

Consultation on amendments to Notice of Specified Charges and Durations of Calls

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Executive Summary

Rule 3.12.1 of the Code of Practice allows the Phone-paid Services Authority to specify maximum service charges for various service categories which are set out in rule 3.12.2. The updated draft Notice of specified service charges and call durations to be published in accordance with paragraph 3.12.6 of the Code, attached at Annex A, details the specified amounts per service category.

Recent changes to UK law have introduced maximum spending caps - per individual transaction and for accumulated transactions per month - for phone-paid transactions, which are not aligned to some of the existing spend caps the PSA has in place.

We believe it is important that any PSA notice that specifies a maximum charge for any category of service is clear and easy to understand and aligned with spend limits set out in law.

The PSA has reconsidered the charges specified in our existing Notice, and proposes to:

- Align our spend caps for Sexual entertainment services, Live entertainment services, Chatline services and Professional advice services with the caps now set out in law
- Remove our existing spend caps for Remote Gambling services - on the grounds that the monthly spending cap which will now be required by law is lower than the monthly consumer spend our previous cap would have allowed, and so will offer consumers greater flexibility and also greater protection

Providers of Children's Services should note that we do not propose to change the existing spend caps applicable to these services, and these remain unchanged in the draft Notice attached at Annex A.

About the PSA

The Phone-paid Services Authority is the UK regulator for content, goods and services charged to a phone bill. Our primary function as a regulator is consumer protection. Our vision is of a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

Our mission is two-fold:

- To protect consumers from harm in the market, including where necessary through robust enforcement of our Code of Practice; and
- To further their interests through encouraging competition, innovation and growth in the market.

Background

Changes to regulations governing electronic payment services

1. On November 25, 2015, the Directive on Payment Services in the Internal Market II (PSD II; Directive 2015/2366) was adopted by the European Parliament and entered into force in January this year. All EU Member States were required to implement the rules as national law by 13 January 2018. In the UK, these rules were transposed into law in the form of The Payment Services Regulations 2017 (PSRs).
2. Phone-paid service transactions are exempt¹ from the regulations where the service is provided in addition to electronic communications services for a subscriber to a telephone Network, and where the additional service is:
 - (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or
 - (ii) performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere, provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240.
3. The second of the two bullet points directly above has become known colloquially within the industry as “the ticketing exemption”. This is because it broadens the scope of the exemption contained in the first Payment Services Directive by allowing various quasi-physical purchases such as transport or entertainment tickets, car parking, and postage.
4. Where phone-paid services providers are making use of this exemption then a spend limit of £40 inclusive of VAT applies per single transaction and a monthly cumulative spend of £240 inclusive of VAT per consumer. However, where a phone-payment provider holds an E-Money licence or is registered with the FCA as a Payment Services Provider the limits do not apply. In both scenarios providers will not need to benefit from the phone-payment exemption and so the PSR spending caps will not apply to services for which they facilitate payment.

¹ Activities which do not constitute payment services are defined in Part 2 of Schedule 1 of the Regulations: http://www.legislation.gov.uk/uksi/2017/752/pdfs/uksi_20170752_en.pdf

How the changes impact on the PSA's regulation and current PSA spending caps

5. The Phone-paid Services Authorities Current Notice of Specified Service Charges and Durations of Calls², published in accordance with paragraph 3.12.6 of the 14th Code of Practice sets out specified actions for nine different categories of service. One of the specified actions is a maximum service charge – i.e. a spend cap, after which the provider must immediately end any voice call or prevent a user from successfully completing further transactions. A spend cap applies to six of the service types listed in the notice and below:
 - i) Sexual entertainment services
 - ii) Live entertainment services
 - iii) Chatline services
 - iv) Remote gambling services
 - v) Professional advice services, excluding counselling services
 - vi) Services aimed at, or which should have been expected to be particularly attractive to Children
6. This consultation pertains to the current spending caps for service categories one to five as outlined above, and our desire to align them with the £40 cap for individual transactions (i.e. digital purchases or calls) within the Payment Services Regulations.
7. In respect of category six, the maximum call costs for services aimed at, or which should have been expected to be particularly attractive to, children were consulted upon in 2014 during the consultation process for the 13th edition of the Code of Practice³. The per call in a single transaction or per month for subscription maximum amount was increased from £3 to £5 (inclusive of VAT), and the cumulative spend of £20 in any given billing period was introduced. We are not proposing any amendments to these spend caps at this time as they are in place to provide extra protection for children and we have no evidence that they are not achieving this purpose.
8. It is also important to note that although counselling services are not subject to a maximum spend cap, they are subject to the following maximum call durations:
 - Such services offered on a one-off basis must terminate after 20 minutes duration.
 - Such services offered over a pre-arranged number of sessions, each call must terminate after 60 minutes duration.
9. Providers operating these services should carefully consider the tariffs they use to ensure that the maximum spend does not exceed those specified in the Payment Services Regulations otherwise they will not be covered by the exemption.

