



# Postal Services Act 2011

## 2011 CHAPTER 5

### PART 3

#### REGULATION OF POSTAL SERVICES

VALID FROM 01/10/2011

#### *Postal services*

#### **27 Postal services, postal packets and postal operators**

- (1) “Postal services” means—
  - (a) the service of conveying postal packets from one place to another by post,
  - (b) the incidental services of receiving, collecting, sorting and delivering postal packets, and
  - (c) any other service which relates to, and is provided in conjunction with, any service within paragraph (a) or (b).
- (2) “Postal packet” means a letter, parcel, packet or other article transmissible by post.
- (3) “Postal operator” means a person who provides—
  - (a) the service of conveying postal packets from one place to another by post, or
  - (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.
- (4) A person is not to be regarded as a postal operator merely as a result of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another.
- (5) The Secretary of State may make regulations prescribing circumstances in which subsection (4) is not to apply.
- (6) Regulations under subsection (5) are subject to affirmative resolution procedure.

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## **28 General authorisation to provide postal services**

- (1) Persons may provide postal services without the need for any licence or authorisation, but the provision of those services by postal operators may be subject to regulatory conditions that OFCOM may impose on them under this Part.
- (2) In this Part a “regulatory condition” means any of the following conditions—
  - (a) a designated USP condition (see sections 36 and 37),
  - (b) a USP access condition (see section 38 and Schedule 3),
  - (c) a USP accounting condition (see section 39),
  - (d) a notification condition (see section 41),
  - (e) a general universal service condition (see section 42),
  - (f) an essential condition (see section 49),
  - (g) a general access condition (see section 50 and Schedule 3), and
  - (h) a consumer protection condition (see sections 51 and 52).

VALID FROM 01/10/2011

### *The universal postal service*

## **29 Duty to secure provision of universal postal service**

- (1) OFCOM must carry out their functions in relation to postal services in a way that they consider will secure the provision of a universal postal service.
- (2) Accordingly, the power of OFCOM to impose access or other regulatory conditions is subject to the duty imposed by subsection (1).
- (3) In performing their duty under subsection (1) OFCOM must have regard to—
  - (a) the need for the provision of a universal postal service to be financially sustainable, and
  - (b) the need for the provision of a universal postal service to be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times.
- (4) The reference in subsection (3)(a) to the need for the provision of a universal postal service to be financially sustainable includes the need for a reasonable commercial rate of return for any universal service provider on any expenditure incurred by it for the purpose of, or in connection with, the provision by it of a universal postal service.
- (5) In subsection (3)(b) “a reasonable period” means such period beginning with the day on which the provisions of this Part come generally into force as OFCOM consider, in all the circumstances, to be reasonable.
- (6) OFCOM's duty under subsection (1) includes a duty to carry out their functions in relation to postal services in a way that they consider will secure the provision of sufficient access points to meet the reasonable needs of users of the universal postal service.
- (7) The Secretary of State may direct OFCOM to take, or refrain from taking, specified action for the purpose of securing that, in the opinion of the Secretary of State,

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sufficient access points are provided throughout the United Kingdom to meet the interests of the public.

- (8) The duty imposed on OFCOM as a result of subsection (6) is subject to any direction given under this section.
- (9) The action that may be specified in a direction under this section includes the imposition of a regulatory condition consisting of or including provision specified in the direction.
- (10) Before giving a direction under this section, the Secretary of State must consult OFCOM.
- (11) In this Part “access point” means any box, receptacle or other facility provided for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission by post.

### **30 The universal postal service**

- (1) OFCOM must by order (a “universal postal service order”) set out—
  - (a) a description of the services that they consider should be provided in the United Kingdom as a universal postal service, and
  - (b) the standards with which those services are to comply.
- (2) A universal postal service must, as a minimum, include each of the services set out in section 31 (as read with sections 32 and 33).
- (3) Before making or modifying a universal postal service order, OFCOM must carry out an assessment of the extent to which the market for the provision of postal services in the United Kingdom is meeting the reasonable needs of the users of those services.
- (4) Subsection (3) does not apply in relation to the making of the first universal postal service order; but OFCOM must carry out an assessment of the kind mentioned in that subsection before the end of the period of 18 months beginning with the day on which the provisions of this Part come generally into force.
- (5) The Secretary of State may direct OFCOM to secure that the first universal postal service order does not include services of a description specified in the direction.
- (6) OFCOM must notify the European Commission of—
  - (a) the universal postal service order, and
  - (b) any modifications of the order.

### **31 Minimum requirements**

This section sets out the services that must, as a minimum, be included in a universal postal service.

*Requirement 1: delivery of letters or other postal packets*

- (1) At least one delivery of letters every Monday to Saturday—
  - (a) to the home or premises of every individual or other person in the United Kingdom, or
  - (b) to such identifiable points for the delivery of postal packets as OFCOM may approve.

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- (2) At least one delivery of other postal packets every Monday to Friday to the places within paragraph (1)(a) or (b).
- (3) The references in this requirement to the delivery of letters or other postal packets include the delivery of packets posted outside the United Kingdom.

*Requirement 2: collection of letters or other postal packets*

- (1) At least one collection of letters every Monday to Saturday from every access point in the United Kingdom used for the purpose of receiving postal packets, or any class of them, for onwards transmission in connection with the provision of a universal postal service.
- (2) At least one collection of other postal packets every Monday to Friday from every access point in the United Kingdom used for that purpose.
- (3) The references in this requirement to the onwards transmission of letters or other postal packets include their onwards transmission to places outside the United Kingdom.

*Requirement 3: service at affordable prices in accordance with uniform public tariff*

- (1) A service of conveying postal packets from one place to another by post (including the incidental services of receiving, collecting, sorting and delivering them) at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.
- (2) The reference in this requirement to conveying postal packets from one place to another includes conveying them to places outside the United Kingdom.

*Requirement 4: registered items service*

A registered items service at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

*Requirement 5: insured items service*

An insured items service at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

*Requirement 6: services to blind or partially sighted*

The provision free of charge of such postal services as are specified in the universal postal service order to such descriptions of blind or partially sighted persons as are so specified.

