



**The Regulatory Guide**  
**UK Edition**

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## 1. Introduction

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Interaction with mobile subscribers is subject to an increasingly extensive and broad range of fundamentally important legal and regulatory requirements. Which requirements apply at any time may be determined by a variety and combination of factors. These factors include the type of service or content being provided, where the service is advertised and the means by which the service is accessed and charged for.

The existence of what can appear disparate and heavy regulation in fact reflects the rich and innovative variety of services that can be provided via mobile, and the underpinning requirement that subscribers/consumers are provided with services they can trust.

The purpose of The UK Regulatory Guide is to draw together in one document the most common requirements of mobile service provision to consumers across the regulatory landscape for the UK market. As the title suggests, this document is for guidance only and in many instances acts as an introduction to areas that will require further consideration. It is not exhaustive, nor does it constitute legal advice and it should not be relied upon as such.

However, we are confident that our unique position as the largest aggregator of mobile PRS services in the UK, with industry experience and knowledge second to none, equips us to provide beneficial, relevant and up-to-date information in this area. As these requirements continue to evolve, we will continue to ensure our Clients' interests are well represented and that any changes required in the operation of services are promptly and effectively communicated.

For further information or conversation on any aspect or omission of this Guide, please do not hesitate to contact us.

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## 2. Advertising Premium Rate Services

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The universal principles applicable to any advertising of premium rate services are set out in Paragraphs 5.7.1 and 5.7.2 of the PhonepayPlus Code of Practice:

- 5.7.1** *Service providers must ensure that all users of premium rate services are fully informed, clearly and straightforwardly, of the cost of using a service prior to incurring any charge.*
- 5.7.2** *Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Spoken pricing information must be easily audible and discernible.*

Through a combination of PhonepayPlus and Mobile Network Codes of Practice, this section also details the requirements for the most common means of advertising premium rate services. It does not cover the requirements for the advertisement of Subscription Services or services billed for via Payforit, which are dealt with separately in Sections 3 and 12.

### 2.1 Print Advertising Requirements

- The cost of the service in pounds and pence (e.g. £1.50 or 50 pence)
- The name of the service provider
- A postal address or PO Box Number with post code
- A subscriber Care number (non premium rate)
- If use of the service is deemed to constitute a soft opt-in to receive promotional material, this must be made clear to the subscriber, as must the means of unsubscribing from such promotions by sending the STOP command.\*

\* There is a lack of uniform interpretation as to whether a subscriber using a service can legitimately be deemed to have provided a soft opt-in to receive marketing communications, where the information above is presented to them in Print Advertising. Please contact us for further information.

### 2.2 TV and Radio Advertising Requirements

- Must include the information required in Print Advertising (as above)
- TV advertising must provide spoken as well as visually displayed pricing information if the cost of the service generally exceeds £2.

### 2.3 Internet/ WAP Site Advertising Requirements

- Must include the information required in Print Advertising (above) on the Internet Site or WAP Site, without the subscriber being required to select a link (as above)
- Pricing information must be presented either:
  - Without the need for the subscriber to scroll down (i.e. above the fold); or
  - If pricing information is below the fold, it must nevertheless be presented directly above each call to action (such as above a billable link).

## 2.4 SMS Marketing Messages

- All promotional messages must be free of charge for the subscriber and must be identified as such. Identification can be achieved in one of two ways:
  1. Stating “Free Message” or “Free Msg” in the originator field of the message.
  2. Stating “Free Message” or “Free Msg” at the very beginning of the SMS.
- The sender of the message must be clearly identified.
- The cost of the service advertised must be clearly identified in pounds and pence.
- The recipient must be able to opt-out of receiving further communications via the same method they have received the communication. In the case of a promotional SMS, the recipient must therefore be given instructions on how to achieve this in one of two ways:
  1. If the message is denoted as free within the originator field, the message must state a Short Code to which the subscriber can send STOP to unsubscribe from further promotional messages.
  2. If the message is denoted as free at the very beginning of the message, a short code should be contained within the originator field. In this scenario the message must state that the recipient can unsubscribe from further promotional messages by replying STOP.
- A subscriber care number (non premium rate) must be included.

An example promotional message may therefore appear as follows:

**Sender: 81234**

***“Free Msg: ABC Ltd. To get our latest share price reply “share”. Each share price we send costs 50 pence. Support: 08701234567. To stop messages reply STOP.”***

or:

**Sender: Free Msg**

***“ABC Limited. To get our latest share price text “share” to 81234. Each share price costs 50 pence. Support: 08701234567. To stop messages send STOP to 81234”***

## 2.5 WAP Push/ XHTML Marketing Messages

- Given the practical constraints of providing clear information in either a WAP URL or on a WAP Site, the fact that a WAP Push marketing message is free should be detailed at the very beginning of the title of the WAP Push.
- To enable the recipient to identify the sender of the WAP Push and unsubscribe from receiving further promotions, a Short Code to which the recipient can send the STOP command to unsubscribe should also be included within the WAP Push. The recipient should not have to open the WAP Push in order to identify a Short Code to which they can send STOP for the purposes of unsubscribing.

Incorporating these two requirements into the title of the WAP Push would be presented as follows

***“Free Msg: 81234 [Service Title]”***

- Further information on how the recipient can opt out of future promotions must also be available from the WAP Site. This needs to be provided on the WAP Landing Page or further to the recipient clicking on one clearly identified link from the Landing Page, such as a Help Page. The information to be provided must include:

- An explanation that the subscriber can unsubscribe from receiving further promotional WAP Push messages by sending STOP to a specific Short Code. This Short Code must be the same as that included within the title of the WAP Push; and optionally also
- A link which the subscriber can select to unsubscribe from receiving further promotional WAP Push messages.

