

Status: Point in time view as at 01/10/2011.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, SCHEDULE 8. (See end of Document for details)

SCHEDULES

SCHEDULE 8 **U.K.**

Section 55

INFORMATION PROVISIONS

PART 1 **U.K.**

REQUIREMENTS TO PROVIDE INFORMATION TO OFCOM

Information required for purposes of OFCOM's functions in relation to postal services

- 1 (1) OFCOM may require a person falling within sub-paragraph (2) to provide them with all such information as they consider necessary for the purpose of carrying out any of their functions in relation to postal services.
- (2) The persons within this sub-paragraph are—
- (a) a person who is, or has been, a postal operator,
 - (b) a person who provides, or has provided, access points or other facilities for use in connection with a postal service, and
 - (c) a person not falling within paragraph (a) or (b) who appears to OFCOM to have information required by them for the purpose of carrying out any of their functions in relation to postal services.
- (3) The required information may, in particular, include information required for any one or more of the following purposes—
- (a) ascertaining whether a contravention of a regulatory requirement (within the meaning of Schedule 7) has occurred or is occurring,
 - (b) ascertaining whether a provision of a regulatory condition which is for the time being in force continues to be effective for the purpose for which it was made,
 - (c) making a designation in accordance with regulations made under section 35,
 - (d) carrying out a review under section 35 or 44,
 - (e) ascertaining or verifying amounts payable by virtue of section 46,
 - (f) ascertaining or verifying charges payable under Schedule 4,
 - (g) identifying markets and carrying out market analyses or assessments in accordance with, or for the purposes of, any enactment relating to postal services, and
 - (h) statistical purposes connected with the carrying out of any of OFCOM's functions in relation to postal services.
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

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Commencement Information

I1 Sch. 8 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Restrictions on imposing requirements in case of conditions of general application

- 2 (1) This paragraph limits the circumstances in which OFCOM may require the provision of information under paragraph 1 for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application.
- (2) OFCOM may require the provision of information for that purpose only if—
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint,
 - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the condition in question has been complied with,
 - (c) the condition in question is one which OFCOM have reason to suspect is one that has been, or is being, contravened, or
 - (d) the condition in question falls within section 42(2)(b).
- (3) A “condition of general application” means a regulatory condition other than a designated USP condition, a USP access condition or a USP accounting condition.

Commencement Information

I2 Sch. 8 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Information required for related purposes

- 3 (1) OFCOM may require—
- (a) a postal operator, or
 - (b) a person who provides access points or other facilities for use in connection with a postal service,
- to provide OFCOM with all such information as they consider necessary to carry out comparative overviews of the quality and prices of postal services.
- (2) The overviews in question must be carried out—
- (a) with a view to publication, and
 - (b) in the interest of users of postal services.
- (3) OFCOM may also require—
- (a) a postal operator, or
 - (b) a person who provides access points or other facilities for use in connection with a postal service,
- to provide OFCOM, for use for such statistical purposes as they think fit, with information relating to the provision of postal services.
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

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Commencement Information

I3 Sch. 8 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Manner in which information may be required

- 4
- (1) A person required to provide information under paragraph 1 or 3 must provide it in such manner and within such reasonable period as may be specified by OFCOM.
 - (2) OFCOM must require the provision of information under paragraph 1 or 3 by a demand which—
 - (a) describes the required information, and
 - (b) sets out OFCOM's reasons for requiring it.
 - (3) The reasons for requiring information for statistical purposes under paragraph 1 or 3 must set out the statistical purposes for which the information is required.
 - (4) A demand for information under paragraph 1 or 3 must be contained in a notice served on the person from whom the information is required.
 - (5) This is subject to an exception in the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under Schedule 4.
 - (6) In that case, the demand—
 - (a) may be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons described in the demand as the persons from whom the information is required, and
 - (b) may take the form of a general demand for a person so described to provide information when specified conditions relevant to the person's liability to the charges are satisfied.

Commencement Information

I4 Sch. 8 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

PART 2 **U.K.**

ENFORCEMENT

Notification of contravention of information requirements

- 5
- (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a requirement imposed under paragraph 1 or 3.
 - (2) A notification under this paragraph must—
 - (a) set out the determination made by OFCOM, and
 - (b) specify the requirement and contravention in respect of which that determination has been made.

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- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
- (a) to make representations about the matters notified, and
 - (b) to comply with notified requirements of which the person remains in contravention.
- (4) The specified period must be at least one month beginning with the day after the day the notification is given unless—
- (a) OFCOM and the person notified agree a shorter period, or
 - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
- (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same requirement, and
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 7(2) that the contravention to which the previous notification related did occur.
- (6) OFCOM may (on one or more occasions) extend the specified period.