*Requirement 7: legislative petitions and addresses*

A service of conveying free of charge qualifying legislative petitions and addresses.

## **32 Section 31: definitions**

- (1) “Insured items service” means a service of conveying postal packets from one place to another by post which, in the event of the theft or loss of or damage to the packets, provides for the payment of an amount up to the value of the packets as declared by the sender.
- (2) “Legislative petitions and addresses” means—
  - (a) petitions and addresses to Her Majesty meeting the weight and covers requirements which are sent by post to a member of a legislative body,

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- (b) petitions meeting those requirements which are addressed to a legislative body and are sent by post to a member of such a body or to the Clerk of the Scottish Parliament, or
  - (c) petitions and addresses forwarded to Her Majesty or, in Northern Ireland, to the Secretary of State.
- (3) For the purposes of subsection (2)—
- (a) a “legislative body” means either House of Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and
  - (b) petitions or addresses meet the “weight and covers requirements” if they do not exceed 1 kilogram in weight and are sent without covers or in covers open at the sides.
- (4) “Registered items service” means a service of conveying postal packets from one place to another by post which provides—
- (a) for the registration of the packets in connection with their conveyance by post, and
  - (b) for the payment of an amount determined by the person providing the service in the event of the theft or loss of or damage to the packets.
- (5) In this section references to conveying postal packets from one place to another include—
- (a) the incidental services of receiving, collecting, sorting and delivering them, and
  - (b) conveying them to places outside the United Kingdom.

### **33 Exceptions to minimum requirements**

- (1) Nothing in section 31 requires the doing of anything in relation to a letter or other postal packet—
- (a) whose weight exceeds 20 kilograms, or
  - (b) whose dimensions fall outside the minimum and maximum dimensions laid down in the Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union.
- (2) The requirements in section 31 in respect of the delivery or collection of letters or other postal packets (requirements 1 and 2)—
- (a) do not need to be met on any day which is (in the part of the United Kingdom concerned) a public holiday, and
  - (b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional.
- (3) Nothing in section 31 is to be read—
- (a) as requiring a service to continue without interruption, suspension or restriction in an emergency, or
  - (b) as preventing individual agreements as to prices from being concluded with customers.

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### **34 Review of minimum requirements**

- (1) OFCOM may from time to time review the extent to which the provision made by section 31 reflects the reasonable needs of the users of postal services provided in the United Kingdom.
- (2) A review under subsection (1) may, in particular, consider whether the requirements imposed by that section could be altered so as better to reflect those needs.
- (3) OFCOM must send a copy of each review under subsection (1) to the Secretary of State.
- (4) The Secretary of State may at any time direct OFCOM to carry out a review under subsection (1).
- (5) Where OFCOM have carried out a review under subsection (1), the Secretary of State may by order amend section 31.
- (6) The provision that may be made by an order under subsection (5) does not include the making of different provision in relation to different places in the United Kingdom.
- (7) An order under subsection (5)—
  - (a) is subject to affirmative resolution procedure, and
  - (b) may include such amendments of this Part as the Secretary of State considers necessary or expedient in consequence of any provision made by the order.

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### *Universal service providers*

### **35 Designation of universal service providers**

- (1) OFCOM may designate one or more postal operators as universal service providers.
- (2) But there are only two cases in which there may be more than one postal operator designated as a universal service provider.
- (3) The first case is where—
  - (a) OFCOM have made a procurement determination under section 45 (fairness of bearing burden of universal service obligations), and
  - (b) in the light of that determination, OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one.
- (4) The second case is where—
  - (a) a postal administration order has been made under Part 4, and
  - (b) OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one for, or in connection with, achieving the objective of the postal administration.
- (5) OFCOM must publish each designation in such way as they consider appropriate for bringing it to the attention of members of the public.

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- (6) The procedure to be followed for the making of a designation under this section must be provided for in regulations made by OFCOM.
- (7) OFCOM may—
  - (a) review the designations for the time being in force, and
  - (b) consider what (if any) designated USP conditions should continue to apply to each of the universal service providers.
- (8) The procedure to be followed on a review must be provided for in regulations made by OFCOM.
- (9) Regulations made by OFCOM must provide for a postal operator's designation to cease to have effect where, in any case described in the regulations, the operator is no longer subject to any universal service obligations.
- (10) Both the procedure for designations and the procedure for the conduct of review of designations provided for by regulations under this section must be one appearing to OFCOM—
  - (a) to be efficient, objective, proportionate and transparent, and
  - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (11) OFCOM must notify the European Commission of the designations and of any case where a designation ceases to have effect (and the notification must identify the postal operator designated or ceasing to be designated).

### **36 Designated USP conditions**

- (1) OFCOM may impose a designated USP condition on a universal service provider.
- (2) A designated USP condition is a condition requiring the provider to do one or more of the following—
  - (a) to provide a universal postal service, or part of a universal postal service, throughout the United Kingdom, or in a specified area of the United Kingdom, in accordance with the standards set out in the universal postal service order,
  - (b) to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service,
  - (c) to provide specified information (at such times and in such manner as OFCOM may direct) to other postal operators and users of postal services about the services within paragraph (a) that it is required to provide, and
  - (d) to do anything else that OFCOM consider appropriate for the purposes of, or in consequence of, the obligations imposed under any of paragraphs (a) to (c).

In this subsection “specified” means specified in the condition.

- (3) OFCOM may impose a designated USP condition only if they consider it is necessary to do so in order to secure the provision of a service of a description set out in the universal postal service order in accordance with the standards set out there.
- (4) A designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which a universal postal service, or part of a universal postal service, is provided.

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- (5) In exercising the power conferred by subsection (4), OFCOM must seek to ensure that—
  - (a) the prices are affordable,
  - (b) the prices take account of the costs of providing the service or part of a service, and
  - (c) the prices provide incentives to provide the service or part of a service efficiently.
- (6) A designated USP condition may impose performance targets.
- (7) If there are two or more universal service providers—
  - (a) OFCOM must secure that there is no overlap in the universal service obligations imposed on the providers, and
  - (b) designated USP conditions may require the providers to make arrangements for securing that a universal postal service operates uniformly and effectively throughout the United Kingdom.
- (8) In this Part “universal service obligations”, in relation to a universal service provider, means the obligations imposed on the provider by any designated USP condition.