## 2.6 The Six Month Rule

It is a Mobile Network Operator requirement that a subscriber cannot receive a mobile communication unless there has been:

- A valid initial opt-in by the subscriber to receive promotional messages from the sender and an associated and auditable MO SMS, MO MMS, Voice or Video Call to a Short Code; and
- No more than 6 months have elapsed since the last Successful Interaction with the subscriber.
  - A “Successful Interaction” is one of:
    - An MO SMS, MO MMS, Voice or Video Call from the subscriber;
    - An MT SMS or MT MMS (where a successful delivery report has been provided) or a successfully connected outbound Voice or Video Call to the subscriber.

In the event that in excess of six months have elapsed since the last Successful Interaction with the subscriber, the associated MSISDN must be removed from all promotional databases and no further attempts made to communicate with the subscriber’s MSISDN, until such time as they independently re-opt-in.

## 3. SMS Subscription Services

SMS Subscription Services are characterised by an initial opt-in to a service, after which time messages are pushed to the subscriber at a pre-agreed frequency.

Due to the potential for subscribers to incur repeat charges without the need for their continued interaction, the operation of premium rate Subscription Services are subject to strict rules ensuring subscriber understanding of the services they have entered into. These rules ensure subscribers are fully informed, both before and during the operation of a Subscription, about the frequency with which they will be charged and how to unsubscribe, should they wish to do so. These rules are mandated jointly by all of the Mobile Networks, as well as by PhonepayPlus.

MX Telecom’s Content Management System (CMX2) fully supports all of the operational requirements for running Subscription Services in the UK. Please contact us for further details.

Please note that the following requirements do not apply to subscriptions billed via Payfort. Payfort subscriptions are dealt with separately in Section 12.

### 3.1 Rules for the Operation of Subscription Services

There are **SIX** mandated regulatory requirements of Subscription Service operation. These are:

- Promotional Material**
- Opt-in to a Subscription Service**
- Introductory Message**
- Monthly Reminder**

**v. £20 STOP Reminder****vi. STOP Command and Confirmation of Subscription Cessation**

Any premium rate Subscription Service must comply with the requirements surrounding these areas, as detailed below, in order to comply with Mobile Network and PhonepayPlus Codes of Practice.

**3.2 Promotional Material****3.2.1 Print and Web Based Advertising**

The fact that a subscriber will be entering into a Subscription Service by texting into the advertised SMS Short Code must be made clear in the advertising material. The following text must be used, adjacent to the most prominent advertising of a Short Code within the advert, with a font size no smaller than 50% of the advertised Short Code:

***“Subscribe to/ Join [name of service and optional description – maximum of 35 characters] for [£X] per [billing period]”***

If a Subscription Service includes a promotional period, the wording may be changed to reflect this but to the minimum amount necessary. For example:

***“Subscribe to/ Join [name of service and optional description – maximum of 35 characters] for [£1 for the first week then £3 per week thereafter]”***

If multiple subscription services are advertised within an advert, this wording must appear adjacent to the call to action for each service.

In addition, any adjoining small print MUST begin with the following text:

***“This is a subscription service, it will cost [£X] per [billing period] until you send STOP to [Short Code Number]”***

The Short Code must be the same one advertised to activate the Subscription Service. This text must appear on the first page of any multi-page print advert and above the fold. It should not require a subscriber to scroll down or select a link on a Web/WAP/ Mobile Internet based advert.

**3.2.2 TV Advertising**

The mandated text as required for Print and Web based advertising must be permanently and statically displayed on-screen for the whole duration of the advertisement and must appear immediately adjacent to the main service Short Code and advertised in the same font type in monochrome colour and background (black on white or white on black) no smaller than 50%, (or 30 pixels - whichever is the larger), than that used for the advertised Short Code.

There must be a voiceover which includes the above text, including details of initial fees if relevant. Additional wording may be included to describe the service in greater detail, provided it does not interfere with, or obscure, the above.

**3.2.3 Radio Advertising**

Radio advertising must include the content of the mandated wording required for Print/Web advertising and must also refer the subscriber to a website where they can view full terms and conditions.

**3.2.4 SMS Advertising**

Although there are constraints imposed by SMS message length of 160 characters, any SMS advertising of a Subscription Service must use the following mandated wording:

**Sender: "Free Msg"**

*"Join [name of service and optional description – maximum of 35 characters] for [£X] per [billing period] by texting [keyword] to [Short Code]. Stop receiving messages - send STOP to [Short Code]"*

or:

**Sender: "[Short Code]"**

*"Free Msg: Join [name of service and optional description – maximum of 35 characters] for [£X] per [billing period] by replying [keyword]. Stop receiving messages by replying STOP."*

### 3.3 Opt-in to a Subscription Service

The two acceptable methods of subscriber opt-in to a Subscription Service:

- Mobile Originated SMS to a Short Code; or
- Sign up via Payforit within a Mobile Internet session (please see the Payforit Section 12) for further details)

### 3.4 Introductory Message

Upon opting in to a Subscription Service by either mechanism detailed above, the subscriber must immediately be sent an Introductory Message using the following wording:

*"[FreeMsg.] U have joined/subscribed to [name of service and optional description – maximum of 35 characters]. for [cost of service in £] per [billing frequency] until you send STOP to [originating service shortcode]. Helpline [UK standard rate or free helpline number]."*

This message may be free to the subscriber or the first billed message of a subscription. It must be the first message sent to the subscriber subsequent to opt-in.

