

## Your response

Question	Your response
<p><b>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.</b></p>	<p>Confidential – N</p> <p>We agree with Ofcom’s assessment.</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>We agree with Ofcom’s assessment.</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?**

Confidential – N

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

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

09 numbers are already regulated by PSA, as shown on its list, and so we are unclear why 098 is being specifically added. We would also ask for the reasoning behind the 5.833 pence tariff definition of PRS as the cost of a Standard Network Rate message on the EE network is significantly higher than this and should not be considered as a PRS.

We recognise that mobile portal content services charged to the customer’s phone bill (also known as ‘own portal services’) were removed from the CPRS definition, following a review by Ofcom, in 2012 . Specifically:

- *“own portal services: These are services in which fixed communications providers (such as Sky, Virgin Media and BT Vision) offer their customers access to their own on demand content such as film and catch up television programmes. MCPs also offer their customers different types of on demand content, such as video clips, music, games and wall papers through their own websites.”*
- *“Own portal services 6.2 We note that respondents substantially agreed with our analysis and proposals in respect of*

	<p><i>own portal services. Given this, and our assessment of the limited risk of consumer harm arising from such services, we have decided that these should be removed from regulation as proposed.”</i></p> <p>The provision of content, in the form of video clips, music games and wall papers was reflective of the way the market worked in 2012. Current ‘own portal’ services are, for example, the consumer bundles provided by EE for services like Spotify, Apple Music and Netflix. These services are typically activated by a consumer at the point of taking out a contract, either via our website or one of our other retail channels, and bundled with their contract charges. We would like Ofcom to confirm that this 2012 definition still remains and therefore exempts from PRS regulation the current day “own portal” services offered.</p>
<p><b>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?</b></p>	<p>Confidential- N</p> <p>We believe that App Stores should be added to the PRS definition, particularly as it has been noted in the consultation that 80% of the market is now driven by these large, global players. In addition, we also believe that App Stores should be directly regulated by Ofcom as their own entity rather than indirectly via their relationships with other parties defined within the PRS value chain. Again, it was noted in the consultation that Ofcom is better placed to deal with these larger organisations, and it can only really achieve this if they are defined separately within the value chain,</p> <p>Under the current regulatory regime, responsibility for day to day implementation sits with the PSA via its Code of Practice (most recently Code 15), however there is no similar illustration of how the day to day management of the marketplace will take place following the transition of regulatory responsibility over to Ofcom. We believe that this could be achieved through reference, in the Order, to the codes of practice that each MNO has. By giving standing to these, it would enable a flexible approach to emerging issues to protect consumer interest.</p>

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

Confidential – N

In the consultation para 4.37 Ofcom propose to streamline the amount of information requested from providers under article 10 of the draft PRS Order, in comparison to what is currently required under Code 15.

We are not clear why these requirements have been removed, as these possibly undermine the levels of assurance around providers. More detail on the rationale for this would be helpful.

We also concur with AIMM’s comments on the impact to the PSA service checker facility available to consumers.

We also note AIMM’s concern that the definition for an exempt *PRS provider as a merchant who— (provides a controlled PRS to consumers via an app store that is provided by a relevant intermediary)* might create an undue loophole for exemptions. We agree with AIMM that Ofcom should require all App Stores who are granted the exemption are directly regulated by Ofcom to ensure that Global Players having many unregistered merchants are sufficiently incentivised to maintain the highest consumer protection standards. Ofcom currently has the infrastructure, staff and funding taken on from the PSA to deliver this.

We also agree with AIMM that the removal of the facility to request compliance advice in the new regulatory regime could be counterproductive and request that Ofcom reconsiders this.

**Q6. Do you have any comments on our proposed requirements relating to due diligence and risk assessment in Part 4 of the draft PRS Order?**

Confidential – N

We note that the information to be assessed as part of the risk assessment includes the following: para 4.75

*“Details of the contracting party’s involvement in any legal proceedings, including any previous or ongoing legal proceedings and judgments or any other decisions made by a court, tribunal or other body in respect of the counterparty;”*

We believe that including all legal proceedings, as set out, is very broad and in many aspects

	<p>would not be relevant in making a diligence risk assessment. Requiring only relevant legal proceedings, relevant to providing PRS, in Ofcom’s final statement, would enable a more relevant and focused approach.</p>
<p><b>Q7. Do you have any comments about our proposed approach to security testing in Part 5 of the draft PRS Order?</b></p>	<p>Confidential – N</p> <p>We note the consultation’s para 4.95 <i>“The relevant security testing must be signed off by a person appointed under article 21(3) of the draft PRS Order and that it is proposed that this person needs to be in “senior management (for the intermediary)” (see article 10(5) of the draft PRS Condition for the definition of “senior management”) rather than a “suitably qualified or experienced person with overall responsibility for security or fraud” as currently contained in Code 15. “</i></p> <p>We also note the consultation’s para 4.98 <i>“We also propose to require that intermediaries share results of their relevant security testing with the network operators they have arrangements with where that network operator has requested the results. On receipt of the results, if the network operator reasonably believes that consumers are not being adequately protected from risks of security compromises in using the intermediary’s payment platform for operator billing, the network operator must notify the intermediary of the same. Both providers are then required to stop carrying out the affected regulated activity.”</i></p> <p>For both the intermediary and the network provider to stop supporting the regulated activity requires a strong burden of proof. Reduction in testing sign off by a suitably qualified person to a senior manager might compromise this activity. We believe that Ofcom should review and reconsider the approach set out in these two paragraphs. In addition, we concur with AIMM’s response that Network Operators suggest that the Intermediary should instead be obliged to provide these critical results - as a matter of course and should not rely upon a Network having to request them.</p>

