

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>Yes, we agree.</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.</p>
<p>Q3. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view.</p>	<p>Yes, we agree. Noted that this is a duplicate of Q22.</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</p>	<p>We note that that Draft Order, PART 1, article 3 states:</p> <p>Meaning of controlled PRS 3.-(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 charge for the provision of the service is—</p>

<p>that are used throughout the Order?</p>	<p><i>(i) a single charge of 5.833 pence or more, or</i> <i>(ii) calculated by reference to a rate of 5.833 pence or more for each minute of the duration of the electronic communication.</i></p> <p>The standard network rate charge for a text message can be higher than the single charge that is proposed in the meaning. We are concerned that as a result a standard rate service i.e. a service where a premium charge has not been added, would now fall under the definition of CPRS and this wording will lead to confusion.</p> <p>We propose that the wording be amended to read (addition in bold):</p> <p><i>(b) the premium charge for the provision of the service is—</i></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>We do not have any comment on this.</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>We have two comments on Draft Order, PART 2, article 10 which states:</p> <p>10.—(1) <i>No person may carry out a regulated activity (or purport to do so), unless the person— (a) is a PRS provider who— (i) meets the requirements in paragraph (2), or (ii) is an exempt PRS provider under article 11, and (b) has appointed a person in senior management for the purposes described in paragraph (4) (“generally authorised person”).</i></p> <p>(2) <i>A provider meets the requirements in this paragraph if the provider— (a) has given OFCOM the information described in Schedule 1 in respect of the regulated activity in the manner specified by OFCOM on their website, and (b) at least five working days have elapsed beginning with the day on which the information was given.</i></p> <p>(3) <i>Where any change in the PRS provider’s circumstances renders inaccurate the information given under paragraph (2)(a), the provider must 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).</i></p> <p>(4) <i>The purposes referred to in paragraph (1)(b) are— (a) having authority to act on behalf of the PRS provider for all purposes relating to the requirements imposed under this Order, including— (i) the receipt, processing and payment of invoices relating to OFCOM’s charges under Part 3 of this Order, (ii) risk assessments under article 17, (iii) security testing under Part 5 of this Order, and (iv) the receipt of notifications and documents transmitted by OFCOM in electronic form in accordance with section 395(5) of the Act, (b) approving the</i></p>

policies and procedures under article 40(4)(a) in relation to vulnerable consumers, and (c) approving the policies and procedures under article 37(4)(c)(i) in relation to complaints and enquiries.

(5) In this article, “senior management”, in respect of a PRS provider, means persons who have a significant role in— (a) the making of decisions about how the whole or a substantial part of the PRS provider’s activities are to be managed or organised, or (b) the actual managing or organising of the whole or a substantial part of those activities.

In reality, the person, or persons, with day-to-day responsibility for PRS activity are not always going to hold senior management positions. We of course understand the importance of a senior person being accountable for the services and would ask Ofcom to consider if it would be clearer for 10.-(5) to be amended to read (addition in bold):

*(5) In this article, “senior management”, in respect of a PRS provider, means persons who **has overall oversight of** — (a) the making of decisions about how the whole or a substantial part of the PRS provider’s activities are to be managed or organised, or (b) the actual managing or organising of the whole or a substantial part of those activities.*

10.-(2)(a) A provider meets the requirements in this paragraph if the provider— (a) has given OFCOM the information described in Schedule 1 [see below] in respect of the regulated activity in the manner specified by OFCOM on their website,

Schedule 1, 12(f) “Where a PRS provider is a merchant, the PRS provider must also provide the following information in respect of each controlled PRS being provided to consumers— (b) the name of any other person contracted for the provision of that service, including for promotion and marketing of that service.”

We consider this registration information requirement could be interpreted more broadly than it is intended and could be overly onerous. We would like Ofcom to consider whether ‘any other person’ is necessary. It is likely that the details of ‘any other person’ will be included in the risk assessments that merchants must now undertake. Additionally, this information may be commercially sensitive – if this information were to be provided, will Ofcom hold this information in confidence?