### 3.5 Monthly Cost Reminder

**Where the Subscription Service costs less than or equal to 50 pence per message including VAT**, the subscriber must be advised of the price of the Service. This can be contained at the end of a service message in line with the following example:

*"Premiership Half Time: Man City 7, Man United 0. Each text 25 pence".*

**Where the Subscription Service costs more than 50 pence per message including VAT**, the subscriber must be sent a message every 30 days containing the following mandated wording:

*"[Free Msg.] U are subscribed to [name of service and optional description – maximum of 35 characters] for [cost of service in £] per [billing frequency] Helpline [UK standard rate or free helpline number]."*

The content of this message is almost identical to that contained within the Introduction Message, other than the STOP command is not mandated within it. The message may be free to the subscriber or sent billed, if part of the cost of the Subscription the subscriber has agreed to.

### 3.6 £20 Spend STOP Reminder

Once the subscriber has a) incurred £20 in charges for the Subscription, or b) 30 days have elapsed since the date the Subscription Service was initiated or since the last reminder (whichever occurs first), the subscriber must be sent a message reminding them of the details of the Subscription, and that they can unsubscribe using the STOP command.

The message sent to the subscriber must read:

**“[Free Msg.] U are subscribed to [name of service and optional description – maximum of 35 characters for [cost of service in £] per [billing frequency] until you send STOP to [originating service Short Code ]. Helpline [UK standard rate or free helpline number].”**

The message may be free to the subscriber or sent billed, if part of the cost of the Subscription the subscriber has agreed to.

It is permissible to send the £20 Spend STOP Reminder instead of the Monthly Cost Reminder, if £20 is spent more frequently than every 30 days.

### 3.7 STOP Command and Confirmation of Subscription Cessation

- Subscription Services cannot be subject to a minimum subscription period.
- Upon receipt of a STOP command, the subscriber must immediately be unsubscribed from the Service and be sent a free-to-receive message clearly confirming this has been actioned.
- Upon receipt of a STOP ALL command, the subscriber must immediately be unsubscribed from all Subscription Services they were a member of, and be sent a free to receive message clearly confirming this has been actioned.

### 3.8 Further Information:

Mobile Network Operator Codes of Practice: Please contact us for copies if you do not already have these.

PhonepayPlus Subscription Service Operation Requirements:

[http://www.phonepayplus.org.uk/CodeOfPractice/ProvisionsSpecificServices.asp#7\\_12](http://www.phonepayplus.org.uk/CodeOfPractice/ProvisionsSpecificServices.asp#7_12)

Please note that although PhonepayPlus requirements are less stringent, the requirements above, as mandated by the Mobile Networks, must be applied.

Further information on the MX Telecom Content Management System – CMX2:

<http://www.mxtelecom.com/uk/smsa/cmx2>

## 4. Marketing Messages

### 4.1 The Privacy and Electronic Communications Regulations (PECR) Directive 2003 and the Information Commissioner’s Office

Electronic communications must only be sent to recipients in accordance with the requirements of the PECR Directive.

A copy of PECR is available here:

<http://www.opsi.gov.uk/si/si2003/20032426.htm>

The Information Commissioner’s Office provides more practical guidance on the UK’s interpretation of The PECR and how the requirements apply specifically to mobile communications:

[http://www.ico.gov.uk/upload/documents/library/privacy\\_and\\_electronic/detailed\\_specialist\\_guides/guidance\\_part\\_1\\_for\\_marketers\\_v3.1\\_081007.pdf](http://www.ico.gov.uk/upload/documents/library/privacy_and_electronic/detailed_specialist_guides/guidance_part_1_for_marketers_v3.1_081007.pdf)

## 5. The STOP Command

### 5.1 The STOP Command Table

The following table details the required behaviour for dealing with STOP commands sent to a Short Code.

What is the consumer subscribed to receiving?	What command do they then send (case irrespective)?	What action is then required?
Promotional free-to-receive messages	<b>STOP or STOP ALL</b>	The consumer must automatically be removed from ALL promotional databases with immediate effect.
Billed messages from a single subscription	<b>STOP or STOP ALL</b>	The consumer must be automatically unsubscribed from receiving ANY further billed messages.
A) Billed messages from a single subscription AND B) promotional free-to-receive messages	<b>STOP</b>	The consumer must be automatically removed from THE MOST RECENT SUBSCRIPTION (i.e. A) or B)) they received a message from.
	<b>STOP ALL</b>	The consumer must be automatically removed from BOTH subscriptions (A) and B)).
Multiple subscriptions to billed messages	<b>STOP</b>	The consumer must be automatically removed from THE MOST RECENT BILLED SUBSCRIPTION they received a message from, on the Short Code to which the STOP message was sent.
	<b>STOP followed by another STOP or STOP ALL</b>	The consumer must be automatically removed from ALL SUBSCRIPTIONS they are receiving billed messages from across ALL Short Codes on which the consumer has billed subscriptions.
A) Multiple subscriptions to billed messages AND B) promotional free to receive messages	<b>STOP</b>	The consumer must be automatically removed from THE MOST RECENT SUBSCRIPTION (i.e. A) or B)) they have received a message from. If A) they must, specifically, be removed from the most recent billed subscription they received a

		message from on the Short Code to which the STOP message was sent.
	<b>STOP followed by another STOP or STOP ALL</b>	The consumer must be automatically removed from ALL SUBSCRIPTIONS they are receiving billed messages from across all Short Codes on which the consumer has billed subscriptions AND Automatically be removed from ALL promotional databases with immediate effect.
Multiple Billing Messages from a non-subscription service (such as a one-in, two out service)	<b>STOP or STOP ALL</b>	The consumer must be automatically unsubscribed from receiving ANY further billed messages.

Notes:

- Reference to messages includes WAP Push as well as SMS.
- The consumer can change their preferences (i.e. to no longer receive a service or promotion) by re-opting-in to a service, promotion, or both, by subsequently providing informed consent of the type required by the service or promotion they wish to re-subscribe to.