Commencement Information

I5 [Sch. 8 para. 5](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

- 6 (1) A notification under paragraph 5—
- (a) may be given in respect of more than one contravention, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 5 has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if—
- (a) the contravention occurs after the earlier notification is given,
 - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

Commencement Information

I6 [Sch. 8 para. 6](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

Penalties for contravention of information requirements

- 7 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 5,

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- (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
 - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on a person if—
- (a) they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 5,
 - (b) the person has not, during the period allowed under that paragraph, complied with the notified requirement, and
 - (c) no proceedings for an offence under paragraph 13 have been brought against the notified person in respect of the contravention.
- (3) If a notification under paragraph 5 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be—
- (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than £50,000.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
- (a) any representations made to them by the person, and
 - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 5.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must—
- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph—
- (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) The Secretary of State may by order substitute a different maximum penalty for the maximum penalty for the time being specified in sub-paragraph (6).
- (11) An order under sub-paragraph (10) is subject to affirmative resolution procedure.

Commencement Information

I7 Sch. 8 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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Suspending service provision for contravention of information requirements

- 8 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services—
- (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of requirements imposed under paragraph 1 or 3.
- (5) Condition B is that an attempt, by the imposition of penalties under paragraph 7 or the bringing of proceedings under paragraph 13, to secure compliance with the contravened requirements has failed.
- (6) Condition C is that the giving of the direction is—
- (a) appropriate, and
 - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.

Commencement Information

I8 Sch. 8 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 8—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator's services.
- (3) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under paragraph 8 or modify its conditions—
- (a) with effect from such time as they may direct,
 - (b) subject to compliance with such requirements as they may specify, and
 - (c) to such extent and in relation to such services, or parts of a service, as they may determine.

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- (5) For the purposes of paragraph 8 there are repeated contraventions by a person of requirements imposed under paragraph 1 or 3 to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 5, OFCOM have determined for the purposes of paragraph 7(2) that a contravention did occur, and
 - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a requirement imposed under paragraph 1 or 3.
- (6) For the purposes of sub-paragraph (5) it does not matter whether the notifications relate to the same contravention or to different contraventions of the same or different requirements or of requirements under different paragraphs.

Commencement Information

I9 Sch. 8 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) OFCOM are not to give a direction under paragraph 8 unless they have—
- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
 - (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.
- (2) That period must be at least one month beginning with the day after the day the notification is given.
- (3) This paragraph does not apply in an urgent case (as to which, see paragraph 11).

Commencement Information

I10 Sch. 8 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 11 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 8, give the contravening person—
- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
 - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM—
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
 - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 10.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of—

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- (a) a serious threat to the safety of the public, to public health or to national security,
- (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
- (c) serious economic or operational problems for users of postal services.

Commencement Information

I11 Sch. 8 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Enforcement of directions under paragraph 8

- 12 (1) A person commits an offence if the person provides any service—
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 8, or
 - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.

Commencement Information

I12 Sch. 8 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Offences in connection with information requirements

- 13 (1) A person who fails to provide information in accordance with a requirement imposed under paragraph 1 or 3 commits an offence.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (3) A person does not commit an offence under sub-paragraph (1) if—
- (a) it was not reasonably practicable to comply with the requirement within the period specified by OFCOM, and
 - (b) the person has taken all reasonable steps to provide the information after the end of that period.
- (4) A person commits an offence if—
- (a) in pursuance of a requirement under paragraph 1 or 3, the person provides any information that is false in any material particular, and
 - (b) at the time the information is provided, the person knows it to be false or is reckless as to whether or not it is false.
- (5) A person guilty of an offence under sub-paragraph (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

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- (6) Proceedings for an offence under sub-paragraph (1) may be brought in respect of a contravention by a person of a requirement imposed under paragraph 1 or 3 only if—
- (a) OFCOM have given the person a notification under paragraph 5 in respect of the contravention,
 - (b) the period allowed under that paragraph for doing the things mentioned in sub-paragraph (3) of that paragraph has ended without the required information having been provided, and
 - (c) OFCOM have not imposed a financial penalty under paragraph 7 in respect of the contravention.

Commencement Information

I13 Sch. 8 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

PART 3 U.K.

SUPPLEMENTARY PROVISIONS

Statement of policy on information gathering

- 14 (1) OFCOM must prepare and publish a statement of their general policy with respect to—
- (a) the exercise of their powers under paragraph 1 or 3, and
 - (b) the uses to which they are proposing to put information obtained under those paragraphs.
- (2) OFCOM may from time to time revise the statement.
- (3) Where OFCOM make or revise a statement under this paragraph, they must publish the statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) In exercising the powers conferred by this Schedule, OFCOM must have regard to the statement for the time being in force under this paragraph.

Commencement Information

I14 Sch. 8 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Provision of information by OFCOM

- 15 (1) OFCOM must comply with a request made by a person—
- (a) to notify the person whether or not a notification is required to be submitted by the person under regulations made under section 48,
 - (b) to notify the person whether a notification submitted for the purposes of those regulations satisfies the requirements of those regulations, or
 - (c) to provide the person with such information about the person's rights as may be necessary for the purpose of facilitating the negotiation by the person of any right to be provided with access pursuant to an access condition.

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- (2) A request for the purposes of this paragraph must be made in such manner as OFCOM may require.
- (3) OFCOM do not have to comply with a request under this paragraph if (without having been asked to do so) they have already given the person the notification or information for which the person is asking.
- (4) Any notification or information which under sub-paragraph (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request was made to them.

Commencement Information

I15 Sch. 8 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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