² [Notice of Specified Service Charges and Durations of Calls Published in accordance with paragraph 3.12.6 of the 14th Code of Practice](#)

³ <https://psauthority.org.uk/-/media/Files/PhonepayPlus/News-Items/Code13Statement.ashx>

Proposals

10. The Phone-paid Services Authority proposes to align the existing spend caps for the following service categories with those spend caps outlined in the Payment Services Regulations:
 - a) Sexual entertainment services
 - ii) Live entertainment services
 - iii) Chatline services
 - iv) Professional advice services
11. This means that the maximum service charge for Sexual entertainment services, Live entertainment services, Chatline services and Professional advice services, will be reduced from £45 to £40 per call. It is important to note that the requirement to notify callers when £15 is spent and the requirement to terminate calls once £30 is spent unless the caller positively confirms a wish to continue the call will remain unchanged.
12. At the time of this consultation we are considering the introduction of new Special Conditions for society lottery services. If, following the consultation, we decide to introduce new Special Conditions, we will need to make a small technical amendment to the draft Notice at Annex A to exclude society lottery services from the scope of the Notice). This would be to avoid any conflict with any Special Conditions that become applicable to society lottery services.

Q1: If you are providing a service falling within any of the four service types listed above, do you anticipate any problems with the implementation on the new maximum spend cap?

Proposals in respect of Remote Gambling Services

13. Regarding Remote gambling services the Phone-paid Services Authority proposes to remove the maximum spend of £30 in any given 24-hour period per consumer. Phone-paid Remote gambling services fall under the regulatory remits of the PSA and the Gambling Commission, and in proposing this we note that the Gambling Commission do not specify any maximum spending cap for services within this gambling category.
14. In the interest of simple and effective regulation we believe it is unnecessary to continue to require a maximum spend limit of £30 in any 24-hour period per consumer given that the Payment Services Regulations have introduced a maximum spend cap of £40 per transaction and £240 per month per individual subscriber for services making use of the exemption. This maximum spend cap has the ability to provide consumers with adequate protection from bill shock whilst also allowing greater flexibility for daily spending.

Summary of proposals

Provision	Current Spend Cap	Proposed Spend Caps	Comments
Sexual Entertainment Services	£45 per call with notification at £15 spent and positive consent to continue at £30	£40 per call with notification at £15 spent and positive consent to continue at £30 £240 per month	Aligned with spend caps in Payment Services Regulations
Live Entertainment Services	£45 per call with notification at £15 spent and positive consent to continue at £30	£40 per call with notification at £15 spent and positive consent to continue at £30 £240 per month	Aligned with spend caps in Payment Services Regulations
Chatline Services	£45 per call with notification at £15 spent and positive consent to continue at £30	£40 per call with notification at £15 spent and positive consent to continue at £30 £240 per month	Aligned with spend caps in Payment Services Regulations
Professional Advice Services	£45 per call with notification at £15 spent and positive consent to continue at £30	£40 per call with notification at £15 spent and positive consent to continue at £30 £240 per month	Aligned with spend caps in Payment Services Regulations
Remote Gambling	£30 per user per day	Remove the daily spend cap	Added consumer protection from dual regulation & Payment Services Regulations

Q2: Do you agree with the proposal to remove the spend limit for remote gambling services of £30 in any 24-hour period per consumer?