## 6. Free Draws, Prize Competitions and Lotteries

The Gambling Act became law on September 1<sup>st</sup> 2007 and through enforcement by The Gambling Commission governs the definition and operation of free draws, prize competitions and lotteries in the UK.

Free draws and prize competitions are free from statutory regulatory controls. Therefore, as long as a service meets the criteria under The Gambling Act as a Free Draw or a Prize Competition, it can be provided as a commercial offering for private benefit or profit.

### 6.1 Free Draws

A 'draw' involves a winner or number of winners being chosen at random from a group of entries. It is envisaged there are two main scenarios where a draw may also be considered as being classed as 'free':

**a. Where all methods of communicating entry are at a 'normal rate'.**

This can be construed to include a standard rate text message or phone call, or other means of non-premium rate communication, such as the cost of a stamp. There can be no additional cost to enter the draw.

**b. Where the entrant has a choice to enter at a premium rate or at a normal rate (as defined above).**

- Both methods need to be advertised in a manner likely to come to the attention of all intending to participate.
- The non-premium method must be no less convenient than the premium route.
- The system for allocating prizes must not distinguish between either method.

## 6.2 Web Entry as an alternative entry mechanism

The popularity of web entry as an alternative entry mechanism has led to particular advice being provided by the Gambling Commission as to how it can be offered as a valid premium rate entry:

- Those without ready web access need sufficient time to access this entry mechanism. At least **three working days** therefore need to be provided between the draw being advertised and the draw entry closing.
- Web entry needs to be available at all times whilst the draw is open.
- The availability of the web entry mechanism needs to be made widely known.

## 6.3 Prize Competitions

A key purpose of the Act was to clarify the difference between prize competitions and lotteries. This is an important distinction because, whereas prize competitions with a premium rate cost of entry can be operated without statutory restriction, lotteries can only be legally operated subject to license and in support of good causes. Lotteries cannot be operated for private commercial gain.

In order to qualify as a prize competition distinct from a lottery the following test applies:

***A process which contains a requirement to exercise skill or judgment or knowledge shall not be treated as relying wholly on chance (and therefore will not be a lottery) if that requirement can be reasonably expected to:***

- ***prevent a significant proportion of people who wish to participate from doing so (section 14(5)(b) of the Act); or***
- ***prevent a significant proportion of people who participate from receiving a prize (section 14(5)(a)).***

What practically constitutes a ‘significant proportion of people’ has not been defined, and will ultimately be determined on a case-by-case basis. In the event of any doubt about whether a service requires skill or judgment, organisers would be required to demonstrate that the question was sufficiently difficult to deter a significant proportion of entrants, or to prevent a significant proportion of entrants from winning.

The Commission have provided non-exhaustive examples of factors which would contribute to demonstrating skill and judgment are required in answering multiple choice questions:

- sufficient plausible alternative answers;
- the question is relevant to the context in which the competition is offered;
- the correct answer is not obviously given close to the question; and
- ‘joke’ answers (therefore providing the answer by a simple process of elimination) are avoided.

## 6.4 Lotteries

The Act defines two types of lotteries: simple and complex.

### 1. Simple Lottery:

- Payment to participate; and
- Prizes are allocated to winners according to chance.

### 2. Complex Lottery:

- Payment to participate
- Prizes are allocated to winner according to a series of processes; and

- the first of these processes relies wholly on chance.

Any scheme falling within either of the above must operate within the statutory provisions relating to lotteries. Principally, those rules require that lotteries cannot be operated for commercial gain.

## 6.5 Further Information:

Gambling Commission Guidance on the operation of Prize Competitions and Free Draws:

<http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/Prize%20competitions%20and%20free%20draws%20guidance%20Nov%2007.pdf>

To sign up to receive information updates from The Gambling Commission:

<http://www.gamblingcommission.gov.uk/client/signup/>

Memorandum of Understanding between PhonepayPlus and The Gambling Commission:

[http://www.phonepayplus.org.uk/pdfs\\_news/MoUGCPHONEPAYPLUS.pdf](http://www.phonepayplus.org.uk/pdfs_news/MoUGCPHONEPAYPLUS.pdf)

## 7. Gambling Services

Specific requirements for the provision of mobile gambling services are imposed by a combination of The Gambling Commission, PhonepayPlus and the Mobile Network Operators.

### 7.1 The Gambling Commission

In order to provide gambling services in a mobile environment, the relevant license (typically a Remote General Betting Operating License) must first be obtained from The Gambling Commission.

### 7.2 PhonepayPlus

Where a gambling service is provided to mobile subscribers and charged to the subscriber's contract bill or decremented from their pre-pay credit, it requires a PhonepayPlus license to operate.

A PhonepayPlus license can be obtained via MX Telecom. Please contact us for further details on this process.

The permission process and terms of the license will, as a minimum, include the following:

- provision of promotional material;
- evidence of age verification to be used;
- evidence of a Gambling Commission licence; and
- the imposition of a £30 per 24 hour spend limit.

### 7.3 Mobile Network Operators

Mobile Network requirements for the provision of gambling services provided to mobile users and billed to the mobile handset (as opposed to credit card billing):

- the service must be provided in an appropriate Short Code number range (69xxx, 79xxx or 89xxx); and

- the service must only be accessible to mobile subscribers who have had their age verified by a means approved in advance by the Mobile Networks.

