

EXPLANATORY MEMORANDUM TO
THE COMMUNICATIONS ACT 2003 (MAXIMUM PENALTY AND RESTRICTIONS
ON DISCLOSURE OF INFORMATION) ORDER 2005

2005 No. 3469

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

The Order amends the Communications Act 2003 (“the Act”). First, in the light of the Report of the Office of Communications (“Ofcom”) relating to Premium Rate Services, it raises the maximum penalty for contraventions of the Code of Practice of the Independent Committee for the Supervision of Standards of Telephone Information Services (“ICSTIS”) from £100,000 to £250,000. Premium Rate Services are communications services offered at more than the normal call rates (up to £1.50 per minute) where the telecoms network operator levies a combined charge for the cost of the call and the content. The revenue is shared between the telecoms network operator and the service provider, who is responsible for the content. Services range from sports, voting and adult chat lines to ring tones and logos, competitions, Directory Enquiry and business information services. Secondly, the Order allows for disclosure of information to ICSTIS under section 393 of the Act for the purposes of its function of administering and enforcing the code which is approved by Ofcom under section 121 of the Act.

3. Matters of special interest to the JCSI

None.

4. Legislative background

4.1 The Order is to be made in exercise of the powers conferred by sections 123(4), 393(3)(i) and 393(4)(c) of the Act. It is subject to the affirmative resolution procedure. Premium Rate Services are dealt with in sections 120-124 of the Act. Ofcom has the power to set conditions, for the purpose of regulating the provision, content, promotion and marketing of Premium Rate Services, which make provision for compliance with directions given in accordance with an approved code. Ofcom has approved the code mentioned above, and this is administered and enforced by ICSTIS. Breaches of the code may be enforced in accordance with sections 94-96 of the Act.

4.2 Section 123(2) of the Act provides that the maximum penalty that can be imposed under section 96 of the Act, as applied by section 123 in respect of conditions regulating Premium Rate Services, is £100,000. Section 123(4) of the Act contains an

order-making power to amend this maximum penalty. We are invoking this power to raise the maximum penalty to £250,000.

- 4.3 Section 393(3) of the Act lists persons to whom information may be disclosed relating to a particular business without the consent of the business concerned. The Order specifies ICSTIS as a relevant person for this purpose in respect of its function of administering and enforcing a code approved by Ofcom under section 121 of the Act which regulates the provision and content of Premium Rate Services.

5. **Extent**

The Order applies to the United Kingdom.

6. **European Convention on Human Rights**

The Minister for Industry and the Regions, Mr Alun Michael, has made the following statement regarding Human Rights.

In my view the provisions of The Communications Act 2003 (Maximum Penalty and Disclosure of Information) Order 2005 are compatible with the Convention rights.

7. **Policy Background**

- 7.1 The purpose of Premium Rate Services legislation is to ensure that Premium Rate Services are appropriately regulated in the UK. Considerable harm was caused to consumers by Premium Rate Services diallers (that is, software operated by service providers) connecting Internet users to Premium Rate Services websites without their consent because it resulted in consumers being charged for services they did not use. Further harm was caused by text messages being sent to consumers inciting them to dial numbers to claim prizes which turned out to be fictitious. Following this, in 2004 Ofcom recommended that the Department of Trade and Industry (DTI) consider raising the maximum penalty which can be levied by ICSTIS on those that breach its code. The current maximum is £100,000 and following advice from ICSTIS DTI are of the view that the penalty should be raised to £250,000. The proposal to add ICSTIS as a person to whom Ofcom can disclose information (such as names and addresses of those that have been allocated numbers) about telecoms network operators without their consent, for the purpose of administering and enforcing the code, will make it easier for ICSTIS to take action against service providers who have breached the code. This is because Ofcom will be able to disclose to ICSTIS the identity and contact details of telecoms network operators who have contracted with service providers who are providing services in breach of the code. This will lead to faster regulatory action by ICSTIS.

- 7.2 The Order is necessary to give effect in UK law to the two changes to Premium Rate Services regulation which are explained in section 4.

