

A7. Statutory notification: proposed modification of Consumer Protection Condition 1

NOTIFICATION OF PROPOSALS TO MODIFY CONSUMER PROTECTION CONDITION 1 PURSUANT TO SECTION 51 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3(3) OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

- (A) On 27 March 2012, following consultation, Ofcom published a statement *entitled ‘Securing the Universal Postal Service: Decision on the new regulatory framework’*¹¹¹ setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Act, such as Consumer Protection Condition 1 (the “**initial CPC1**”).
- (B) On 28 March 2013, following consultation, Ofcom published a statement *entitled ‘Decision on modification to Consumer Protection Condition 1: Statement to modify Consumer Protection Condition 1 to reflect the change in the provision of consumer advice for postal services to Citizens Advice and Citizens Advice Scotland’*¹¹² setting out its decision to modify initial CPC1 in order to allow Ofcom to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland.
- (C) On 1 April 2014, following consultation, Ofcom published a statement *entitled ‘Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions’*¹¹³ setting out various decisions, including the revocation of the initial CPC1 (as modified in 2013) and the imposition of a new Consumer Protection Condition 1 (“**CP1**”).
- (D) On 4 December 2015, following consultation, Ofcom published a statement *entitled ‘Modification to Consumer Protection Condition 1: Collection of qualifying consumer expenses of the Consumer Advocacy Bodies’*¹¹⁴ setting out its decision to modify CP1 to correct an error in the drafting of CP1 with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies.

¹¹¹ https://www.ofcom.org.uk/data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf

¹¹² https://www.ofcom.org.uk/data/assets/pdf_file/0033/37689/statement.pdf

¹¹³ <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

¹¹⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0024/84165/cp1_statement_04dec2015.pdf

(E) On 27 July 2017, Ofcom published a consultation entitled ‘*Recovering postal regulation and consumer advocacy costs - A review*’¹¹⁵ setting out its proposals to amend CP1. Having considered responses received to that consultation, Ofcom has decided to reconsult on its new proposals for amending CP1 set out in this Notification.

PROPOSALS

1. Ofcom hereby proposes, in accordance with section 53 of, and paragraph 3(3) of Schedule 6 to, the Act and pursuant to its powers under section 51 of the Act, to modify CP1 in order to make further provision for matters set out in that section 51 and to impose that CP1 on every postal operator of a description specified therein.
2. The proposed modifications to CP1 are—
 - (a) specified in the Schedule to this Notification, marked up against the existing CP1 to show the changes which Ofcom is proposing to its substance, as highlighted in yellow and in red font for new text and highlighted in yellow and in black font for deleted text (which highlightings, for the avoidance of doubt, do not form part of the proposed modifications);
 - (b) being proposed to come into force with effect from the date of a publication in accordance with section 53 of, and paragraph 3(1) of Schedule 6 to, the Act.
3. The effect of, and Ofcom’s reasons for making, these proposals are set out in the accompanying consultation document.

OFCOM’S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that these proposals satisfy the general test in paragraph 1 of Schedule 6 to the Act.
5. In making these proposals, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

MAKING REPRESENTATIONS

6. Representations may be made to Ofcom about the proposals set out in this Notification by no later than 24 May 2018.
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

¹¹⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—
- (a) considered every representation about the proposal that is made to Ofcom within the period specified in paragraph 6 of this Notification; and
 - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

INTERPRETATION

9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of CP1 (as relevant).
10. In this Notification—
- (a) “**Act**” means the Postal Services Act 2011 (c.5);
 - (b) “**CP1**” means Consumer Protection Condition 1 as referred to in recital (C) to this Notification, as modified by the modification referred to in recital (D); and
 - (c) “**Ofcom**” means the Office of Communications.
11. For the purpose of interpreting this Notification—
- (a) headings and titles shall be disregarded;
 - (b) expressions cognate with those referred to in this Notification shall be construed accordingly; and
 - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
12. The Schedule to this Notification shall form part of this Notification.