#### 7.4 Further information:

Types of Gambling License from The Gambling Commission available:

[http://www.gamblingcommission.gov.uk/Client/faq\\_detail.asp?id=47&sector=11](http://www.gamblingcommission.gov.uk/Client/faq_detail.asp?id=47&sector=11)

## 8. The IMCB and Visual Service Age Verification

The Independent Mobile Classification Board (IMCB) was jointly set up in 2005 by the Mobile Networks to govern the classification of new forms of mobile content: chiefly visual and gambling services. In order to classify content, the IMCB devised a classification framework against which service providers must self-rate their content. Content deemed by the classification framework as only being suitable for subscribers aged 18 and over ('Age Restricted' content) must only be accessible by subscribers who have verified their age with their Mobile Network.

### 8.1 Age Restricted Content through SMS, MMS and Video Short Codes

- Traditionally, the provision of Age Restricted content would require a Short Code to be classified as Adult Visual, with Network Age Verified subscribers able to access the content and non-Age Verified subscribers being blocked from doing so. The latter would be sent an SMS response informing them how to Age Verify with their Mobile Network.
- MX Telecom can now provide dynamic age verification of all subscribers to enable the provision of Age Restricted content to those that are Network Age Verified. If you wish to have this feature enabled for any SMS or MMS Short Code in the Adult Range (69xxx, 79xxx or 89xxx) please contact us to have this set up.
- Once provisioned, we will pass you an extra parameter with each inbound SMS and MMS, which will detail the subscriber's Age Verification status.
  - If the subscriber's status is Age Verified, they can be returned Age Restricted Content.
  - If the subscriber's status is not Age Verified, they can be returned instructions on how to Age Verify with their Mobile Network, or (subject to the detail of advertising) be provided with alternative content appropriate to their age status.

### 8.2 URL Filtering

- The Orange, Vodafone, T-Mobile, Virgin and Three Mobile Networks also filter WAP URL's, to ensure that URLs providing access to content only suitable for subscribers over the 18, can only be accessed by subscribers with a corresponding Age Verification Status.
- URL's are rated automatically on the Orange, Vodafone, T-Mobile and Virgin Networks. On the Three network, URL's must be registered in advance.
- Age restricted content and universal content should be sent from different URL's to ensure that access to the latter is not blocked due to sharing a URL with the former.

### 8.3 Gambling Services and Age Verification

Notwithstanding the previous subsections, Gambling Services can only be provided to subscribers where the means of Age Verification to be undertaken has been approved in advance by the Mobile Networks. Please contact us for further information.

### 8.4 Further Information:

The IMCB Classification Framework:

<http://www.imcb.org.uk/assets/documents/ClassificationFramework.pdf>

## 9. SMS Chat Services

### 9.1 Initiation and SMS Age Verification

A subscriber cannot enter an SMS Chat Service until they have provided a valid date of birth in an MO SMS. This can be provided in the format dd/mm/yy or the age in letters (for example, 'twenty').

Any MT message sent to the subscriber, prior to their having provided a valid date of birth, must be non-billed. This includes, for example, an MT message requesting the subscriber's date of birth.

- subscribers under the age of 16 are not allowed to participate in any type of SMS Chat Service.
- subscribers aged 16-17, having provided a valid date of birth (as above), can participate in SMS Chat Services which are non-adult in theme. Advertising of such services must not be in publications with a target readership of below the age of 16.
- subscribers aged 18+, having provided a valid date of birth (as above), can participate in SMS Chat Services with adult themes. Advertising of such services must not be in publications with a target readership of below the age of 18. Adult themed SMS Chat Services must only be operated on the Short Code ranges designated for use of age-restricted Services.

### 9.2 Visual Service Age Verification

As part of an SMS Chat Service, it is permitted to exchange visual content such as MMS and WAP Push content.

Please note however, the Age Verification requirements for providing a subscriber with visual content unsuitable for subscribers under the age of 18, are different from those required before a subscriber can enter an SMS Chat Service (i.e. as detailed in Section 9.1). Prior to providing any age-restricted visual content to a subscriber, the subscriber must be Age Verified by the Mobile Network to whom the subscriber is connected, in accordance with the procedures detailed in Section 8.1.

Additionally, the content tagging feature of MX Telecom's Chat System automatically ensures that Visual content sent to a subscriber is appropriate to the subscriber's Age Verification Status.

### 9.3 Spend Reminders

In accordance with Paragraph 7.3.3 of the PhonepayPlus Code of Practice:

All Chat Services must, as soon as is reasonably possible after the subscriber has spent £10, and after each £10 of spend thereafter:

- a. inform the subscriber of the cost per message of the Service,

- b. require subscribers to provide a positive response to confirm that they wish to continue. If no such confirmation is given, the service must be terminated.

Spend reminder functionality is fully supported by the MX Telecom Chat System.

#### 9.4 Further Information

PhonepayPlus Code requirements for Virtual Chat Services (section 7.3):

[http://www.phonepayplus.org.uk/CodeOfPractice/ProvisionsSpecificServices.asp#7\\_3](http://www.phonepayplus.org.uk/CodeOfPractice/ProvisionsSpecificServices.asp#7_3)

Definition of Chat and Dating Services Help Note:

[http://www.phonepayplus.org.uk/pdfs\\_helpnotes\\_code11/defining\\_SES.pdf](http://www.phonepayplus.org.uk/pdfs_helpnotes_code11/defining_SES.pdf)

## 10. Contact and Dating Services

PhonepayPlus define Contact & Dating Services as:

***services which enable persons who were previously unacquainted with each other to make initial contact and arrange to meet in person or otherwise continue to have contact with one another outside the service if they wish to do so.***

Any Premium Service enabling such contact between previously unacquainted subscribers must follow the PhonepayPlus requirements for the operation of such services.