Impact Assessment

15. We consider that the impact of these proposals on the value chain will be low. This is for the following reasons:

- i) The technology to change the price, either for a single digital purchase or the price point at which calls terminate, already exists on phone payment platforms. As such the resource involved in making a change to bring the price point to £40 will be minimal and does not create any requirement for capital cost changes to existing platforms.
- ii) Whilst a reduction from £45 to £40 may have some impact on provider revenues from “top percentile” consumers who stay on a call until the spend cap is reached, this impact is likely to be low as most consumers do not stay on the line for this period of time. In addition, we do not consider the likely loss of revenue to be especially relevant, given that providers who wish to benefit from the PSR exemption will be required to introduce the £40 cap regardless of whether the PSA makes a change to spending caps or not.
- iii) The daily spend limit for Remote Gambling will no longer be capped and will allow more flexible consumer spending within a controlled cap of £240 per monthly billing cycle as required by the PSRs. This monthly cap is significantly lower than if consumers spent £30 a day every day through one month, as they could theoretically do under the current arrangements, and so will provide considerable additional protection to consumers using phone payment.

Q3: Do you agree with the impact assessment? Do you have any additional information on the costs and benefits of the proposals?

How to respond to this consultation

16. We welcome responses to the following questions, along with any views respondents have relating to our ongoing considerations linked to this review:

Q1: If you are providing a service falling within any of the four service types listed above, do you anticipate any problems with the implementation on the new maximum spend cap?

Q2: Do you agree with the proposal to remove the spend limit for remote gambling services of £30 in any 24-hour period per consumer?

Q3: Do you agree with the impact assessment? Do you have any additional information on the costs and benefits of the proposals?

17. We plan to publish the outcome of this consultation and to make available all responses received. If you want all, or part, of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

18. The closing date for responses is **12 July 2018**. Where possible, comments should be submitted in writing and sent by email to consultations@psauthority.org.uk

19. Copies may also be sent by post to:

Sarah-Louise Prouse
Phone-paid Services Authority
25th Floor, 40 Bank Street,
London,
E14 5NR

20. If you have any queries about this consultation, please email using the above contact details.

Annex A

Draft Notice of Specified Service Charges and Durations of Calls

Published in accordance with paragraph 3.12.6 of the 14th Code of Practice

This Notice is being issued to inform all providers involved, or intending to be involved, in the provision of the service categories set out in paragraph 3.12.2 of the Phone-paid Services Authority's Code of Practice, 14th edition ("the Code"), that specified actions are required under paragraph 3.12.1 of the Code. Those specified actions are listed for each service category separately.

Failure to carry out the actions specified in this Notice will amount to a breach of the Code under paragraph 3.12.5.

Specified actions

1. Sexual entertainment services

- 1.1 Sexual entertainment services are defined under paragraph 5.3.34 of the Code
- 1.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 1.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 1.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

2. Virtual chat services

- 2.1 Virtual chat services are defined under paragraph 5.3.39 of the Code
- 2.2 All such services must, as soon as is reasonably possible after the user has spent £10.22 (inclusive of VAT), and after £10.22 (inclusive of VAT) of spend thereafter:
 - a. Inform the user separately from the service or any promotion that £8.52 plus VAT has been spent; and
 - b. Terminate the service promptly if the user does not interact further with it following the provision of the message sent in accordance with (it).

3. Live entertainment services

- 3.1 Live entertainment services are defined under paragraph 5.3.21 of the Code
- 3.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 3.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 3.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

4. Chatline services

- 4.1 Chatline services are defined under paragraph 5.3.12 of the Code
- 4.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 4.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 4.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

5. Professional advice services, excluding counselling services

- 5.1 Professional advice services are defined under paragraph 5.3.29 of the Code
- 5.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 5.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 5.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

6. Counselling services

- 6.1 Counselling services are defined under paragraph 5.3.16 of the Code
- 6.2 Such services offered on a one-off basis must terminate after 20 minutes duration.
- 6.3 Such services offered over a pre-arranged number of sessions, each call must terminate after 60 minutes duration.

7. Subscription services, excluding recurring donation services operated by a registered charity

- 7.1 Subscription services are defined under paragraph 5.3.37 of the Code
- 7.2 For all subscription services, once a month, or every time a user has spent £20.45 (inclusive of VAT) if that occurs in less than a month, the following information must be sent free to subscribers:
 - (i) The name of the service;
 - (ii) Confirmation that the service is subscription-based;

- (iii) What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;
- (iv) The charges for the service and how they will or can arise;
- (v) How to leave the service; and
- (vi) Level 2 provider contact details.

8. Services aimed at, or which should have been expected to be particularly attractive to children

8.1 Children is defined under paragraph 5.3.13 of the Code

8.2 Such services must not charge more than £5 (inclusive of VAT) per call in a single transaction or per month for a subscription.

8.3 Such services must not charge more than £20 (inclusive of VAT) over a single monthly billing period.