### **37 Publication of information about performance**

- (1) A designated USP condition must include provision requiring the universal service provider concerned—
  - (a) to publish information about the extent to which it is providing specified postal services in accordance with specified standards, and
  - (b) to publish annually an independently audited performance report.
- (2) The reference here to an independently audited performance report is to a report that—
  - (a) contains information about the provider's performance in complying with specified requirements under the designated USP condition, and
  - (b) is audited by an independent person for accuracy and, if there are two or more universal service providers, for its usefulness in comparing information published by other universal service providers.
- (3) An “independent person” means a person who is independent of both OFCOM and universal service providers.
- (4) OFCOM must notify the European Commission of anything contained in a designated USP condition as a result of subsection (1).
- (5) A designated USP condition may require the universal service provider concerned to meet the costs of the audit required as a result of subsection (1)(b).
- (6) A designated USP condition may include other provision requiring the universal service provider concerned to publish information about its performance in complying with specified requirements under the designated USP condition.
- (7) The provision made as a result of this section—
  - (a) must include provision—
    - (i) requiring information previously published to be updated and published again, and



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- (ii) requiring the published information to satisfy requirements that OFCOM consider appropriate to secure its adequacy, and
  - (b) may include requirements as to the times at which, and the manner in which, the information is to be published.
- (8) In this section “specified” means specified in the designated USP condition.

### **38 USP access conditions**

- (1) OFCOM may impose a USP access condition on a universal service provider.
- (2) A USP access condition is a condition requiring the provider to do either or both of the following—
- (a) to give access to its postal network to other postal operators or users of postal services, and
  - (b) to maintain a separation for accounting purposes between such different matters relating to access (including proposed or potential access) to its postal network as OFCOM may direct.
- (3) The provider's “postal network” means the systems and all the resources used by the provider for the purpose of complying with its universal service obligations (and, accordingly, includes arrangements made with others for the provision of any service).
- (4) OFCOM may not impose a USP access condition unless it appears to them that the condition is appropriate for each of the following purposes—
- (a) promoting efficiency,
  - (b) promoting effective competition, and
  - (c) conferring significant benefits on the users of postal services.
- (5) In addition, OFCOM may not impose any price controls on a universal service provider in a USP access condition unless it appears to them that the provider concerned—
- (a) might otherwise fix and maintain some or all of its prices at an excessively high level with adverse consequences for users of postal services, or
  - (b) might otherwise impose a price squeeze with adverse consequences for users of postal services.
- (6) In imposing price controls in a USP access condition in connection with the giving of access to a universal service provider's postal network or to part of that network, OFCOM must have regard to such of the costs incurred in the provision of that network, or part of that network, as OFCOM consider appropriate.
- (7) In imposing price controls in a USP access condition OFCOM may—
- (a) have regard to the prices at which services are available in comparable competitive markets, and
  - (b) determine what they consider to represent efficiency by using cost accounting methods.
- (8) In deciding what obligations to impose in a USP access condition in a particular case, OFCOM must (in addition to taking into account anything relevant for the purpose of performing their duty under section 29) take into account, in particular, the following factors—

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- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary,
  - (b) the feasibility of giving the proposed access,
  - (c) the investment made by the universal service provider concerned in relation to the matters in respect of which access is proposed,
  - (d) the need to secure effective competition in the long term, and
  - (e) any rights to intellectual property that are relevant to the proposal.
- (9) For the purposes of this section references to giving a person access to a provider's postal network include giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the postal network.
- (10) In Schedule 3—
- (a) Part 1 makes provision about the kind of matters that may be included in a USP access condition, and
  - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.

### **39 USP accounting conditions**

- (1) OFCOM may impose a USP accounting condition on a universal service provider.
- (2) A USP accounting condition is a condition requiring the provider to do one or more of the following—
  - (a) to maintain a separation for accounting purposes between such different matters as OFCOM may direct for such purposes as they may direct,
  - (b) to comply with rules made by OFCOM in relation to those matters about the identification of costs and cost orientation,
  - (c) to comply with rules made by OFCOM about the use of cost accounting systems in relation to those matters, and
  - (d) to secure that its compliance with those systems is audited annually by a qualified independent auditor.
- (3) An obligation within subsection (2)(a)—
  - (a) may require the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
  - (b) may impose requirements about the accounting methods to be used in maintaining the separation.
- (4) An obligation within subsection (2)(b) or (c)—
  - (a) may include conditions requiring the application of presumptions in the fixing and determination of costs and charges for any purpose, and
  - (b) may require the universal service provider concerned to publish such accounts and other information relating to anything required to be done as a result of those provisions as OFCOM consider appropriate.
- (5) An obligation within subsection (2)(d) may require the universal service provider concerned to meet the costs of the audit.

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- (6) If a USP accounting condition imposes rules on a universal service provider about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the provider to make arrangements for a description to be made available to the public of the cost accounting system used.
- (7) If OFCOM impose an obligation under subsection (6), the description of information to be made available must include details of—
  - (a) the main categories under which costs are brought into account for the purposes of that system, and
  - (b) the rules applied for the purposes of that system with respect to the allocation of costs.
- (8) In this section “qualified independent auditor” means a person who—
  - (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
  - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

*Persons providing services within scope of universal postal service*

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**40 Services within scope of the universal postal service**

- (1) A postal service is within the scope of the universal postal service if—
  - (a) the service falls within the description of a service set out in the universal postal service order, or
  - (b) the service would fall within the description of a service set out in that order but for the fact that—
    - (i) in the case of a service consisting of the delivery or collection of letters or other postal packets, the delivery or collection is not made on each of the days required by section 31 (see requirements 1 and 2),
    - (ii) the service is not provided throughout the United Kingdom, or
    - (iii) the service is not provided at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom, or
  - (c) in the opinion of OFCOM the service is of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service of a description set out in that order.
- (2) In this section any reference to a service includes a part of a service.

