

# Statutory Notification: proposed essential condition

## NOTIFICATION OF PROPOSAL TO IMPOSE A REGULATORY CONDITION IN ACCORDANCE WITH SECTION 49 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

**A.** On 13 June 2011, the Postal Services Act 2011 (the “**Act**”) received Royal Assent, which Act makes provision (among other things) about the new regulation of postal services. The new regulatory regime is set out in Part 3 of the Act, which Part came into force on 1 October 2011 and on which day the regulatory responsibility was also transferred from Postcomm to Ofcom. The provisions of the Act also give effect to Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, which amends Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

**B.** On 29 September 2011, following a consultation, Ofcom published a statement entitled ‘*Postal regulation: Transition to the new regulatory framework*’<sup>1</sup> (the “**September Statement**”) setting out various decisions, including the imposition of regulatory conditions and directions in accordance with the transitional provisions under section 66 of, and paragraphs 4 to 6 of Schedule 9 to, the Act.

**D.** Ofcom is proposing changes to those regulatory conditions, which it proposes to implement by revoking the regulatory conditions in their entirety (with the exception of certain paragraphs of Acc 1) and replacing them as proposed in this consultation with effect from 1 April 2012.

### PROPOSAL

1. Ofcom hereby proposes, in accordance with section 49 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 49 and Schedule 6 of the Act, to impose on postal operators of a description specified in the condition an essential condition to make provision for matters set out in that section 49.
2. The proposed essential condition is specified in the Schedule hereto.
3. The effect of, and Ofcom’s reasons for making, this proposal are set out in the accompanying consultation document.

### OFCOM’S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.

---

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf>

5. In making this proposal, 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 proposal set out in this Notification by no later than **31 January 2012**.

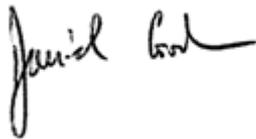
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

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 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.

9. The Schedule to this Notification shall form part of this Notification.

Signed by **Daniel Gordon**

A handwritten signature in black ink, appearing to read 'Daniel Gordon', written in a cursive style.

**Competition Policy Director**

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

**13 December 2011**

## SCHEDULE

### ESSENTIAL CONDITION 1

#### 1.1. Application, Definitions and Interpretation

E 1.1.1	This Essential Condition shall apply to <u>Code operators</u> .
E 1.1.2	<p>In this Essential Condition—</p> <p>(a) “<b>access agreement</b>” means:</p> <ul style="list-style-type: none"><li>(i) an agreement entered into between <u>postal operators</u> for the provision by one <u>postal operator</u> of access to the other <u>postal operator’s postal facilities</u> for the partial provision of a <u>postal service</u>; and</li><li>(ii) an agreement between a <u>postal operator</u> and a <u>user</u> of <u>postal services</u> for the <u>postal operator</u> to provide <u>postal services</u> to fulfil the obligations that the <u>user</u> has under an agreement with <u>Royal Mail</u> for access to its <u>postal facilities</u>;</li></ul> <p>(b) “<b>Access party</b>” means a <u>postal operator</u>, other than the <u>universal service provider</u>, which is party to an <u>access agreement</u>;</p> <p>(c) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(d) “<b>Appointed Day</b>” means 1 October 2011;</p> <p>(e) “<b>Code operator</b>” means a <u>postal operator</u> which is either a <u>regulated postal operator</u> or an <u>access party</u>;</p> <p>(f) “<b>Code Postal Packet</b>” means -</p> <ul style="list-style-type: none"><li>(i) in the case of the <u>universal service provider</u> and an <u>access party</u>, a <u>postal packet</u>;</li><li>(ii) in the case of any other <u>regulated postal operator</u> (including an <u>access party</u> not acting in the capacity of <u>access party</u>) a <u>letter</u> which:<ul style="list-style-type: none"><li>○ is conveyed in consideration of a payment of not more than £1 made by or on behalf of the person for whom it is conveyed; and</li><li>○ weighs less than 350 grams;</li></ul></li></ul> <p>(g) “<b>Council</b>” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007;</p> <p>(h) “<b>Damage</b>” means, in relation to a <u>Code Postal Packet</u>, any physical damage to a <u>Code Postal Packet</u> (other than damage caused by interference or accidental damage) occurring after the time of acceptance of that <u>Code Postal Packet</u> by the relevant <u>Code operator</u> and before its delivery</p>

to the person to whom or at the premises to which it is addressed;

(i) **“Interference”** means interference with a Code Postal Packet contrary to sections 83 or 84 of the Postal Services Act 2000;

(j) **“Loss”** means the physical loss of a Code Postal Packet, other than as a result of:

(a) having been stolen,

(b) being incorrectly addressed,

at any time after the acceptance of that Code Postal Packet by the Code operator and before its delivery to the person to whom or at the premises to which it is addressed. Save where the context otherwise indicates, loss includes a failure by the Code operator to deliver that Code Postal Packet within 15 working days of its due day of delivery;

(k) **“Mail Integrity Code”** means the document of that name annexed to this Condition;

(l) **“Mail Integrity Objectives”** has the meaning given by paragraph 1.1 of the Annex to this Condition;

(m) **“postal facilities”** means the physical and human resources deployed by a postal operator (and, where relevant, by its contractors and agents) for the purpose of providing postal services;

(n) **“public holiday”** means Christmas Day, Good Friday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971 and any other day which Ofcom has by direction agreed should be treated as a public holiday;

(o) **“Regulated postal operator”** means a postal operator which provides services in relation to which, had those services been carried out prior to the Appointed Day, it would have been required to hold a licence under the Postal Services Act 2000;

(p) **“Relevant Employees”** means permanent, temporary, casual or part time employees or workers (including those under a contract for service), who are (or may be) involved in conveying, receiving, collecting, sorting, delivering or otherwise handling Code Postal Packets or who are reasonably likely to have access to Code Postal Packets in the course of their work;

(q) **“Relevant year”** means any year beginning on 1 April;

(r) **“Royal Mail”** means Royal Mail Group Limited (registered

	<p>number 4138203);</p> <p><b>(s)</b> “<b>Serious incident</b>” has the meaning given in paragraph 2.6 of the Mail Integrity Code;</p> <p><b>(t)</b> “<b>Stolen</b>” means misappropriated contrary to the Theft Act 1968;</p> <p><b>(u)</b> “<b>Theft</b>” means misappropriation contrary to the Theft Act 1968;</p> <p><b>(v)</b> “<b>Working day</b>” means any day which is not a Sunday or a <u>public holiday</u>.</p>
<b>E 1.1.3</b>	<p>For the purpose of interpreting this Essential Condition—</p> <p><b>(a)</b> 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 Act<sup>2</sup>;</p> <p><b>(b)</b> headings and titles shall be disregarded;</p> <p><b>(c)</b> expressions cognate with those referred to in this Essential Condition shall be construed accordingly;</p> <p><b>(d)</b> the Interpretation Act 1978 (c. 30) shall apply as if this Essential Condition were an Act of Parliament;</p> <p><b>(e)</b> 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, a Bank Holiday, Christmas Day, Good Friday or other public holiday</p> <p><b>(f)</b> the following shall be deemed to be directions issued by <u>Ofcom</u> agreeing that a day should be treated as a <u>public holiday</u> for the purposes of the definition of “public holiday” in this Essential Condition:</p> <ul style="list-style-type: none"> <li>• <i>Exceptions to Royal Mail’s universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document</i> (Postal Services Commission, October 2009).</li> </ul>

## **2. Obligation to comply with the Mail Integrity Code**

<b>E 1.2.1</b>	<p>Unless Ofcom otherwise consents, a <u>Code operator</u> shall at all times comply with the <u>Mail Integrity Code</u>.</p> <p>For the purposes of this Condition E 1, any consent issued and not</p>
----------------	---

<sup>2</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

	<p>withdrawn by the Postal Services Commission prior to the <u>Appointed Day</u>, relating to:</p> <p>(a) Condition 8 of the licence held by Royal Mail under the Postal Services Act 2000 immediately before the <u>Appointed Day</u>; or</p> <p>(b) Condition 3 of a licence held by any other <u>postal operator</u> under the Postal Services Act 2000 immediately before the <u>Appointed Day</u>,</p> <p>shall be deemed to be a consent issued by <u>Ofcom</u> under this Condition.</p>
--	---

## Annex to Essential Condition 1 - Mail Integrity Code

### Protecting the Integrity of Mail – A Code of Practice

#### 1 Introduction

1.1 This is the Code of Practice covering the protection of the integrity of mail. Its purpose is to achieve the following objectives (the "Mail Integrity Objectives"):

- (a) minimising the exposure of Code Postal Packets to the risk of loss, theft, damage and/or interference; and
- (b) maintaining and improving Code operators' performance in respect of the matters referred to in paragraph 1.1(a).

1.2 This Code sets out the requirements and procedures to be followed in order to satisfy the Mail Integrity Objectives.

1.3 This Code applies to:

- (a) Code operators; and
- (b) all Code Postal Packets conveyed, received, collected, sorted, delivered or otherwise handled by Code operators.

1.4 Code operators should allocate responsibility to specific personnel within their organisations for implementation of and compliance with this Code.

1.5 In meeting their obligations under this Code, Code operators should have due regard to the size and nature of their organisations and operations.