- 7.3.1 The Government held a three-month public consultation on the proposals. This ran from 29 June to 20 September. There were a total of 12 responses, nearly all of which

were very supportive of increasing the maximum penalty, and of allowing Ofcom to disclose numbering information about telecoms companies to ICSTIS. Concern was raised that ICSTIS might fine service providers per breach of the code resulting in multiple maximum fines on a single service. However, ICSTIS have noted that this is not the approach they have followed and that the maximum level needs to be increased in any event to allow for significant single breaches to be proportionately penalised. Raising the penalty will act as a deterrent to any Premium Rate Services provider who might intend to breach the ICSTIS code. Specifying ICSTIS as a person to whom Ofcom can disclose information will make it easier for ICSTIS to identify those telecoms network operators who are linked to service providers who have breached the ICSTIS code, thereby speeding up regulatory investigations. Those that responded to the consultation also supported this proposal.

8. Impact

- 8.1** A partial RIA for this Order is available from Stephen Booth, details below.
- 8.2** The impact on Premium Rate Service Providers who abide by the ICSTIS Code is neutral. The impact on those breaking the rules will be swifter investigations and the possibility of higher penalties by ICSTIS where appropriate.

9. Contact

Stephen Booth at the Department of Trade and Industry, telephone 020 7215 1747 or e-mail stephen.booth@dti.gsi.gov.uk, can answer any queries regarding this Order.

Regulatory Impact Assessment – Key Ofcom Analysis

1. Title of proposal

CONSULTATION BY THE DEPARTMENT OF TRADE AND INDUSTRY ON A DRAFT ORDER RAISING THE MAXIMUM PENALTY FOR THOSE THAT MISUSE PREMIUM RATE SERVICES (PRS), AND ON DISCLOSURE OF INFORMATION

2. Purpose and intended effect

- Objective - Deterrent to PRS providers intending to act fraudulently
- Background – One of 18 recommendations in Ofcom’s Report into Premium Rate Services consulted on widely with the industry in Autumn 2004 and published in December. Please see the Ofcom Report at: www.ofcom.org.uk/telecoms/loi/nwbnd/prsindex/ntsprsdtdi/prs_review.pdf
- Rationale for government intervention – Consumer Protection

3. Consultation

- Within Government – agreed at official level and endorsed by DTI Minister on 9 December 2004.
- Public consultation – Extensive public consultation by Ofcom throughout Autumn 2004. DTI consulted from 29 June to 20 September 2005.
- Following the consultation no major changes were made to the Order. None of the responses mentioned any costs to legitimate business.

4. Options – Maximum Fine:

See page 38 of Ofcom report in link above.

- 1. Keep level of fine at £100,000 – ie do nothing*
- 2. Raise maximum fine to £250,000*
- 3. Raise maximum fine to a figure other than £250,000*

Options – Information Disclosure

1. *Keep information disclosure provision in Communications Act unchanged – ie do nothing*
2. *Add ICSTIS to the list of those bodies to which Ofcom can disclose information without the consent of the company concerned.*

5. **Costs and benefits**

- **Sectors and groups affected** – PRS industry
 - **Benefits** – Consumers suffer less detriment. Hard to quantify because only one of 18 recommendations. Overall Ofcom, DTI and ICSTIS believe implementation of the recommendations would save consumers at least £5 million per year.
 - **Costs** – None to either compliant business or to ICSTIS as the enforcement authority
6. **Small Firms Impact Test** – Ofcom’s Review included consultation with small businesses and relevant trade associations. We have discussed our proposal with interested parties and have identified no impact on compliant SMEs.
 7. **Competition assessment** – The competition filter has been applied and there will be no adverse impact on competition

8. **Enforcement, sanctions and monitoring**

ICSTIS decides when and where to fine Service Providers for breaches of its Code of Practice.

ICSTIS reviews breaches on a case-by-case basis, based on level of consumer detriment and the seriousness of the breach. All adjudications are published on the website and initial decisions can be appealed.

9. **Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed *Alun Michael*

Date 22nd November 2005

Alun Michael,
Minister for Industry and the Regions, Department of Trade and Industry

Contact point for enquiries and comments:

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