

Status: Point in time view as at 01/10/2011.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, Part 2. (See end of Document for details)

SCHEDULES

SCHEDULE 3

FURTHER PROVISION ABOUT ACCESS CONDITIONS

PART 2

RESOLUTION OF ACCESS DISPUTES BY OFCOM

Reference of disputes to OFCOM

- 13 (1) Any one or more parties to an access dispute may refer the dispute to OFCOM.
- (2) In this paragraph “access dispute” means a dispute between postal operators, or between a postal operator and a user of postal services, about the terms and conditions (including those as to price) on which access, required by virtue of an access condition to be given—
- (a) is to be or may be provided,
 - (b) is being provided, or
 - (c) has been provided.
- (3) A reference under this paragraph must be made in such manner as OFCOM require.
- (4) A requirement under sub-paragraph (3) is to be imposed, withdrawn or modified by OFCOM publishing a notice in such manner as they consider appropriate for bringing the requirement, withdrawal or modification to the attention of persons who, in their opinion, are likely to be affected by it.
- (5) Different requirements may be imposed for different cases.

Commencement Information

II Sch. 3 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

OF COM to decide whether to handle dispute

- 14 (1) This paragraph applies where a dispute has been referred to OFCOM under paragraph 13.
- (2) OFCOM must decide whether it is appropriate for them to handle the dispute.
- (3) As soon as possible after they have reached a decision, OFCOM must inform each of the parties to the dispute of—
- (a) their decision,
 - (b) the date it was made, and
 - (c) their reasons for it.

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Commencement Information

I2 Sch. 3 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Resolution of disputes by OFCOM

- 15 (1) This paragraph applies if OFCOM have decided under paragraph 14 that it is appropriate for them to handle a dispute.
- (2) OFCOM must—
- (a) consider the dispute, and
 - (b) make a determination for resolving it.
- (3) The determination must be made as soon as reasonably practicable.
- (4) A determination binds all of the parties to the dispute.
- (5) Where there has been an attempt to resolve the dispute by other means—
- (a) OFCOM may, in making their determination, take account of decisions made by others in the course of that attempt, and
 - (b) the determination may include provision ratifying any of those decisions.

Commencement Information

I3 Sch. 3 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Resolution of disputes: OFCOM's powers

- 16 (1) The powers that may be exercised by OFCOM, on the making of a determination under paragraph 15, are those listed in sub-paragraph (2).
- (2) The powers are—
- (a) to make a declaration setting out the rights and obligations of parties to the dispute,
 - (b) to give a direction fixing the terms or conditions of transactions between parties to the dispute,
 - (c) to give a direction imposing an obligation, enforceable by the parties, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM,
 - (d) to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment (but see sub-paragraph (3)),
 - (e) to require a party to the dispute to pay all or part of another party's costs and expenses incurred in connection with the dispute,
 - (f) to require a party to pay all or part of OFCOM's costs of dealing with the dispute (but see sub-paragraph (4)).
- (3) A direction under sub-paragraph (2)(d) may be given only for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one party to the dispute to another.

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- (4) A direction under sub-paragraph (2)(f) may be given to a party only if—
- (a) the party referred the dispute to OFCOM, and
 - (b) OFCOM consider that the reference was frivolous or vexatious or that the party has otherwise abused the right (conferred by paragraph 13) to refer disputes.

Commencement Information

14 Sch. 3 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Resolution of disputes: procedure

- 17 (1) The procedure for the consideration and determination of a dispute is the procedure that OFCOM consider appropriate.
- (2) That procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by other means.
- (3) OFCOM must send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute.
- (4) OFCOM must publish so much of their determination as (having regard in particular to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (5) Information published under sub-paragraph (4) must be published in such manner as OFCOM consider appropriate for bringing it to the attention (to the extent that they consider appropriate) of members of the public.

Commencement Information

15 Sch. 3 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Reference not to affect legal proceedings or OFCOM's powers

- 18 (1) A reference under paragraph 13 of a dispute does not prevent any person from bringing or continuing any civil or criminal proceedings in or before a court with respect to any of the matters under dispute.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 15(4) (determination binding on all parties), and
 - (b) any agreement to the contrary.
- (3) Any reference of a dispute to OFCOM, or consideration or determination by OFCOM of a dispute, does not prevent OFCOM from exercising any of their powers (or from doing anything in connection with the exercise of any of their powers) in relation to the subject-matter of the dispute.

Commencement Information

16 Sch. 3 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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Information

- 19 (1) This paragraph applies where a dispute has been referred under paragraph 13 to OFCOM.
- (2) OFCOM may require a person to provide them with specified information, in the specified manner and within the specified period.
- (3) The information that may be specified is information required by OFCOM for the purpose of—
- (a) deciding whether it is appropriate for them to handle the dispute, or
 - (b) considering the dispute and making a determination under paragraph 15.
- (4) The specified period must be reasonable.
- (5) In fixing that period, OFCOM must have regard, in particular, to—
- (a) the information that is required,
 - (b) the nature of the dispute, and
 - (c) the obligation imposed by paragraph 15(3) (obligation to make a determination as soon as reasonably practicable).
- (6) Part 2 of Schedule 8 (information: enforcement) applies in relation to a requirement imposed under this paragraph as if—
- (a) the requirement were imposed under paragraph 1 of that Schedule, and
 - (b) sub-paragraphs (4) and (5) of paragraph 5 of that Schedule were omitted.

Commencement Information

I7 Sch. 3 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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