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#### **41 Notification condition**

- (1) OFCOM may impose a notification condition on—
  - (a) every person providing, or intending to provide, a service within the scope of the universal postal service, or
  - (b) every person providing, or intending to provide, a service within the scope of the universal postal service of a specified description.
- (2) A notification condition is a condition requiring the person to give OFCOM—
  - (a) advance notice of the person's intention to provide a letters business on a specified scale (whether or not the person is currently providing a letters business or any other postal service), and
  - (b) where the person is already providing a letters business on a specified scale, advance notice of the person's intention to expand the business by a specified extent.
- (3) A specified scale or extent may be determined by reference to any specified factor.
- (4) The Secretary of State may at any time direct OFCOM to impose a notification condition.
- (5) The direction may (but need not) specify some or all of the provision to be contained in the condition.
- (6) Where a notification condition applies to a person at a time when the person is not providing a postal service—
  - (a) Schedule 7 (enforcement of regulatory conditions) is to have effect as if paragraph 7(2) and (3) were omitted and as if, for the purposes of paragraph 11, the person were providing a postal service, and
  - (b) Schedule 8 (information provisions) is to have effect as if the person were a person falling within paragraph 1(2) and as if, for the purposes of paragraph 8, the person were providing a postal service.
- (7) In this section—

“advance notice” means written notice given at least a specified period of time before the person intends to do as mentioned in subsection (2)(a) or (b),

“a letters business” means a postal service which consists in the delivery of letters, and

“specified” means specified in the notification condition.

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#### **42 General universal service conditions**

- (1) OFCOM may impose a general universal service condition on—
  - (a) every postal operator providing a service within the scope of the universal postal service, or

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- (b) every postal operator providing a service within the scope of the universal postal service of a description specified in the condition.
- (2) A general universal service condition is—
- (a) a condition containing such obligations as OFCOM consider necessary to impose for, or in connection with, securing the provision of a universal postal service in accordance with the standards set out in the universal postal service order, or
  - (b) a condition containing such obligations as OFCOM consider necessary to impose for the purposes of section 46.
- (3) A general universal service condition may require a person—
- (a) to make contributions in accordance with any scheme established under section 46, and
  - (b) to take such steps as may be required by any such scheme as regards contributions made by users of services within the scope of the universal postal service.
- (4) At any time when there is a universal service provider, nothing in subsection (2)(a) is to be read as authorising the imposition of a condition requiring a person—
- (a) to deliver or collect letters or other postal packets as mentioned in section 31,
  - (b) to provide a service throughout the United Kingdom, or
  - (c) to provide a service at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom.

#### **43 Recovery of administrative charges incurred by OFCOM**

Schedule 4 makes provision authorising OFCOM to impose charges on postal operators providing services within the scope of the universal postal service to meet costs incurred by OFCOM in carrying out their functions in relation to postal services.

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#### *Financial support for universal postal service*

#### **44 Review of costs of universal service obligations**

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a universal service provider of complying with its universal service obligations.
- (2) In carrying out a review under this section OFCOM must consider the extent to which, in their opinion, the provider is complying with its universal service obligations in a cost-efficient manner.
- (3) If—
  - (a) regulations under section 35 require the financial burden of complying with universal service obligations (or proposed universal service obligations) to be taken into account in determining whom to designate, and
  - (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,

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that must be the method of calculation applied on a review under this section.

- (4) If subsection (3) does not apply, the financial burden of complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the universal service provider from—
  - (a) the provider's designation, and
  - (b) the application to the provider of universal service obligations.
- (5) After carrying out a review under this section OFCOM must either—
  - (a) ensure that the calculations made by them on the review are audited by a person who appears to them to be independent of universal service providers, or
  - (b) carry out an audit of those calculations themselves.
- (6) OFCOM must ensure that a report on the audit—
  - (a) is prepared, and
  - (b) if not prepared by OFCOM, is provided to them.
- (7) OFCOM must publish—
  - (a) their conclusions on the review, and
  - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (8) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (9) The Secretary of State may at any time direct OFCOM to carry out a review under this section.
- (10) Unless directed to do so by the Secretary of State, OFCOM may not carry out a review under this section before the end of the period of 5 years beginning with the day on which this section comes into force.

#### **45 Fairness of bearing burden of universal service obligations**

- (1) This section applies if OFCOM—
  - (a) have concluded on a review under section 44 that complying with its universal service obligations imposes a financial burden on a universal service provider, and
  - (b) have published that conclusion in accordance with that section.
- (2) OFCOM must determine whether they consider it is or would be unfair for the provider to bear, or to continue to bear, the whole or a part of the burden of complying with its universal service obligations.
- (3) The determination by OFCOM of—
  - (a) whether it is or would be unfair for the provider to bear, or to continue to bear, that burden, or
  - (b) the extent (if any) to which that is or would be unfair,
 must be made in accordance with regulations made by OFCOM.
- (4) OFCOM must publish the determination.

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- (5) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) If OFCOM determine that it is or would be unfair for the provider to bear, or to continue to bear, the whole or a part of that burden, they must submit a report to the Secretary of State setting out their recommendations as to the action (if any) that they consider ought to be taken to deal with the burden.
- (7) The report may make recommendations—
  - (a) about the order in which action ought to be taken, and
  - (b) as to whether the taking of action ought to be contingent on the success or otherwise of the taking of other action.
- (8) The recommended action may consist of one or more of the following—
  - (a) the carrying out of a review under section 34 (review of minimum requirements),
  - (b) requiring contributions to be made in accordance with section 46 for meeting some or all of that burden, and
  - (c) the making of a procurement determination.
- (9) A procurement determination is a determination by OFCOM as to whether, in their opinion, any particular postal operator or operators (which may include the provider) could provide any of the postal services required to be provided by the universal service obligations concerned in a way which would mean that—
  - (a) no unfair financial burden would be imposed on any person (or persons) in complying with those obligations, or
  - (b) the financial burden imposed on any person (or persons) in complying with those obligations would be less unfair than the one mentioned in subsection (6).
- (10) A procurement determination must be made in accordance with regulations made by OFCOM.
- (11) After receiving the report under subsection (6), the Secretary of State must determine what action (if any) the Secretary of State considers ought to be taken by OFCOM to deal with the burden.
- (12) The Secretary of State may then direct OFCOM to take that action.
- (13) A direction under subsection (12) may make provision—
  - (a) about the order in which specified action is to be taken, and
  - (b) for the taking of specified action to be contingent on the success or otherwise of the taking of other specified action.