#### 2 Definitions and rules of interpretation

2.1 In this Code, unless the context requires otherwise, the words include, including and in particular are to be construed as being by way of illustration or emphasis and do not limit or prejudice the generality of any foregoing words. The singular includes the plural and vice versa.

2.2. Nothing in this Code is to be construed as requiring a Code operator to act unlawfully (for example, by breaching employment law in meeting the recruitment and vetting requirements set out in paragraph 3 of this Code).

2.3 This Code shall not be interpreted in any way which is inconsistent with the Mail Integrity Objectives.

2.4 Where this Code requires a policy to be established, that policy must be in writing and a copy must be given to the specific personnel within the Code operator's organisation who are responsible for implementation of and compliance with the policy.

2.5 Where this Code requires Code operators to allocate responsibility to specific personnel within their organisations to be responsible for implementation of and compliance with this Code (including any policy required by this Code), the personnel responsible for implementation may be different from those responsible for compliance.

2.6 A **serious incident** for the purpose of this Code is an incident in relation to which the percentage of Code Postal Packets lost, stolen, damaged or interfered with in one incident exceeds 10% of the total volume of Code Postal Packets conveyed, received, collected, sorted, delivered or otherwise handled by a Relevant Employee that day.**3 Recruitment of Relevant Employees**

3.1 If a Code operator employs or uses (or intends to employ or use) Relevant Employees, the Code operator must:

- (a) establish, maintain and adhere to a recruitment policy in relation to the employment or use of Relevant Employees designed to facilitate the achievement of the Mail Integrity Objectives; and
- (b) allocate responsibility to specific personnel within its organisation for the implementation of and compliance with that recruitment policy.

3.2 The recruitment policy should include:

- (a) an explanation of the jobs, roles or types of work, as the case may be, in respect of which the recruitment policy should apply;
- (b) the types of information about a prospective Relevant Employee that the Code operator requires;
- (c) the steps that the Code operator requires to be taken to satisfy itself of the identity of the prospective Relevant Employee;
- (d) the steps which the Code operator expects to be taken in order to confirm a prospective Relevant Employee's work history over at least the immediately preceding 5 years (or the entire period of that Relevant Employee's working life, if that period is shorter than 5 years);
- (e) a requirement for prospective Relevant Employees to declare any criminal convictions or any cautions or conditional discharges for offences relating to:
  - (i) postal packets; or

(ii) dishonest conduct generally (in particular, theft, obtaining property by deception or fraud)

and guidelines on how any such convictions, cautions or conditional discharges declared by prospective Relevant Employees will be taken into consideration in deciding whether or not to employ the prospective Relevant Employee.

3.3 For the avoidance of doubt, in respect of any Code operator's existing permanent, temporary, casual or part-time employee or worker (including those under a contract for service) who is not (or might not be) involved in conveying, receiving, collecting, sorting, delivering or otherwise handling Code Postal Packets in the course of his or her work and who is to be redeployed such that he or she will (or might be) so involved, such redeployment should be treated for the purposes of this paragraph 3 as effectively the employment or use of that individual as a Relevant Employee and be subject to the other provisions of this paragraph 3.

3.4 Code operators must reasonably regularly monitor implementation of and compliance with the recruitment policy.

3.5 Code operators must reasonably regularly review the recruitment policy and, where necessary, update or amend the policy to ensure that it continues to meet the Mail Integrity Objectives.

#### **4 Training Relevant Employees**

4.1 If a Code operator employs or uses Relevant Employees, the Code operator must:

(a) establish, maintain and adhere to a training policy that provides for Relevant Employees to receive initial and ongoing training so as to facilitate achievement of the Mail Integrity Objectives; and

(b) allocate responsibility to specific personnel within its organisation for the implementation of and compliance with that policy.

4.2 Without prejudice to the generality of paragraph 4.1, all Relevant Employees must be informed of the provisions of sections 83 and 84 of the Postal Services Act 2000 and made aware of the seriousness of the offences detailed in those sections.

4.3 The training policy should include:

(a) the levels of training required to facilitate achievement of the Mail Integrity Objectives;

(b) the levels of training required according to the differing responsibilities of, and work undertaken by, Relevant Employees in relation to Code Postal Packets;

(c) details of the minimum level of training required;

(d) an explanation of how the training will be provided;

(e) the frequency with which training should be provided; and

(f) details of how training is to be given, recorded and monitored.

4.4 Code operators must reasonably regularly monitor implementation of and compliance with the training policy.

4.5 Code operators must reasonably regularly review the training policy and, where necessary, update or amend the policy to ensure that it continues to meet the Mail Integrity Objectives.