The general PhonepayPlus requirements which apply irrespective of the communication channel (be it SMS, WAP, MMS, Voice, Video or a combination thereof) and whether live or not (i.e. instant communication or message-relay) are as follows:

- warn subscribers of the risk involved when giving out personal details and provide clear advice and precautions to take when meeting people through such services (for example, such as meeting in a public place);
- ensure publicly-available elements of the service do not list contact details of any nature (for example, on a general-access website);
- remove any adverts placed by a subscriber on a Service within 24 hours of request (for example, such as a personal profile);
- where a subscriber has submitted a profile, treat four weeks of inactivity as a time limit before such profile is removed.

Any Contact & Dating Service must adhere to these requirements as a minimum. However, certain types of Contact and Dating Service also constitute Live Services and must further comply with all the requirements of Section 11.

## 11. Live Services

### 11.1 Rules Applicable to all Live Services

The majority of Live Services require PhonepayPlus Prior Permission to operate. If you wish to operate a Live Service not covered by this Section 11, please contact the Legal Team for further information on the permissions process.

Paragraph 6.3.1 of the PhonepayPlus Code states that unless permission has been given to do otherwise, all Live Services must adhere to the following requirements:

- a) *all providers of live services must ensure that on connection each service user receives a brief introductory message giving details of the call costs and the name of the service provider providing the live service,*
- b) *service providers must actively discourage service users from seeking or giving out surnames, places of work, addresses or geographic phone numbers, or arranging or attempting to arrange any meeting while connected to a live service,*
- c) *service providers must ensure that operators use reasonable endeavours to prevent persons under 18 years of age from taking part in any live service,*
- d) *if an operator has reasonable grounds, upon questioning a service user, to suspect that the user is under 18, the service provider must immediately end the service for that user.*

Additionally:

*The service provider shall take reasonable steps to identify and cut off calls made without the permission of the bill-payer.*

## 11.2 Compensation For Unauthorised Use

Compensation must be available to a bill-payer where they have been charged for accessing a Live Service but have not authorised its usage.

## 11.3 Live Contact and Dating Services

Service Providers are only permitted to provide Live Contact and Dating Services to subscribers where they have Prior Permission from PhonePayPlus to do so. In particular, this relates to Voice and Video Services where subscribers can directly communicate with other subscribers or with Call Operators. The terms of the Prior Permission Certificate include the payment of a Bond to a Compensation Scheme, the recording of all Live Calls on PhonepayPlus-approved Call Recording Equipment and £30 automatic disconnect of calls (where charged at more than 60 pence per minute). MX Telecom has the requisite Prior Permission in place to facilitate the provision of Live Contact and Dating Services by Service Providers. The license covers Tarot, Live Chat and Dating via Voice and Video.

By a very straightforward process, MX Telecom can add Service Providers to its Prior Permission. Thereafter, the main terms that must be adhered to by the Service Provider are as follows:

- All promotional material must state that calls will be recorded; and
- The introductory message at the beginning of the call must state:
  - calls will be recorded;
  - the caller must be 18 or over;
  - the caller must be the bill payer or have the bill payer's permission; and
  - service details may appear on the phone bill.

## 11.4 International Call Credit Services billed to the subscriber's handset

Services with the following features are required to have a PhonepayPlus license prior to launch:

- A subscriber requests credit to make international phone calls (typically low cost routing services similar to international call card services).

- The credit is charged to the mobile handset and the subscriber is provided with a free or low cost number to call and a PIN number to access their account.
- Upon calling the number and entering their PIN (or alternatively, the caller CLI is automatically recognised), the subscriber can then enter the destination number and the cost of such call is decremented from the subscriber's purchased credit, at the rate advertised.

Such services have traditionally been classified as Pay-For-Product rather than Live Services, as the premium rate element of the service is the provision of credit to the subscriber, as opposed to the call itself being charged at a premium rate.

It is now the case that PhonepayPlus require such services to have Prior Permission to operate.

MX Telecom has submitted an application for a blanket license under which any Client can provide an International Call Credit service. We expect the license to be in place in October 2008, further to which Clients can simply register that they are providing a service which accords with the terms of our license prior to operation. Please contact the Legal Team for further information.

### 11.5 Further Information:

Categories of Live Service exempt from Prior Permission:

[http://www.phonepayplus.org.uk/pdfs\\_helpnotes\\_code11/notice\\_liveexemptions.pdf](http://www.phonepayplus.org.uk/pdfs_helpnotes_code11/notice_liveexemptions.pdf)

## 12. Payforit

Payforit exists to promote a secure, consistent and transparent billing environment within which a subscriber may purchase goods and services on a one-off or subscription basis, with the cost charged to their mobile account. The payment screens presented to the subscriber are managed by Accredited Payforit Payment Intermediaries (APIs), such as MX Telecom.

### 12.1 Trusted Mobile Payment Framework Scheme Rules

The Trusted Mobile Payment Framework Scheme Rules constitute a Code of Practice, in accordance with which all Payforit billing services must be provided. Please contact us for a copy of the Scheme Rules.

### 12.2 The transition from PSMS Billing for WAP-based purchases to Payforit

- Payforit is the mandatory mechanism for billing subscribers for content purchased from a WAP site on the Vodafone and O2 Mobile Networks.
- It represents the only cross network solution for billing subscribers for WAP-based purchases.
- Payforit is not mandatory where a subscriber requests content via an SMS and the content is delivered to the subscriber via a WAP Push.
- Mobile Networks no longer support MSISDN Passing for the purposes of enabling WAP-based transactions, unless Payforit is used as the billing mechanism.
- Payforit, unlike standard WAP Billing, is necessary to identify the MSISDN of a new subscriber wishing to make a purchase from a WAP Site, where the subscriber has independently accessed the WAP Site (by typing in a URL or via surfing the Mobile Internet - as opposed to accessing a site via an MO-triggered WAP Push).