In this subsection “specified” means specified in the direction.
- (14) A direction under subsection (12) may not require OFCOM to make a procurement determination at any time in the period of 10 years beginning with the day on which this section comes into force unless the universal service provider has agreed to the making of the determination.

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#### **46 Contributions for meeting burden**

- (1) This section applies where the Secretary of State has directed OFCOM to require contributions to be made for meeting some or all of the burden concerned.
- (2) The contributions are to be made by either or both of the following—
  - (a) postal operators providing services within the scope of the universal postal service,
  - (b) users of services within the scope of the universal postal service (by way of the charges paid by them).
- (3) OFCOM may determine that the contributions under this section are to be made only by a description of postal operator or user.
- (4) The assessment, collection and distribution of the contributions must be carried out in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.
- (5) OFCOM must exercise their power to make the regulations in a way they consider will secure the operation of the scheme—
  - (a) in an objective, proportionate and transparent way,
  - (b) in a way that does not involve, or tend to give rise to, any undue discrimination against particular postal operators (or a particular description of postal operators) or particular users (or a particular description of users), and
  - (c) in a way that avoids, or (if that is impracticable) minimises, any distortion of competition.
- (6) The regulations may provide for—
  - (a) the scheme, and
  - (b) any fund set up for the purposes of the scheme,to be administered by OFCOM or some other person specified in the regulations.
- (7) A person may be specified only if OFCOM are satisfied as to the person's independence of both—
  - (a) universal service providers, and
  - (b) postal operators providing postal services within the scope of the universal postal service.
- (8) The regulations may not be made unless—
  - (a) the Secretary of State has consented to the making of them and
  - (b) a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

#### **47 Report on sharing mechanism**

- (1) This section applies where regulations under section 46 provide for a scheme for the assessment, collection and distribution of contributions.
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—
  - (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything required



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- to be provided by a universal service provider to meet its universal service obligations,
- (b) the market benefits for each universal service provider that have accrued to the provider during that period from its designation and the application to it of universal service obligations, and
  - (c) the contribution made by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of 12 months beginning with the coming into force of the first regulations made under section 46.
- (4) Subsequent reports must be prepared in relation to the period of 12 months beginning with the end of the period to which the previous report applied.
- (5) A report under this section—
- (a) must be prepared as soon as practicable after the end of the period to which it is to apply, and
  - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
- (a) to publish any matter that is confidential, or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential for this purpose—
- (a) if it relates specifically to the affairs of a particular body and publication of the matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of the body, and
  - (b) if it relates to the private affairs of an individual and publication of the matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of the individual.
- (8) A report under this section must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

VALID FROM 01/10/2011

*Postal operators generally*

**48 Notification by postal operators**

- (1) The Secretary of State may make regulations requiring persons to notify OFCOM before they carry on business as postal operators.
- (2) The Secretary of State must consult OFCOM before making the regulations.
- (3) The regulations may make provision corresponding, with such modifications as appear to the Secretary of State to be appropriate, to any of the provisions of sections 33 to 37 of the Communications Act 2003 (requirements to notify before carrying on a regulated activity).

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- (4) The maximum penalty which may be imposed by the regulations for failure to comply with any of its provisions must not exceed the maximum penalty for the time being specified in section 37(6) of that Act.
- (5) OFCOM must establish and maintain a register which records every notification given to them under the regulations.
- (6) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (7) OFCOM must publish a notice setting out—
  - (a) the times at which the register is for the time being available for public inspection, and
  - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (8) The notice must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (9) OFCOM must make the register available for public inspection—
  - (a) during such hours, and
  - (b) on payment of such fees,as are set out in the notice for the time being in force under subsection (7).
- (10) Regulations under this section are subject to negative resolution procedure.

#### **49 Essential conditions**

- (1) OFCOM may impose an essential condition on—
  - (a) every postal operator, or
  - (b) every postal operator of a description specified in the condition.
- (2) An essential condition is a condition containing such obligations as OFCOM consider necessary to impose for, or in connection with, any one or more of the following purposes—
  - (a) safeguarding confidentiality in connection with the sending, conveyance and delivery of letters,
  - (b) safeguarding security where dangerous goods are transported,
  - (c) safeguarding the confidentiality of information conveyed,
  - (d) guarding against the theft or loss of or damage to postal packets, and
  - (e) securing the delivery of postal packets to the intended addressees.

#### **50 General access conditions**

- (1) OFCOM may impose a general access condition on a particular postal operator (or operators).
- (2) A general access condition is a condition requiring the operator to do either or both of the following—

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- (a) to give access to other postal operators, or users of postal services, to the operator's postal infrastructure or any service within the scope of the universal postal service which it provides, and
  - (b) to maintain a separation for accounting purposes between such different matters relating to access of a kind within paragraph (a) (including proposed or potential access of that kind) as OFCOM may direct.
- (3) An operator's "postal infrastructure" includes both physical infrastructure (such as letter boxes) and infrastructure in non-physical form (such as information relating to postcodes or addresses or arrangements made with others for the provision of any service).
- (4) OFCOM may impose a general access condition only if it appears to them that the condition is necessary for either or both of the following purposes—
- (a) protecting the interests of the users of postal services, and
  - (b) promoting effective competition.
- (5) In deciding what obligations to impose in general access conditions in a particular case, OFCOM must (in addition to taking into account anything relevant for the purpose of performing their duty under section 29) take into account, in particular, the following factors—
- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary,
  - (b) the feasibility of giving the proposed access,
  - (c) the investment made by the postal operator in relation to the matters in respect of which access is proposed,
  - (d) the need to secure effective competition in the long term, and
  - (e) any rights to intellectual property that are relevant to the proposal.
- (6) For the purposes of this section a reference to giving a person access to an operator's postal infrastructure includes giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the infrastructure.
- (7) In Schedule 3—
- (a) Part 1 makes provision about the kind of matters that may be included in general access conditions, and
  - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.

