

## 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>Fonix agrees with the 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>Fonix agrees with the assessment.</p>
<p><b>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?</b></p>	<p>Confidential? – N</p> <p>Fonix requests confirmation that only the premium service element will be regulated under the PRS Order and that the standard network rate is out of scope for regulation.</p> <p>The PSA has always been clear that standard network rate is excluded from PSA regulation and has never been controlled PRS.</p>
<p><b>Q4. Do you have any comments about our proposed definition for PRS regulated providers and</b></p>	<p>Confidential? – N</p> <p>Fonix has no comment</p>

<p>regulated activity in article 9 in Part 1 of the draft PRS Order?</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>Confidential? – N</p> <p>Fonix notes under the Exemption for certain merchants:</p> <p>11.—(1) A person is an exempt PRS provider if the PRS provider is a merchant who—</p> <p>(a) provides a controlled PRS in respect of which the charge to the consumer (for the service) is enabled by means of a facility made available by a sole relevant intermediary, or</p> <p>(b) provides a controlled PRS to consumers via an app store that is provided by a relevant intermediary</p> <p>Fonix is concerned this could be exploited if a merchant only utilises a single payment intermediary and therefore believe themselves exempt from registration. Under the PSA this was a specific application process and should remain as such if exemptions are to remain.</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>Confidential? – N</p> <p>Will Ofcom provide a list of companies under investigation and who have received sanctions in order to ensure compliance with article 16?</p> <p><i>No PRS provider may enter into an arrangement with another person in respect of a regulated activity where that person is the subject of— (a) a direction given by OFCOM as set out in paragraph (2), (b) a <b>sanction</b> imposed by PSA as set out in paragraph (3), or (c) a <b>sanction</b> imposed by a relevant enforcement authority as set out in paragraph (4),</i></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>Confidential? – N</p> <p>Fonix has no comment.</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>Confidential? – N</p> <p>Fonix has no comment.</p>
<p>Q9. Do you have any comments about our</p>	<p>Confidential? – N</p>

proposed approach to pre-contract information and express consent for imposing certain charges in Part 6, Chapter 3 of the draft PRS Order?

Fonix notes that **Article 26** states:

**Information to be provided before entering into a controlled PRS contract 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.

Merchants operating prize draws, competitions and votes, and charity donation services will present key information to consumers, with more detailed information such as terms and conditions, contact details and policies available via a web link (which the consumer may, or may not, access before entering into the contract).

This is particularly useful for those with limited space (perhaps on TV) or time (perhaps on radio). This ensures that the information which aids a consumer to make up their mind about whether to participate is presented clearly pre-contract, along with further, more detailed information available to the consumer if they wish to view it – at whatever stage in the contract process they choose, even post contract.

The above **Article 26** states that information in **Schedule 3** (below) must be given pre-contract, in a prominent manner, appropriate to the means of communication used.

### **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.*

An example of where it would be problematic to ensure all of schedule 3 is included pre-contract, is on air -for example a radio competition, read out by the DJ, where the inclusion of terms (k) to (o) pre-contract, in a prominent manner, appropriate to the means of communication used would be prohibitive.

	<p>On TV, it would be unreasonable to expect viewers to read all of this information on screen in advance of participating in a competition/vote, and indeed it can be argued that not all of the information is key to influencing their decision to participate.</p> <p>Fonix requests that the requirement remains the same as it is in the 15<sup>th</sup> Code, such that certain key information, and also the web link to further terms, should be prominent and appropriate to the means of communication used. This reflects the current regulatory model and allows consumers to receive enough information for them to decide whether to participate, along with the opportunity to delve into further information should they want to at a time convenient to them.</p>
<p><b>Q10. Do you have any comments about our proposed approach to provision of CPRS in Part 6, Chapter 4 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>Fonix has no comment.</p>
<p><b>Q11. Do you have any comments about our proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?</b></p>	<p>Confidential? – N</p> <p>Fonix has no comment.</p>
<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>Fonix has no comment</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>1) Members note that at <b>4.206 and Article 44</b> it states:</p> <p><i>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>During the Code 15 consultation process, evidence was submitted around the wording of the entry process as it was perceived to be problematic.</p> <p>If the consumer has used the facility (i.e. sent an MO SMS or a postal entry) but the entry has not been received by the Merchant, then it cannot be considered as a valid ticket of entry or entered into the service.</p> <p>This could happen in the event of an outage, network latency or a delayed postal service for example, so even though the consumer has used the facility in the allotted time, the entry has not been received by the Merchant. Code 15 was amended by further consultation to take this into account, and as such reads:</p> <p><b>3.13.3</b> 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>Fonix supports a proposed wording amendment:</p> <p><b>Suggested Article 44</b></p> <p><i>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, <b>the entry must have been received by the Provider</b> 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><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>Fonix has no comment</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>Fonix would expect to see a reduction in costs</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>Fonix has no comment</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>Fonix has no comment.</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>Fonix has no comment.</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>Fonix requests that all investigations and sanctions be published to enable us to fulfil the requirements laid out with regards to the risk assessment of contracting parties.</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>Fonix agrees with the provisional assessment but seeks clarification on the points above as part of the process.</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>Fonix agrees with the implementation period proposal.</p>

Please complete this form in full and return to [prsregulation@ofcom.org.uk](mailto:prsregulation@ofcom.org.uk).