Q6. Do you have any comments on our proposed requirements relating to due diligence and risk assessment in

We note that **Draft Order, PART 4, article 17** states:

17.-(2) The assessment must consider the risks to consumers that may arise having regard to—

<p>Part 4 of the draft PRS Order?</p>	<p>17.-(3)(c) details of the 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</p> <p>We consider the requirement to obtain details of <i>all</i> legal history to be disproportionate.</p> <p>We propose that this be amended to read (addition in bold):</p> <p>17.-(3)(c) details of the party’s involvement in any legal proceedings relevant to the provision of CPRS, 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</p> <p>The additional wording we propose limits legal history to only that that is relevant to the provision of CPRS which we believe is reasonable and proportionate.</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>We do not have any comments.</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>We do not have any comments.</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>We note that Draft Order, PART 6, article 26 and the related provision of Schedule 3 states:</p> <p>Information to be provided before entering into a controlled PRS contract</p> <p>26.-(1) Before entering into a controlled PRS contract with a consumer, a merchant must provide the consumer with the information specified in Schedule 3 in a clear, comprehensible and prominent manner, and in a way appropriate to the means of communication used.</p> <p>The information in Schedule 3 (below) is extensive and we consider that it would be unrealistic and overly onerous to expect broadcasters to include all this information at the time of promotion of the service.</p> <p>Currently, when promoting competitions and text donation services we present key information to viewers on-screen and in voice-over, with additional detailed information e.g. Terms & Conditions,</p>

available on a web page, the URL of which is included in any broadcast promotion of the service.

It is unclear to us why the wording in Article 26 does not specify how and when the required information must be given to the consumer and as a result this may lead to confusion and lack of certainty about what is required. We would like to see the wording in Article 26 amended and for it to mirror the requirements in the Draft Order for a subscription service entered into by means of an SMS text message, which allows for certain information to be provided via the merchant's website.

Schedule 3

The information referred to in article 26(1) is— (a) a description of any contents offered by the controlled PRS, including the main characteristics of the contents, the information that the consumer will need to make use of that contents and, where applicable, the conditions, time limit, restrictions, limitations and procedures for using the contents,

(b) a description of any offered facility comprised in the controlled PRS, including the main characteristics of the facility and, where applicable and except to the extent provided for in sub-paragraphs (c) to (e), the information that the consumer will need to make use of that facility, the conditions, time limit, restrictions, limitations and procedures for making use of the facility,

(c) where a facility for making a payment for goods, services or digital content is comprised in the controlled PRS, the information that the consumer will need to make use of that facility and, where applicable, the conditions, time limit, restrictions, limitations and procedures for making such a payment,

(d) where a facility for entering a competition or claiming a prize is comprised in the controlled PRS, the information that the consumer will need to make use of that facility (including details of any different ways of using it) and, where applicable—

(i) the conditions of entering a competition or claiming a prize,

(ii) the time limit of entering a competition or claiming a prize,

(iii) the procedures for entering a competition or claiming a prize, and

(iv) details of the prizes available for allocation, including their number and value together with any criteria, restrictions and limitations for their allocation,

(e) where a facility for registering a vote or recording a preference is comprised in the controlled PRS, the information that the consumer will need to make use of that facility and, where applicable, the conditions, time limit, restrictions, limitations and procedures for registering a vote or recording a preference, (f) the total charge payable for the provision of the controlled PRS inclusive of taxes, or

where the nature of the controlled PRS is such that the charge cannot reasonably be calculated in advance, the manner in which the charge is to be calculated,

(g) where applicable, all additional charges and any other costs for or in connection with the provision of the controlled PRS including any access charge or, where those charges or costs cannot reasonably be calculated in advance, the fact that such additional charges or costs may be payable,

(h) in the case of a controlled PRS contract of indeterminate duration or a controlled PRS contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs,

(i) an explanation that any charge payable for the provision of the controlled PRS will be imposed in the form of a charge to a bill (within the meaning given in article 23(3)(a)),

(j) the name of the merchant as notified to OFCOM for the purposes of articles 10 or 13, including any trading name,

(k) the geographical address at which the merchant is established and, if different from that address, the geographical address of the place of business of the merchant, and, where available, the merchant's website address, telephone number and e-mail address, to enable the consumer to contact the merchant, (l) the name of the controlled PRS offering the contents or facility referred to in paragraphs 2(a) or (b), whichever is applicable, as given to OFCOM for the purposes of articles 10 or 13, (m) the name and contact details of the person who is responsible for the merchant's customer care and complaints handling in respect of the provision of the controlled PRS,

(n) the policies and procedures for handling consumer complaints and enquiries, and

(o) the duration of the controlled PRS contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract.

Q10. Do you have any comments about our proposed approach to provision of CPRS in Part 6, Chapter 4 of the draft PRS Order?

We note that **Draft Oder, PART 6, article 36** states:

Article 36.—(1) A merchant who provides a controlled PRS to a consumer must make and keep in writing a record of the consumer's consent to entering into a controlled PRS contract and for any charges imposed under such a contract.

Please can Ofcom clarify what constitutes a record of consent and what these records must set out.