Signed by

M. Gibbs

Marina Gibbs

Competition Policy Director

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

4 April 2018

SCHEDULE
CONSUMER PROTECTION CONDITION 1
PAYMENTS RELATING TO QUALIFYING EXPENSES

1.1. Application, Definitions and Interpretation

CP 1.1.1 Application	This consumer protection condition (“ CP Condition ”) shall apply to every regulated relevant postal operators to whom any of the obligations to make payments to OFCOM prescribed in CP 1.2.1 apply.
CP 1.1.2 Definitions	<p>In this CP Condition—</p> <p>(a) “Act” means the Postal Services Act 2011 (c.5);</p> <p>(b) “appointed day” means 1 October 2011;</p> <p>(c) “assessment year” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “calls relating to a regulated relevant postal operator” means calls to Citizens Advice or Citizens Advice Scotland a consumer advocacy body recorded by Citizens Advice or Citizens Advice Scotland such a body as relating to a specific <u>regulated relevant postal operator</u> save that where a call is recorded by Citizens Advice or Citizens Advice Scotland a consumer advocacy body as relating to more than one specific <u>regulated relevant postal operator</u> OFCOM will consider the call as relating to no <u>regulated relevant postal operator</u>;</p> <p>(e) “closed user group network” means a system providing for the conveyance of postal packets (and the incidental services of receiving, collecting, sorting and delivering postal packets) between—</p> <p style="padding-left: 40px;">(1) the premises of one firm and another firm;</p> <p style="padding-left: 40px;">(2) a government department and a third party firm;</p> <p style="padding-left: 40px;">(3) branches and/or units in the same firm; or</p> <p style="padding-left: 40px;">(4) government departments,</p> <p style="padding-left: 40px;">where both the sender and the recipient of the postal packets have entered into specific arrangements with the postal operator for the conveyance of postal packets to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;</p> <p>(e) (f) “consumer advocacy body (or bodies)” means each of the following—</p> <p style="padding-left: 40px;">(1) Citizens Advice;</p> <p style="padding-left: 40px;">(2) Citizens Advice Scotland or such other body that provides, in or as regards Scotland, consumer advocacy and advice to which section 51(2)(ca) of the Act refers; and</p>

	<p>(3) the General Consumer Council for Northern Ireland;</p> <p>(g) “express and secured service” means a service involving the conveyance of postal packets and any incidental services of collecting, sorting and delivering those postal packets which have at least one of the following features—</p> <ol style="list-style-type: none"> (1) a guarantee for delivery by a certain time or date; (2) a facility enabling the sender and the recipient to monitor the progress of a postal packet through the postal operator’s network, including confirmation of delivery; <p>(f) (h) “public holiday” means a Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial Dealings Act 1971;</p> <p>(i) “qualifying calls expenses” has the meaning given to it in CP 1.2.4;</p> <p>(j) “qualifying calls threshold” has the meaning given to it in CP 1.2.4;</p> <p>(k) “qualifying expenses” has the meaning given to it in CP 1.2.2;</p> <p>(l) “relevant letter” means a postal packet that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;</p> <p>(m) “relevant letters postal service” means a service of conveying relevant letters from one place to another by post and the incidental services of receiving, collecting, sorting and delivering relevant letters, excluding—</p> <ol style="list-style-type: none"> (1) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters; (2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards; (3) express and secured services; (4) services consisting of the conveyance of relevant letters within a closed user group network; (5) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over postal packets to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the postal packets; (6) services consisting of conveying relevant letters, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and
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	<p>(7) services provided by a party to a <u>USP Access Agreement</u> with the <u>universal service provider</u>, including by the <u>universal service provider</u> itself, to other <u>postal operators</u> and <u>users of postal services</u> by obtaining access to the <u>universal service provider’s postal network</u> under, or as a result of, the party’s <u>USP Access Agreement</u>;</p> <p>(n) “relevant parcel” means a <u>postal packet</u> that is larger in dimensions than a <u>relevant letter</u>, and weighs no less than 750g but no more than 31.5kg;</p> <p>(o) “relevant parcels postal service” means a service of conveying <u>relevant parcels</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant parcels</u>, excluding—</p> <ol style="list-style-type: none">(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant parcels</u>;(2) services consisting of the conveyance of <u>relevant parcels</u> within a <u>closed user group network</u>;(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>relevant parcels</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>relevant parcels</u>; and(4) services consisting of conveying <u>relevant parcels</u>, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; <p>(p) “relevant postal operator” means each of the following—</p> <ol style="list-style-type: none">(1) a <u>postal operator</u> that provides a <u>relevant letters postal service</u>;(2) a <u>postal operator</u> that provides a <u>relevant parcels postal service</u>; <p>(h) (q) “relevant turnover” means <u>turnover from regulated postal services</u> each of the following—</p> <ol style="list-style-type: none">(1) turnover from <u>relevant letters postal services</u>;(2) turnover from <u>relevant parcels postal services</u>; <p>(g) (r) “relevant year” means any year beginning on 1 April;</p> <p>(i) “regulated postal operator” means a <u>postal operator</u> which provides services in relation to which, had those services been carried out prior to the <u>appointed day</u>, it would have been required to hold a licence under the Postal Services Act 2000;</p>
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	<p>(j) “regulated postal service” means a postal service the provision of which, had it been carried out prior to the Appointed Day, would have required the provider to hold a licence under the Postal Services Act 2000.</p> <p>(s) “Scottish consumer advice amounts” mean such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to users of postal services; and</p> <p>(t) “USP Access Agreement” means an agreement under which the universal service provider provides access to its postal network in accordance with requirements set out in a condition imposed under section 38 of the Act.</p>
<p>CP 1.1.3</p> <p>Interpretation</p>	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act¹¹⁶;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a “day” are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday and public holidays.</p>

