



Postal Services Act 2011

2011 CHAPTER 5

PART 3

REGULATION OF POSTAL SERVICES

Financial support for universal postal service

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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.