	<p>We also request further clarity if it is just the operator billing platforms that need a PEN test, i.e. those doing direct billing, and not those doing PSMS (or any other PRS).</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>We have no comments</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>We are supportive of the proposal in para 4.149 that consumers should not be charged for ICSS until they have been given all the key pre-contract information (as part of the initial, free 60 seconds of the call), and have given consent to continue with the service. This would provide enhanced consumer protection and greatly reduce harm through unexpected call charges.</p> <p>Other than 080, the originator will bill the caller an Access Charge for all calls to 08/09 from the start of the call. We understand that for ICSS the proposal is to zero-rate the first 60 seconds of the service charge, but the call will not be free to the caller if the Access Charge is still applied. We request that Ofcom clarifies whether for ICSS the first 60 seconds of the Access Charge should be zero rated, making the first 60 seconds free-to-caller (and origination costs recovered from the terminator as is done for 080), or whether the Access Charge remains as today.</p> <p>We agree with AIMM’s assessment that providing all the required pre-contract information to the consumer upfront and not via a link or sign-posting a consumer to terms and conditions, could be problematic and detract from the pertinent and key bits of information like price. We would like Ofcom to confirm that certain parts of the pre-contract information can instead be delivered via a link/signpost to something like terms and conditions.</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?**

Confidential – N

We have some concern regarding our Network Operator role in the consumer complaints handling process given the delegation within the Order solely to merchants for this. We would like to understand better what our role, as a Network Operator, is in relation to this. Currently Ofcom's website does not contain sufficient facility for consumers wishing to complain about PRS and passes responsibility out to PSA. Combined with an assumption that merchants will have robust and mature complaint handling processes in place, we would welcome more information about how this process will work going forwards.

We agree with AIMM's response comments concerning the consultation para 4.163 around removing requirements specifically around Excessive Use that exist in Code 15. We also see that there is scope for excessive use to become a problem and suggest these requirements are retained. In our view, Merchants need to be held accountable for managing Excessive Use by their customers and that basic judgment and process is needed here.

**Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?**

Confidential – N

We support the principles of identifying and protecting vulnerable customers and we note AIMM's comments that judging what an average consumer is, could be very difficult or at the very least open to subjectivity.

<p><b>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?</b></p>	<p>Confidential – N</p> <p>We agree with the wider view of the MNOs that they already have robust, publicly available policies and procedures and technical systems in place to protect consumers from harm and offence. Additionally, MNOs can put in place a variety of tools to prohibit underage usage including bars etc but will also need to be able to address areas such as excessive use which can be very harmful to consumers, particularly in a cost of living crisis. The Order is not the appropriate place for this to be detailed because it is a complex area involving the consideration of what constitutes excessive use and how it should be addressed. MNO Codes of Practice are the right place for this level of detail and control to protect specific market segments and so we repeat the request that they are given standing within the definition of the PRS value chain to avoid legal challenges arising from their omission from this Order.</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>We have no comments.</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>Ofcom states that after a £40 charge is reached the caller cannot be charged more, and acknowledges that “This is different to paragraph 1.6 of Annex 1 of Code 15 which requires the call to be terminated as soon as a charge of £40 is reached” We request Ofcom to clarify that if the call goes on after the £40 (service charge) limit is reached that whilst service charge payments will not go above this, that the access charge will still carry on applying.</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>We note the proposal para 4.255 to retain the current PSA funding model which is a levy-based approach (collected by networks) and is determined by the market size vs the amount to be funded by levy. We also note that the amount to be funded by the levy for 2023/2024 is £3,647,494 (£3,797,494 (PSA budget) - £150k</p>



	<p>(PSA registration fees)). This represents 0.81% of the total sector revenue.</p> <p>We believe that with the absorption of the PSA into Ofcom and the consequent reduction in costs (shared building/removal of the PSA board/opportunity for synergies) that the amount to be funded will be greatly reduced.</p> <p>In addition, 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.</p>
<p><b>Q16. Do you have any comments about our proposed approach to additional requirements on network operators in Part 7 of the draft PRS Order?</b></p>	<p>Confidential – N</p> <p>We have no comments.</p>
<p><b>Q17. Do you have any comments about our proposed requirements relating to information requirements in Part 8 of the draft PRS Order</b></p>	<p>Confidential– N</p> <p>We have no comments</p>
<p><b>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?</b></p>	<p>Confidential – N</p> <p>We have no comments</p>
<p><b>Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?</b></p>	<p>Confidential – N</p> <p>We have no comments</p>
<p><b>Q20. Do you agree with our provisional assessment that our proposals are justifiable, non-discriminatory, proportionate and transparent? Please provide further information</b></p>	<p>Confidential - N</p> <p>Subject to our comments above, we agree with Ofcom’s assessment. However, in noting the significantly decreased level of consumer complaints and the change in the structure of the PRS market to larger organisations (with stronger compliance regimes), we believe that Ofcom should continue to monitor these trends and in the longer term consider a more self-regulated approach by players in the value chain. This would remove the responsibilities on Network Operators and intermediaries to perform DDRAC activity, thus aligning PRS with any other activity regulated by Ofcom.</p>

	<p>As per our answer to question 4, we are concerned that without formal acknowledgement somewhere in the Order of the existence of MNO Codes of Practice that additional requirements placed on the value chain via the Codes to reduce risk and protect consumers may be met by a legal challenge. To meet the aims stated, we would therefore recommend that an amendment is made to the draft Order to acknowledge the important and vital role of MNO Codes of Practice.</p>
<p><b>Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?</b></p>	<p>Confidential – N</p> <p>We support the view in AIMM’s response that a minimum of 3 months is required for implementation, and should that 3 months fall over the Summer holiday period then this will not be enough time (due to staff absence and much lower resource levels being available).</p>

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