## **51 Consumer protection conditions**

- (1) OFCOM may impose a consumer protection condition on—
- (a) every postal operator, or
  - (b) every postal operator of a specified description.
- (2) A consumer protection condition is a condition requiring the operator to do one or more of the following—
- (a) to assume specified liability in respect of specified loss of or damage to specified postal packets,
  - (b) to establish and maintain procedures, standards and policies with respect to consumer protection matters, and

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- (c) to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading.
- (3) The reference in subsection (2)(b) to consumer protection matters is to—
  - (a) the handling of complaints made to postal operators by users of their services,
  - (b) the resolution of disputes between postal operators and users of their services,
  - (c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes,
  - (d) the information that is to be made available by postal operators to users of their services about service standards and about the rights of those users, and
  - (e) anything else appearing to OFCOM to be necessary to secure effective protection for those users.
- (4) The reference in subsection (2)(c) to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading is to—
  - (a) such proportion of the expenses of the National Consumer Council as the Secretary of State considers reasonable having regard to the functions exercisable by it in relation to users of postal services, and
  - (b) such proportion of the expenses of the Office of Fair Trading incurred in connection with its support of any public consumer advice scheme as the Secretary of State considers reasonable having regard to the functions under the scheme exercisable in relation to those users.
- (5) In imposing a consumer protection condition, OFCOM must (so far as they consider appropriate) secure that—
  - (a) the procedures for the handling of complaints and the resolution of disputes are easy to use, transparent and effective and otherwise facilitate the settling of disputes fairly and promptly,
  - (b) users have the right to use those procedures free of charge, and
  - (c) if a postal operator contravenes a consumer protection condition, the operator follows such procedures as may be required by the condition.
- (6) The Secretary of State may direct OFCOM to include provision within subsection (2)(c) in consumer protection conditions.
- (7) In this section and section 52 any reference, in relation to postal operators, to users of their services is to users of any of the postal services provided by the operators.
- (8) In this section “specified” means specified in the consumer protection condition.

## **52 Provision that may be made by consumer protection conditions**

- (1) A consumer protection condition may require postal operators to be members of an approved redress scheme.
- (2) A “redress scheme” is a scheme under which complaints about postal operators by users of their services may be made to, and investigated and determined by, a person who is independent of postal operators and OFCOM.
- (3) A redress scheme is “approved” if it is approved by OFCOM in accordance with Schedule 5.

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- (4) For the purposes of the law relating to defamation, proceedings under an approved redress scheme are to be treated in the same way as proceedings before a court.
- (5) A consumer protection condition may require postal operators—
  - (a) to provide information to OFCOM with respect to the levels of compliance with the standards for the handling of complaints, and
  - (b) to publish information about the number of complaints made about them (whether under an approved redress scheme or otherwise) and the way in which the complaints have been dealt with.
- (6) Requirements may be contained in the condition as to the times at which, and the manner in which, any information is to be published as a result of subsection (5)(b).
- (7) A consumer protection condition imposed on a universal service provider must include a requirement within subsection (5)(b).

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### *General provisions*

#### **53 Imposition, modification or revocation of regulatory conditions**

Schedule 6 contains general provision about the imposition of regulatory conditions and their modification or revocation.

#### **54 Enforcement of regulatory requirements**

Schedule 7 makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services.

#### **55 Information**

- (1) Schedule 8 makes provision for requiring information to be provided to OFCOM for the purpose of carrying out their functions in relation to postal services or for related purposes.
- (2) In that Schedule—
  - (a) Part 1 makes provision authorising OFCOM to require information to be provided to them,
  - (b) Part 2 makes provision for the enforcement of those requirements, and
  - (c) Part 3 contains supplementary provision.
- (3) Nothing in Schedule 7 to the Postal Services Act 2000 (disclosure of information) prevents the Postal Services Commission from disclosing information to OFCOM for the purposes of OFCOM's functions in relation to postal services.

#### **56 General restriction on disclosure of information**

- (1) Information that—
  - (a) is obtained as a result of this Part, and

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(b) relates to the affairs of an individual or to a particular business, must not be disclosed during the lifetime of the individual or so long as the business is carried on, except as provided by this section.

(2) Disclosure is permitted—

- (a) with the consent of the individual or the person for the time being carrying on the business,
- (b) for the purpose of facilitating the carrying out by OFCOM of any of their functions,
- (c) for the purpose of facilitating the carrying out by the Secretary of State, the Treasury or the Competition Commission of any of their functions under this Act,
- (d) for the purpose of facilitating the carrying out by a prescribed body or other person of any functions under a prescribed enactment,
- (e) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings,
- (f) for the purposes of any civil proceedings brought as a result of this Part or any prescribed enactment,
- (g) in pursuance of an EU obligation, or
- (h) in any other prescribed circumstances or for any other prescribed purpose.

(3) In subsection (2) “prescribed” means prescribed by an order of the Secretary of State.

(4) An order under subsection (3) is subject to affirmative resolution procedure.

(5) This section does not apply to information that has been made available to the public by being disclosed in circumstances in which, or for a purpose for which, disclosure is not precluded by this section.

(6) This section also does not apply to information that is subject to the disclosure regime in Part 9 of the Enterprise Act 2002 as a result of—

- (a) section 393(8) of the Communications Act 2003 (information obtained by OFCOM in exercise of competition functions), or
- (b) section 29(3) of the Consumers, Estate Agents and Redress Act 2007 (information obtained by the National Consumer Council).

(7) A person who discloses information in contravention of this section commits an offence.