1.2. Payments relating to qualifying expenses

<p>CP 1.2.1</p> <p>Obligations to make payments to OFCOM</p>	<p>A regulated postal operator that generated relevant turnover exceeding £10 million in the assessment year, shall pay to OFCOM in any relevant year such proportion as OFCOM may specify of the expenses described in CP 1.2.2.</p> <p>A relevant postal operator is liable to make payments to OFCOM in one or more (as applicable to that operator) of the following three circumstances—</p> <p>(a) where a postal operator that provides relevant letters postal services that generated relevant turnover exceeding £10 million in the assessment year, that operator shall pay to OFCOM in any relevant year such proportion (calculated in accordance with CP 1.2.3) as OFCOM may specify of the qualifying expenses;</p>
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¹¹⁶ A table for information identifying such defined terms is provided at the end of this CP eCondition. This table is intended only as a guide and does not form a part of this CP eCondition. We make no representations as to its accuracy or completeness.

	<p>(b) where a postal operator that provides relevant parcels postal services that generated relevant turnover exceeding £350 million in the assessment year, that operator shall pay to OFCOM in any relevant year such proportion (calculated in accordance with CP 1.2.3) as OFCOM may specify of the qualifying expenses;</p> <p>(c) where a relevant postal operator has reached the qualifying calls threshold in the relevant year, that operator shall pay to OFCOM in any relevant year such proportion (calculated in accordance with CP 1.2.5) as OFCOM may specify of qualifying calls expenses.</p>
<p>CP 1.2.2</p> <p><i>Meaning of “qualifying expenses”</i></p>	<p>The expenses are the qualifying consumer expenses of the consumer advocacy bodies and the Secretary of State, likely to be incurred during the relevant year in respect of functions other than the consumer advocacy bodies’ function of providing a public consumer advice scheme.</p> <p>The “qualifying expenses” are—</p> <p>(a) the qualifying consumer expenses of Citizens Advice;</p> <p>(b) the qualifying consumer expenses of the General Consumer Council for Northern Ireland;</p> <p>(c) the Scottish consumer advice amounts; and</p> <p>(d) the qualifying consumer expenses of the Secretary of State, likely to be incurred during the relevant year in respect of functions other than the consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators.</p>
<p>CP 1.2.3</p> <p><i>Calculation of proportion for the purposes of CP 1.2.1(a) and (b)</i></p>	<p>The proportion referred to in CP 1.2.1(a) and (b) will be calculated by multiplying the sum of the total qualifying expenses referred to in CP 1.2.2 by that regulated relevant postal operator’s share of relevant turnover expressed as a percentage of the total relevant turnover generated by all regulated relevant postal operators to which this CP condition CP 1.2.1(a) and (b) refer applies that generated relevant turnover in excess of £10 million in the assessment year in question.</p>
<p>CP 1.2.4</p>	<p>A regulated postal operator shall pay to OFCOM in any relevant year such proportion as OFCOM may specify of the qualifying consumer expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme.</p>
<p>CP 1.2.54</p> <p><i>Meanings of “qualifying calls threshold”</i></p>	<p>OFCOM shall require payments to be made by a A regulated relevant postal operator under CP 1.2.4 shall be liable to make payments to OFCOM for the purposes of CP 1.2.1(c) only where the following calculation gives an amount greater than £100 (the “qualifying calls threshold”) — ÷</p>