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### 12.3 Integration with SMS to enable provision of Subscription Services

Whether a Subscription Service is billed to the subscriber via PSMS or via Payforit, the subscriber must receive the introductory monthly cost reminder, £20 spend STOP reminder and confirmation of unsubscribe messages, via SMS and as required by the Subscription Service operation requirements (contained in Section 3). Full integration of MX Telecom's SMS and Charge to Account Gateways ensures Clients can simply achieve compliance with this.

### 12.4 PhonepayPlus

PhonepayPlus have stated their belief that Payforit falls within their regulatory remit. At Q3 2008, no requirements have been imposed by PhonepayPlus specific to Payforit. However, it is likely that they will introduce a Help Note which may introduce requirements additional to those contained within the Scheme Rules.

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## 13. Charity Donation Services

### 13.1 VAT

Premium SMS does not provide a cross-network solution enabling registered charities to receive donations and reclaim the VAT from Her Majesty's Revenue and Customs (HMRC).

### 13.2 Payforit

Vodafone and Three treat charitable donations made via Payforit as VAT exempt. Consequently, charities receive an additional 17.5% on Vodafone and Three subscribers' donations via Payforit.

### 13.3 Higher Rate Tariffs

Tariff rates between £5 and £10 are now available cross network and offer higher proportionate outpayments, relative to the price paid by the subscriber, than has been the case for tariff rates below £5. As a result of these more attractive outpayment rates, they have become a more viable solution for facilitating charitable donation services. These tariffs are available on both Premium SMS and Payforit. Please contact us for further details.

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## 14. Broadcast PRS Services

In addition to Ofcom regulation of Broadcasters providing interactive PRS to their audiences (imposed via Broadcaster TV License conditions) PhonepayPlus have introduced a Prior Permission regime to ensure that Technical Service Providers facilitating the provision of Broadcast PRS Services are competent to do so. The Prior Permission system is designed to ensure that viewers are protected from any possible harm when participating in Broadcast PRS.

Once PhonepayPlus permissions have begun to be granted, Broadcast PRS Services can only be provided via a technical service provider with a PhonepayPlus license covering the facilitation of such services.

MX Telecom's application is awaiting PhonepayPlus approval and we expect the license to be issued in October 2008. As permission is pending and in the interim, there is no restriction on the provision of Broadcast PRS through MX Telecom.

## 14.1 Further Information:

PhonepayPlus Press Release on Broadcast PRS Licensing:

[http://www.phonepayplus.org.uk/pdfs\\_news/PhonepayPlusBroadcastPRS.pdf](http://www.phonepayplus.org.uk/pdfs_news/PhonepayPlusBroadcastPRS.pdf)

## 15. Location Based Services

MX Telecom can provide geographic subscriber location data to enable Client provision of Location Based Services. Location data is available for subscribers on the O2, T-Mobile, Vodafone, Orange and Virgin Mobile Networks. We expect Three to support Location Based Services during Q4 of 2008, making LBS a true cross-network solution through MX Telecom.

### 15.1 Location Based Services (LBS) Code of Practice

The provision of location data and any location based services is subject to strict compliance with the LBS Code of Practice. This Code was put together jointly by O2, T-Mobile, Vodafone and Orange (under the auspices of The Mobile Broadband Group) and key stakeholders, including MX Telecom.

Location Based Services are classified as either:

- Active Location Services; or
- Passive Location Services.

#### 15.1.1 Active Location Services:

Require the subscriber to actively make a request for their location to be determined. The most common application of active services are “where’s my nearest?” type-services (cinema, cash machine, nightclub).

#### 15.1.2 Passive Location Services:

Enable the owner of a SIM, or an authorised parent or guardian, to provide durable consent for their location to be determined on an ongoing basis. The main applications of location based data provision are child location, friend location and corporate tracking services.

The LBS Code of Practice is designed to ensure that location is only utilised with the fully informed and ongoing knowledge and consent (if a passive service), of the subscriber being located.

### 15.2 Network Prior Approval

Location based services must have approval from each supporting Mobile Network prior to launch. The prior approval system does not impose any additional requirements. Rather, its purpose is to ensure the Code of Practice is being correctly applied by LBS providers.

The prior approval process takes approximately four weeks from submission of applications (cross-network).

### 15.3 Further Information

For information on setting up Location Based Service test accounts and the Prior Approval process, please contact us.

Location Based Services Code of Practice:

[http://www.mobilebroadbandgroup.com/documents/UKCoP\\_location\\_servs\\_210706v\\_pub\\_clean.pdf](http://www.mobilebroadbandgroup.com/documents/UKCoP_location_servs_210706v_pub_clean.pdf)

## 16. Network Codes of Practice

The following Mobile Networks currently have their own Codes of Practice for the provision of services to their subscribers:

- Vodafone
- T-Mobile
- Three

Orange are expected to launch a Code of Practice by the end of Q4 2008.

The MX Telecom Regulatory Guide is intended to address the most common requirements of the Mobile Network Codes of Practice, amongst other sources of regulation. Familiarity with each Network Code is nonetheless necessary to ensure all network requirements are met.

### 16.1 Network Code Non-Compliance – The Yellow and Red Card System

The Mobile Networks use a Yellow and Red Card system to address instances of non-compliance with their respective Codes of Practice, or less frequently where there are clear breaches of the PhonepayPlus Code of Practice.

Mobile Networks may issue Yellow and Red Cards collectively if the non-compliance relates to a common breach across all network requirements (such as a non-compliant Subscription Service), or individually if the breach is specific to their own individual requirements (such as a WAP-based purchase billing via PSMS rather than Payforit on O2 or Vodafone).

