p>
<p>Q12. Do you have any comments about the proposed requirements relating to prevention of harm and offence in Part 6, Chapter 5 of the draft PRS Order?</p>	<p>We believe that your proposal in relation to this is sensible and pragmatic, although we would say in the live 1:1 adult arena, that what is offensive to one human is not to another, by the very denote of this section of the market's nature. Who in reality arbitrates in law and day to day life what is offensive?</p>
<p>Q13. Do you have any comments about our proposed approach to competition and voting services in chapter 6 of Part 6 the draft PRS Order?</p>	<p>We believe that competition law defines you must state if the competition is chance or has an element of skill, in reality all reputable providers would practice clarity in expressing what kind of competition or voting mechanism is operating. You must clearly state if a programme is a repeat or whether it is a live show. To not do so would be misleading to the consumer and place an onerous obligation on the industry of refunding consumers.</p>
<p>Q14. Do you have any comments about our proposed requirements in respect of certain CPRS in chapter 7 of Part 6 our draft PRS Order?</p>	<p>We are concerned that you are suggesting the removal of recording live entertainment services, the providers who are operating these services will be recording as a matter of course and this is to protect both themselves and the consumer. This is so, if for instance there was an issue for a refund then the provider can listen to the call. The author is aware of providers being asked for recordings via the police. Out of interest, who determines the professional qualifications of those individuals working on professional services? We support trying to tighten age verification processes, but this in reality and day-to-day operation may be difficult for PRS providers to operate</p>

	<p>successfully; at clause 50 (4) it seems onerous that a record in writing of the age verification that is carried out is kept in respect of each consumer, how long is this record to be kept? This seems to be determined by Part 9 and is to be kept for 2 years for a PRS provider with millions of minutes per month, and thousands of callers, this may be extremely difficult certainly if live recordings no longer have to be made in respect of certain services. It would be helpful to have a clear definition of “threshold services” in the draft order.</p>
<p>Q15. Do you have any comments about our proposed approach to the recovery of Ofcom’s expenditure in Part 3 of the draft PRS Order?</p>	<p>We understand that the mechanism for your funding will be different from PSA and believe that this will work for the industry.</p>
<p>Q16. Do you have any comments about our proposed approach to additional requirements on network operators in Part 7 of the draft PRS Order?</p>	<p>We have no comments as the draft order seems to protect both the industry and the consumer.</p>
<p>Q17. Do you have any comments about our proposed requirements relating to information requirements in Part 8 of the draft PRS Order</p>	<p>These proposed requirements seem to be sensible and should be proficient for the industry. Although whilst we understand that your powers do not extend to those who are not defined as PRS providers, we do believe that any person or entity involved in the industry should have a duty of care to gather relevant information, and act in the best interests of both the industry and the consumer.</p>
<p>Q18. Do you have any comments about our proposal to retain current PSA data retention periods for 2 years (for consumer data) and 3 years (for DDRAC data) in Part 9 of the draft PRS Order, with a preservation requirement following an investigation being opened?</p>	<p>Your proposals in regard of retentions seem to be both relevant and sufficient to ensure both industry and consumer protection. Although in reality this may be difficult for some PRS providers, dependant on the nature and operation of their services.</p>
<p>Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?</p>	<p>This is the only section of your consultation that seems perverse to us. You seek under section 120 of the 2003 Telecommunications Act to cease approval of the currently appointed regulator and stop their operation. By removing the code, you approved and then you want to allow the code to continue so it seems - that those that have been caught under this code can still be continued to be tried by the organisation your draft order seeks to remove. Cake and eat it springs to mind, whilst we understand you approved their code you can’t discard the regulatory body then continue to use the same staff and code for enforcing those</p>

	<p>that have been found in breach by it. Presumably this is to collect fines and continue to enforce any determination that they made against a PRS provider who operated under PSA. If you propose to change and update a code of practice which in reality will need to happen there seems no provision for this. We are aware there are outstanding fines against companies, since the legal limited entity of the Phone Paid services authority will have to be dissolved, can we ask what date is planned for this to happen? How can Ofcom as a separate legal entity either gather these fines or have them passed to you via another legal entity? Having been involved in service providers and network cases under ICSTIS and its various guises, they were at times immutable and unfair, in the author's opinion. One example, when my daughter had Neuroblastoma and was hospitalised at John Radcliffe, I had a client being "tried" for breaching the code, whilst I sought an extension to attend to represent my client I was refused. Another example, I have attended an oral hearing and not be allowed to speak on behalf of my client or make representation. We would urge Ofcom takes over and ceases the existence of and operation of code 15 with immediate effect, and that the open cases be looked at again by Ofcom and decisions be made by Ofcom and non-PSA staff. The draft order without your current need for this retention of the "old" system, would then seem fair and balanced, we urge you to reconsider your position. Having been in the industry since the original regulator and early on in its conception, and therefore had the privilege to work with the likes of Louis Blook Cooper, Valerie Howarth, Baroness Dean, Sarah Harrison, and David Wiseman et al, I have seen a real sense of balance to both the industry and the consumer and understanding of the need for common sense and reason. I have also seen utter stupidity in the administration of the various codes. It is not balanced to cast aside a regime and yet then try and continue to administer certain cases under it.</p>
<p>Q20. Do you agree with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent? Please provide further information</p>	<p>We disagree with keeping the old system whilst trying to move forward with a new regulatory system and create a new regime, we disagree with your current proposal, as above. Whilst you can justify your actions, we do not believe</p>

	<p>that this is proportionate. You are acting with transparency, but it is potentially discriminatory and prejudicial. Why should a PRS provider still be held to account under the 15th code, when and how do you propose to effectively remove the operation of the old regime?</p>
<p>Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?</p>	<p>Your suggested implementation period would seem to be adequate.</p> <p>In conclusion of the above points, we have already made, the author would personally like to comment that when she operated services within the industry that had a value which was in excess of £1.2 billion and yet now is valued at £470 million. It is with great sadness that the author has witnessed the decline of this industry, and it has largely been in my opinion to over regulation and/or miss management of regulation. The original code was set up by the industry itself as the operators within it sought to ensure that there was a code by which services should be operated, to ensure that those that sought to cause harm would be stopped and/or punished. The industry and the genuine operators within it have always sought to act with transparency and with regard to protect their companies and the consumer. We absolutely agree that there have been and are, those that have sought/seek to create harm to both the industry and the consumer. We therefore welcome Ofcom's "taking over" of regulation (PSA) and hope under your good tutelage and stewardship that the industry will grow again, and welcome entrepreneurship, not just large corporates who do not always serve as well as they ought to.</p>