

Notification of modifications to the Premium Rate Services Condition under section 120A(1) of the Act¹

WHEREAS

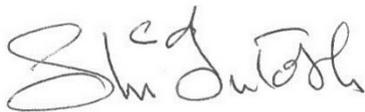
- A. On 15 April 2013, Ofcom published a notification (the “First Notification”) setting out their proposals for modifying the PRS Condition.
- B. In the First Notification and the accompanying explanatory document, Ofcom invited representations about the proposed modifications by 28 May 2013.
- C. By virtue of section 120A(5) of the Act, OFCOM may give effect to the proposal to modify the PRS Condition as set out in the First Notification, with or without modification, after:
 - (i) considering every representation about the proposal made to them within the period specified in the First Notification; and
 - (ii) having regard to every international obligation of the United Kingdom (if any) notified to Ofcom for this purpose by the Secretary of State.
- D. Ofcom received three responses to the First Notification and have considered every representation made to them in respect of the proposed modifications.
- E. The Secretary of State has not notified Ofcom of any international obligations of the UK for the purposes of section 120A(5) of the Act.

THEREFORE

1. In accordance with the procedures in section 120A of the Act, Ofcom are modifying the PRS Condition as set out in the Schedule to this Notification.
2. Ofcom’s reasons for making these modifications, and the effect of the modifications, are set out in the accompanying explanatory statement accompanying this Notification.
3. Ofcom are satisfied that the modifications comply with the requirements of sections 47, 120 and 120A of the Act, insofar as they are applicable.
4. In making these modifications, Ofcom have considered and acted in accordance with their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
5. The modifications shall enter into force on 26 December 2013.
6. A copy of this Notification is being sent to the Secretary of State in accordance with section 120A(7) of the Act.

¹ This Notification formed Annex 10 of the statement entitled ‘*Simplifying non-geographic numbers: Final statement on the unbundled tariff and making the 080 and 116 ranges free-to-caller*’, published on 12 December 2013 and available at: <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/final-statement>

7. In this Notification:
 - a. "the Act" means the Communications Act 2003;
 - b. "Ofcom" means the Office of Communications; and
 - c. "PRS Condition" means the condition set under section 120 of the Act by the Director General of Telecommunications on 23 December 2003, as amended from time to time.
8. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
9. For the purposes of interpreting this Notification: (a) headings and titles shall be disregarded; and (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
10. The Schedule to this Notification shall form part of this Notification.



Stuart McIntosh
Competition Group Director

12 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

Schedule

The modifications to the PRS Condition are made by the insertions and deletions marked in bold and highlighted in yellow for ease of reference in the text below:

1. The Communications Provider and Controlled Premium Rate Service Provider shall comply with:
 - (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
 - (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.
2. In this Condition,
 - (a) "Act" means the Communications Act 2003;
 - (b) "Approved Code" means a code approved for the time being under section 121 of the Act;
 - (c) "Communications Provider" means either:
 - (i) a person who:
 - (A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;
 - (ii) a person who:
 - (A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and
 - (B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service; or
 - (iii) a person who:
 - (A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and
 - (B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) “Chatline Service” means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) “Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) **in respect of** which **falls within one or more of the following categories:**
- (i) **until the Effective Date,** the service is obtained through a Special Services Number (except an 0843/4 number), and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 5 pence per minute for BT customers inclusive of value added tax; **or**
 - (ii) **from and including the Effective Date, the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;**
 - (iii)** the service is obtained other than through a Special Services Number, **or a PRS Number,** and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax); **or**
 - (iv)** the service is a Chatline Service; **or**
 - (v)** the service is Internet Dialler Software operated; **or**
 - (vi)** the service is a Sexual Entertainment Service;
- (f) “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 and the Companies Act 2006;

- (g) “Controlled Premium Rate Service Provider” means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (h) “Dial-up Telephone Number” means the telephone number used by an end user’s computer that connects it to the Internet;
- (i) “Effective Date” means 26 June 2015;**
- (j) “Enforcement Authority” means, in relation to an Approved Code, the person who under the code has the function of enforcing it;**
- (k) “Facility” includes reference to those things set out in section 120(14) of the Act;**
- (l) “International Call” means a call which terminates on an Electronic Communications Network outside the United Kingdom;**
- (m) “Internet Dialler Software” is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number; other than where it is used so that:**
- (i) an end-user’s existing Internet Service Provider replaces the Dial-up Telephone Number; or
 - (ii) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent;
- (n) “Internet Service Provider” means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business;**
- (o) “National Telephone Numbering Plan” means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;**
- (p) “Non-Geographic Number” shall have the meaning ascribed to it in the National Telephone Numbering Plan;**
- (q) “Premium Rate Service” shall have the meaning ascribed to it by section 120(7) of the Act;**
- (r) “Payment Mechanism” is a mechanism whereby the charge for a service delivered by means of an Electronic Communications Service is paid to the Communications Provider providing the Electronic Communications Service;**
- (s) “PRS Number” means a Non-Geographic Number starting 087, 090, 091 or 118;**

(t) “Service Charge” shall have the meaning ascribed to that term in General Condition 17 of the general conditions set by the Director General of Telecommunications on 22 July 2003 by way of a Notification published pursuant to section 48(1) of the Act, and modified by Ofcom from time to time;

(u) “Sexual Entertainment Service” means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature; and

(v) “Special Services Number” means a telephone number designated by Ofcom in the National Telephone Numbering Plan as Special Services basic rate, Special Services higher rate or Special Services at a Premium Rate.

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.