#### **Yellow Card**

- Issued in instances where a breach is so significant it requires a prompt fix. For example, no subscriber care number on an Internet advertisement.
- The Network will provide written details of the breach, along with a notice period of 24 hours within which a resolution and response must be provided. An unsatisfactory resolution of a Yellow Card can lead to a Red Card being issued, as below.

#### **Red Card**

- Issued in instances where a breach is so significant it requires an immediate fix. For example, no pricing information in an advertisement for a premium rate service.
- The Network will provide written details of the breach, along with a direction to the Aggregator to immediately suspend the number upon which the service is being operated.
- Upon resolution of the underlying problem and provision of a written explanation, the service provider can request that the service is reinstated.
- Where a Red Card is issued on Vodafone or O2, a suspension applies for a minimum of 14 days. The length of suspension on other Mobile Networks is not fixed but at their discretion.

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## 17. Unfair Trading Practices Directive

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The Government Department for Business, Enterprise and Regulatory Reform ("BERR") are responsible for implementing the Unfair Commercial Practices Directive into UK law. With an effective date of 26th May 2008, the Consumer Protection from Unfair Trading Regulations (the "Regulations") are designed to afford clearer protection to consumers of commercial services. The sale of goods and services to consumers, charged for by mobile payment mechanisms, fall within the scope of the Regulations. PhonepayPlus act as one Regulatory Body assisting with compliance.

There are three main areas covered by the Regulations, with protection for subscribers being provided by the prohibition of:

1. Practices which are **"contrary to the requirements of professional diligence"**.
2. Misleading practices (actions and omissions) and aggressive practices.
3. 31 specific practices which are banned under all circumstances (examples include circumstances where the word "free" can be used, advertising to children, persistent and unwanted communications).

### 17.1 Further Information:

The Directive and a Business Help Note is available from the BERR website:

[http://www.offt.gov.uk/advice\\_and\\_resources/small\\_businesses/competing/protection](http://www.offt.gov.uk/advice_and_resources/small_businesses/competing/protection)

As an "Established Means" for the enforcement of the Regulations, PhonepayPlus have also published a Fact Sheet on the Regulations and their role in their enforcement, which is available here:

[http://www.phonepayplus.org.uk/pdfs\\_news/UCP\\_Factsheet.pdf](http://www.phonepayplus.org.uk/pdfs_news/UCP_Factsheet.pdf)

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## 18. MT Receipts for Higher Rate Tariffs and WAP Billing Services

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### 18.1 Higher Rate Tariffs

Cross-Operator support for MX Telecom-lobbied Higher Tariff Rates (£5 - £10 range) opens up significant new opportunities for the types of service mobile can provide a payment mechanism for.

In order to ensure subscriber trust in such higher value transactions from the outset, it is important to standardise receipt information provided to the subscriber.

As a result, any MT billing message sent to a subscriber on a Short Code with a tariff of £5 or greater must begin with standardised wording.

### 18.2 WAP Billing Services

Where content is purchased by a subscriber on a WAP/ XHTML page on a Mobile Network and premium SMS is the billing mechanism (i.e. there is no Payforit transaction), the content of the billing MT message must be a form of receipt to ensure subscriber clarity about the service they have used and its associated cost.

Please note that WAP Push messages cannot be charged at a premium rate. In order to charge for content sent to a subscriber via WAP Push, a billed MT SMS message should separately be sent to the subscriber, to ensure they have a record of the Short Code which has charged them.

For both Higher Rate Tariff transactions and WAP Billing Service transactions, the MT message must commence with the following wording:

***“You have been billed £x.xx [<for product> (optional)], <Service provider name>, <Customer care number>”***

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## 19. Subscriber Care

### 19.1 Launching Services

Prior to launching any premium rate service, MX Telecom must be provided with a service description and subscriber care details, including:

- A subscriber Care Number which is charged at no more than the cost of a national rate geographic phone call; and
- A support email address.

This information is provided to the Mobile Networks and PhonepayPlus so it can be provided to any subscriber querying a service associated with a premium rate long number or Short Code.

### 19.2 Ongoing Support

The subscriber Care Number is required by the Mobile Networks to be answered during standard UK business hours of Monday to Friday, from 9am until 5pm.

In exceptional circumstances, if it is not possible for a subscriber to speak with an individual during business hours, an answerphone facility must be provided. If a subscriber requests that they receive a call in return, this must be achieved within 24 hours.

The support email address must be an address that is checked regularly and responses to reasonable requests for information must be promptly provided.

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## 20. Compliance Advice Service

In conjunction with ICSTIS' change of name to PhonepayPlus, the Regulator for phone-paid services also launched a compliance advice service in late 2007. The Compliance Advice Service provides facility for service providers to confidentially solicit PhonepayPlus' views about whether a proposed or current service and its associated marketing is compliant with the PhonepayPlus Code of Practice. Written feedback is provided swiftly and a record of the advice sought and provided kept on file. Whilst the advice provided is not binding on the Code Compliance Panel, in the event that a service is adjudicated, such advice would be considered favourably.

The PhonepayPlus Compliance Advice Team can be contacted as follows:

By email: [compliance@phonepayplus.org.uk](mailto:compliance@phonepayplus.org.uk)

By phone: 0845 026 1060

By fax: 0845 026 1061

### 20.1 Further Information:

Compliance Advice Frequently Asked Questions section:

[http://www.phonepayplus.org.uk/service\\_providers/setting\\_up\\_services/compliance\\_advice\\_faqs.asp](http://www.phonepayplus.org.uk/service_providers/setting_up_services/compliance_advice_faqs.asp)

Useful information from PhonepayPlus:

<http://www.phonepayplus.org.uk/business/NewToPhonepayPlus.asp>