(8) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

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## *Appeals*

### **57 Decisions by OFCOM to impose regulatory conditions, penalties etc**

- (1) For the purposes of this section a “qualifying decision” means—
  - (a) a decision to impose or modify a regulatory condition,
  - (b) a decision to give, modify or withdraw a direction, consent or approval that falls within paragraph 2 of Schedule 6,
  - (c) a decision to impose a penalty, or give or modify a direction, under any provision of Schedule 4, 7 or 8,
  - (d) a decision to give or modify a direction under section 89A or 116(2A) of the Postal Services Act 2000 (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or
  - (e) a decision to give a direction under section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement of requirements to give information to the National Consumer Council).
- (2) A person affected by a qualifying decision may appeal against it to the Competition Appeal Tribunal (“the CAT”).
- (3) The means of making an appeal is by sending the CAT a notice of appeal in accordance with rules made under section 15 of the Enterprise Act 2002.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) In determining an appeal under this section the CAT must apply the same principles as would be applied by a court on an application for judicial review.
- (6) The CAT must either—
  - (a) dismiss the appeal, or
  - (b) quash the whole or part of the qualifying decision to which the appeal relates.
- (7) If the CAT quashes the whole or part of a qualifying decision, it may refer the matter back to the person who made the decision with a direction to reconsider and make a new decision in accordance with its ruling.
- (8) The CAT may not direct the person who made the decision to take any action that the person would not otherwise have the power to take in relation to the decision.
- (9) Except in the case of a decision to impose a penalty, or give or modify a direction, under Schedule 4, 7 or 8, the effect of a qualifying decision is not suspended by the making of an appeal against the decision under this section.

### **58 Appeals from the CAT**

- (1) An appeal lies to the appropriate court on any point of law arising from a decision of the CAT under section 57.
- (2) An appeal under this section may be brought by—
  - (a) a party to the proceedings before the CAT, or

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(b) any other person who has a sufficient interest in the matter.

(3) An appeal under this section requires the permission of the CAT or the appropriate court.

(4) In this section “the appropriate court” means—

- (a) in relation to England and Wales and Northern Ireland, the Court of Appeal, and
- (b) in relation to Scotland, the Court of Session.

## **59 Price control decisions**

(1) A person affected by a price control decision may appeal against it by sending a notice of appeal to OFCOM within the period of two months beginning with the day on which the decision is published.

(2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate the error (or errors) which the appellant contends OFCOM made.

(3) OFCOM must refer any appeal made in accordance with this section (and with rules made under section 60) to the Competition Commission (“the Commission”) as soon as reasonably practicable after it is made.

(4) The making of an appeal against a decision does not suspend the effect of the decision.

(5) The Commission must determine an appeal before the end of—

- (a) the period of 4 months beginning with the day on which OFCOM refer the appeal to it, or
- (b) if the decision appealed against is not an initial price control decision and the Commission considers that the circumstances of the case are exceptional, the period of 6 months beginning with that day.

If paragraph (b) applies, the Commission must, before the end of the period mentioned in paragraph (a), publish its reasons for considering that the circumstances of the case are exceptional.

(6) On determining the appeal, the Commission must—

- (a) dismiss the appeal,
- (b) allow the appeal and make its own decision on the subject matter of the appeal, or
- (c) quash the whole or part of the price control decision to which the appeal relates.

(7) The Commission may allow the appeal, or quash the whole or part of the price control decision to which the appeal relates, only if it considers that OFCOM made a material error.

(8) If the Commission quashes the whole or part of a price control decision, it may refer the matter back to OFCOM with a direction to reconsider and make a new decision in accordance with its ruling.

(9) The Commission may not direct OFCOM to take any action that they would not otherwise have the power to take in relation to the decision.



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- (10) OFCOM must give effect to any decision of the Commission under subsection (6) (b) as soon as is reasonably practicable after it is made.
- (11) The Commission may investigate any matter or do any other thing for the purpose of making a decision under subsection (6)(b) or (c).
- (12) Any decision made by the Commission under subsection (6) other than one relating to an initial price control decision is a qualifying decision for the purposes of section 57.
- (13) In this section—
  - a “price control decision” means—
    - (a) a decision of OFCOM as to the tariffs that are to be used as mentioned in section 36(4) (designated USP condition: tariffs), or
    - (b) a decision of OFCOM (other than under Part 2 of Schedule 3) as to prices that may be charged for the giving of access under an access condition, and
  - an “initial price control decision” means—
    - (a) the first decision of OFCOM within paragraph (a) of the definition of “price control decision”, or
    - (b) the first decision of OFCOM within paragraph (b) of that definition.

## **60 Section 59: supplementary**

- (1) The Commission may make rules about the making, conduct and disposal of appeals under section 59.
- (2) The rules may, in particular, impose time limits or other restrictions on—
  - (a) the taking of evidence at an oral hearing, or
  - (b) the making of representations or observations at an oral hearing.
- (3) The rules may make different provision for different cases.
- (4) The Commission must publish the rules in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (5) Before making the rules, the Commission must consult such persons as it considers appropriate.
- (6) The Secretary of State may by order—
  - (a) apply any of sections 109 to 117 of the Enterprise Act 2002 (investigation powers of the Commission), with or without modifications, in relation to appeals made under section 59, and
  - (b) make provision for and in connection with the extension of the period within which appeals must be determined in cases where requirements imposed under section 109 of that Act (as applied) have not been complied with.
- (7) An order under subsection (6) applying an enactment under which a criminal or civil penalty could be imposed may not provide for the penalty to be greater than that which could be imposed under the enactment.
- (8) An order under subsection (6) is subject to negative resolution procedure.

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### *Supplementary and consequential provisions*

VALID FROM 01/10/2011

#### **61 Duties in relation to social and environmental matters**

- (1) The Secretary of State may from time to time give guidance about the making by OFCOM, in the carrying out of their functions in relation to postal services, of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) OFCOM must, when carrying out their functions in relation to postal services, have regard to any guidance given under subsection (1).
- (3) Before giving any such guidance, the Secretary of State must consult—
  - (a) OFCOM,
  - (b) the National Consumer Council, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (4) A draft of any guidance proposed to be given under subsection (1) must be laid before Parliament.
- (5) Guidance may not be given under subsection (1) until after the end of the period of 40 days beginning with the day on which the draft is laid before Parliament.
- (6) In calculating that 40 day period, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than four days.
- (7) If, before the end of that 40 day period, either House of Parliament resolves that the guidance should not be given, the Secretary of State must not give it.
- (8) The Secretary of State must publish any guidance given under subsection (1) in such way as the Secretary of State considers appropriate.