Also, it is unclear what is meant by retention by the merchant. Currently, whilst call and text logs are available to Channel 4 on request, we do not hold this information. Instead, we request and remunerate a contracted third-party Intermediary to make and retain these records for us. Please can Ofcom clarify if this will be permissible when the Order comes into effect.

	<p>Please can Ofcom also clarify who the merchant with responsibility is, when there is more than one merchant. For example, Channel 4 promotes donation services during Stand Up To Cancer (SU2C) programming. SU2C is a joint initiative between Channel 4 and Cancer Research UK (CRUK). Channel 4 is responsible for the promotion of the donation services and CRUK are responsible for the collection and administration of all donations.</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 do not have any comments.</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 do not have any comments.</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 note that 4.206 in the consultation states:</p> <p><i>In article 44 of the draft PRS Order, we propose a new definition of a valid ticket of entry. In particular, we propose that, in order to receive a valid ticket of entry, the consumer must use the facility made available in a competition and voting service before the time limit has expired and also meet any relevant conditions which are applicable to the service. Only consumers with valid tickets of entry can have their votes taken into account (where they have registered a vote or preference) or acquire a chance of winning the competition/claiming a prize.</i></p> <p>Following the publication of the Phone-paid Services Authority (PSA) final statement and Code 15 on 20th October 2021, industry members involved in broadcast competitions and voting notified the PSA that a service-specific requirement to include <i>all</i> entries made <i>before</i> the close date and time could not be implemented. If a consumer has used a service, i.e. sent an MO SMS, but the SMS has not been received by the merchant then it technically cannot be considered as a valid ticket of entry or entered into the service. This could happen in the event of an outage or network latency. In this instance, even though the consumer has used the facility <i>before</i> the close date and time, the entry has <i>not</i> been received by the merchant. As a result the PSA consulted on clarificatory changes after Code 15 had been</p>

	<p>introduced and Requirement 3.13.3 was subsequently amended to read as follows:</p> <p>3.13.3 All valid responses for entry into a competition or vote that are sent in by consumers within the timeframe set out in the promotional material must be entered and afforded sufficient time to be given full and equal consideration, except where such responses are received by the merchant provider (or a third party on its behalf) outside of the timeframe set out in the promotional material.</p> <p>We consider that similar wording has been used in 4.206 and in Article 44 and we propose the following wording amendments (additions in bold):</p> <p><i>4.206 In article 44 of the draft PRS Order, we propose a new definition of a valid ticket of entry. In particular, we propose that, in order to receive a valid ticket of entry, the consumer must use the facility made available in a competition and voting service before the time limit has expired and the entry must have been received by the Provider and also meet any relevant conditions which are applicable to the service. Only consumers with valid tickets of entry can have their votes taken into account (where they have registered a vote or preference) or acquire a chance of winning the competition/claiming a prize.</i></p> <p>44.-(2) <i>Where a consumer uses the facility before that time limit has expired and the entry has been received by the provider and meets any conditions applicable to the competition and voting service, the merchant must—</i></p> <p><i>(a) give the consumer an entitlement to— (i) acquire a chance of winning a competition or claiming a prize, or (ii) have a vote registered or a preference recorded, whichever is applicable in the consumer’s case, and 30</i></p> <p><i>(b) give a confirmation in writing of that entitlement (“valid ticket of entry”) to the consumer without undue delay after the consumer has used the facility.</i></p> <p>Additionally, we note the requirement in Article 44.-(2)(b) for written confirmation of their entry to be given to consumers. Ofcom should consider that giving written confirmation would not be feasible to consumers who have entered a competition or voted by calling an 090 telephone number and as such the wording in (b) should be reviewed.</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 do not have any comments.</p>
<p>Q15. Do you have any comments about our proposed approach to</p>	<p>We do not have any comments.</p>

<p>the recovery of Ofcom's expenditure in Part 3 of the draft PRS Order?</p>	
<p>Q16. Do you have any comments about our proposed approach to additional requirements on network operators in Part 7 of the draft PRS Order?</p>	<p>We do not have any comments.</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>We do not have any comments.</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>This data retention period is in line with our current practices, however as per our comments on question 10 we do not currently hold records of consent. Instead, we request and remunerate a contracted third-party Intermediary to make and retain these records for us and we are seeking clarification from Ofcom that this would be permissible going forward.</p>
<p>Q19. Do you have any comments about our proposed approach to enforcement in Part 10 of the draft PRS Order?</p>	<p>We do not have any comments.</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 do not have any comments.</p>
<p>Q21. Do you agree with our implementation period? Please state your reasons and</p>	<p>We would welcome the opportunity to review, and if necessary, make further submissions on any revisions to the Draft Order should changes be made post this consultation period.</p>

provide evidence to
support your view?