<p>and of “qualifying calls expenses”</p>	<p>(a) take the total qualifying consumer calls expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme in the relevant year,</p> <p>(b) multiply it by that regulated relevant postal operator’s share of calls relating to regulated relevant postal operators in the relevant year expressed as a percentage of the total calls relating to regulated relevant postal operators.</p> <p>The “qualifying calls expenses” are—</p> <p>(a) the qualifying consumer expenses of Citizens Advice;</p> <p>(b) the qualifying consumer expenses of the General Consumer Council for Northern Ireland; and</p> <p>(c) the Scottish consumer advice amounts,</p> <p>likely to be incurred during the relevant year in respect of the consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators.</p>
<p>CP 1.2.65 Calculation of proportion for the purposes of CP 1.2.1(c)</p>	<p>The proportion referred to in CP 1.2.1(c) to be paid by a regulated relevant postal operator falling within CP1.2.5 reaching the qualifying calls threshold will be calculated by multiplying the total qualifying consumer calls expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme in the relevant year by that regulated relevant postal operator’s share of calls relating to regulated relevant postal operators falling within CP1.2.54 expressed as a percentage of the total calls relating to regulated relevant postal operators falling within CP1.2.54.</p>
<p>CP 1.2.76 Adjusted amounts payable under CP 1.2.1(a) and (b)</p>	<p>The amounts payable under CP 1.2.1(a) and (b) in a relevant year shall include the amount of the difference, if any, between the costs actually incurred during the previous relevant year and the estimate of the costs in question upon which charges in the previous relevant year were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.</p>
<p>CP.1.2.87 Adjusted amounts payable under CP 1.2.1(c)</p>	<p>The amounts payable under CP 1.2.41(c) in a relevant year shall include the amount of the difference, if any, between the amounts charged to the regulated relevant postal operator in the previous relevant year, based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of calls relating to that and other regulated relevant postal operators (including to calls relating to that specific relevant postal operator) and actual qualifying consumer calls expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme. Where the latter exceeds the former, the amount of the difference shall be treated as a negative amount.</p>
<p>CP 1.2.98</p>	<p>The amount due under each of the three circumstances specified in either or both of CP 1.2.1 and CP 1.2.4 shall be payable on 30 June in the relevant year or, if</p>

Payments due dates	later, on the expiry of one month from the day on which OFCOM serve notice on the regulated relevant postal operator of such amount.
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Table of terms defined in the Act

This table is provided for information and does not form a part of this CP eCondition. We make no representations as to its accuracy or completeness. Please refer to the Act.

Defined term	Section
<i>Citizens Advice</i>	65(1)
<i>Citizens Advice Scotland</i>	65(1)
<i>letter</i>	65(1)
<i>OFCOM</i>	90
postal network	38(3)
<i>postal operator</i>	27(3)
<i>postal packet</i>	27(2)
postal services	27(1)
qualifying consumer expenses of Citizens Advice	51(4)(a) to (c)
qualifying consumer expenses of the General Consumer Council for Northern Ireland	51(4)(g)
qualifying consumer expenses of the Secretary of State	51(4ZA)
qualifying consumer expenses	51(4)
<i>universal service provider</i>	65(1) and Schedule 9 paragraph 3(3)
user	65(1)