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#### **62 UK postage stamps bearing image of Her Majesty**

- (1) The Secretary of State may give a direction to a universal service provider requiring the provider to do either or both of the following—
  - (a) to issue United Kingdom postage stamps bearing the image of Her Majesty (“relevant stamps”) in cases specified in the direction, and
  - (b) to comply with provision specified in the direction in relation to any relevant stamps that the provider is required or proposes to issue.
- (2) A direction under subsection (1)(b) must include provision for relevant stamps not to be issued without the approval of Her Majesty.
- (3) The provision that may be contained in a direction under subsection (1)(b) includes—

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- (a) provision in relation to the design or subject-matter of relevant stamps (including the frequency of designs in any period specified in the direction), and
  - (b) provision conferring functions on persons (or a committee of persons).
- (4) A person to whom a direction has been given has a duty to comply with it.
- (5) That duty is enforceable in civil proceedings by the Secretary of State—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

VALID FROM 01/10/2011

### **63 Orders, schemes and regulations made by OFCOM**

Section 403 of the Communications Act 2003 (regulations and orders made by OFCOM) applies to any power of OFCOM under this Part to make an order, a scheme or regulations.

VALID FROM 15/09/2011

### **64 Abolition of Postal Services Commission etc**

- (1) The Postal Services Commission is abolished.
- (2) In section 30 of, and Schedule 2 to, the Communications Act 2003 (transfers of property etc from pre-commencement regulators), each reference to a pre-commencement regulator includes the Postal Services Commission.
- (3) The following provisions apply in relation to a transfer scheme made by virtue of subsection (2).
- (4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer, by virtue of a transfer scheme, of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).
- (5) Where an employee of the Postal Services Commission becomes an employee of OFCOM by virtue of a transfer scheme—
  - (a) a period of employment with that Commission is to be treated as a period of employment with OFCOM, and
  - (b) the transfer to OFCOM is not to be treated as a break in service.
- (6) The transfer of functions, property, rights or liabilities from the Postal Services Commission to OFCOM under or by virtue of this Act is not to be treated as a merger for accounting purposes.

*Status: Point in time view as at 13/06/2011. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, Part 3. (See end of Document for details)*

VALID FROM 01/10/2011

## 65 Interpretation of Part 3 etc

### (1) In this Part—

“access condition” means a USP access condition or a general access condition,

“access point” has the meaning given by section 29(11),

“consumer protection condition” has the meaning given by section 51,

“contravention” has the meaning given by subsection (4)(a),

“designated USP condition” has the meaning given by section 36,

“essential condition” has the meaning given by section 49,

“general access condition” has the meaning given by section 50,

“general universal service condition” has the meaning given by section 42,

“letter”—

(a) means any communication in written form on any kind of physical medium to be conveyed to the person or address indicated on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical), and

(b) includes a postal packet containing any communication within paragraph (a),

“notification condition” has the meaning given by section 41,

“postal operator” has the meaning given by section 27,

“postal packet” has the meaning given by section 27,

“postal services” has the meaning given by section 27,

“regulatory condition” has the meaning given by section 28,

“universal postal service order” has the meaning given by section 30,

“universal service obligations” has the meaning given by section 36(8),

“universal service provider” means any postal operator for the time being designated under section 35,

“user”, in relation to a postal service, includes—

(a) addressees, and

(b) potential users,

“USP access condition” has the meaning given by section 38, and

“USP accounting condition” has the meaning given by section 39.

### (2) In this Part—

(a) references to the provision of a universal postal service are to be read in accordance with sections 30 to 33, and

(b) references to the provision of a service within the scope of the universal postal service are to be read in accordance with section 40.

### (3) In the case of a universal service provider who—

(a) provides part of a universal postal service, or

(b) provides a universal postal service, or part of a universal postal service, in a specified area of the United Kingdom,

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references in this Part to the provision of a universal postal service are to the provision of that part or to the provision of a universal postal service, or part of a universal postal service, in that area.

- (4) For the purposes of this Part—
- (a) “contravention” includes a failure to comply (and related expressions are to be read accordingly),
  - (b) where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, the contravention is to be taken to continue after the end of that period, or after that time, until that thing is done,
  - (c) references to remedying the consequences of a contravention include paying an amount to a person—
    - (i) by way of compensation for loss or damage suffered by the person, or
    - (ii) in respect of annoyance, inconvenience or anxiety to which the person has been put, and
  - (d) in determining whether a contravention is a repeated contravention for any purposes, a notification of a contravention under any provision is to be ignored if it has been withdrawn before the imposition of a penalty in respect of the matters notified.
- (5) Any direction given by the Secretary of State under any provision of this Part—
- (a) must be in writing, and
  - (b) may be varied or revoked by a further direction.
- (6) Nothing in any provision of this Part that authorises the inclusion of any particular kind of provision in any regulatory condition or direction is to be read as restricting the generality of the provision that may be included in the condition or direction.
- (7) Any power under this Part to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.
- (8) Any reference in this Part to OFCOM's functions under an enactment includes their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.

## 66 Transitional provisions for Part 3

Schedule 9 makes transitional provision in connection with the coming into force of this Part and provides for OFCOM to carry out certain functions before the provisions of this Part come into force generally.

VALID FROM 01/10/2011

## 67 Review of Part 3

- (1) As soon as reasonably practicable after the end of the review period, the Secretary of State must—
- (a) carry out a review of the provisions of this Part, and
  - (b) set out the conclusions of the review in a report.

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**Status:** Point in time view as at 13/06/2011. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011, Part 3. (See end of Document for details)

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- (2) The report must, in particular—
  - (a) set out the objectives intended to be achieved by the regulatory system established by those provisions,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposed less regulation.
- (3) The review period is the period of 5 years beginning with the day on which the provisions of this Part come generally into force.
- (4) The Secretary of State must lay the report before Parliament.

**Status:**

Point in time view as at 13/06/2011. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Postal Services Act 2011, Part 3.