## **5 Disciplinary Procedures**

5.1 If a Code operator employs or uses Relevant Employees, the Code operator must:

(a) make Relevant Employees aware of the standards of conduct in relation to facilitating achievement of the Mail Integrity Objectives the Code operator requires Relevant Employees to meet; and

(b) establish, maintain and adhere to a disciplinary policy in relation to the treatment of Relevant Employees who fail to meet the standards of conduct expected of them.

5.2 The standards of conduct and disciplinary policy should be such as to facilitate achievement of the Mail Integrity Objectives.

5.3 Code operators must allocate responsibility to specific personnel within their organisations for:

(a) making Relevant Employees aware of the standards of conduct expected of them; and

(b) the implementation of and compliance with the disciplinary policy.

5.4 The disciplinary policy should include:

(a) an explanation of what constitutes a failure to meet the standards of conduct and the action to be taken in relation to any failures;

(b) an explanation of how the Code operator ensures that all Relevant Employees understand when a failure to meet the standards of conduct might also constitute a criminal offence and how this will be dealt with;

(c) provision for appropriate records to be maintained detailing any action taken against Relevant Employees for failure to meet the standards of conduct; and

(d) a process to identify consistent failure to meet the relevant standards of conduct and the taking of appropriate remedial action.

5.5 Code operators must reasonably regularly monitor implementation of and compliance with the:

(a) standards of conduct; and

(b) disciplinary policy.

5.6 Code operators must reasonably regularly review the:

(a) standards of conduct; and

(b) disciplinary policy

and, where necessary, update or amend the standards of conduct or disciplinary policy, as the case may be, to ensure that they continue to meet the Mail Integrity Objectives.

## **6 Security of Mail**

6.1 Notwithstanding the other requirements of this Code, Code operators must establish, maintain and adhere to such other policies and procedures as may reasonably be necessary to facilitate achievement of the Mail Integrity Objectives, in particular in relation to the security of relevant premises, and the use of vehicles and equipment in the collection, conveyance or delivery of Code Postal Packets.

6.2 Code operators must allocate responsibility to specific personnel within their organisations for the implementation of and compliance with the policies and procedures specified in paragraph 6.1.

6.3 The policies and procedures should include:

(a) regular risk assessment;

(b) the maintenance of records so that Code operators can identify, as far as is reasonably practicable, which Relevant Employees were responsible for the conveyance, receipt, collection, sortation, delivery or handling of specific Code Postal Packets that have been interfered with; and

(c) the measures to be taken, including monitoring, to prevent or detect loss or theft of, damage to, or interference with, Code Postal Packets from or at premises, vehicles or equipment.

6.4 Code operators must reasonably regularly review the policies and procedures and, where necessary, update or amend those policies and procedures to ensure that they continue to meet the Mail Integrity Objectives.

## **7 Information and Reporting Requirements**

7.1 All incidents of loss or theft of, damage to, or interference with Code Postal Packets must be recorded in reasonable detail.

7.2 Without prejudice to the generality of paragraph 7.1, information to be recorded in relation to Serious Incidents includes:

(a) the date, time and place of the incident;

(b) the number of (or where the precise number is not known, a reasonable estimate of the number of) Code Postal Packets the subject of the incident;

(c) as far as is reasonably practicable, the Relevant Employees involved in the conveyance, receipt, collection, sortation, delivery or handling, as the case may be, of the Code Postal Packets the subject of the incident; and

(d) any other particulars relating to the incident which it would be reasonable to record, including the factual circumstances in which the incident occurred.

7.3 Incidents which constitute Serious Incidents (together with details of the date, time and place of the incident and the number of, or a reasonable estimate of the number of, Code Postal Packets the subject of the incident) are to be reported to Ofcom as soon as reasonably practicable and, in any event, within 48 hours of the Code operator becoming aware of their occurrence. The information required to be recorded in accordance with paragraphs 7.2(c) and 7.2(d) and any other information in relation to the incident that Ofcom may require should be reported to Ofcom as soon as reasonably practicable.

7.4 In respect of each period of three months in any year (each year ending on 31 March), each Code operator must submit to Ofcom (as soon as reasonably practicable, and in any event within 28 days, after the end of each such period) a report detailing any prosecutions which that Code operator has instigated in the relevant period and provide such information in relation to any relevant incident and prosecution that Ofcom may require.

7.5 Code operators must reasonably regularly review the information recorded under this paragraph 7 with a view to identifying any trends, patterns or other notable features (such as above average incident levels at certain premises).

7.6 Code operators must submit to Ofcom and the Council annual reports not later than 3 months from the end of the year (being 31 March) to which those reports relate, which include:

(a) the number of (or where precise numbers are not known, reasonable estimates of the numbers of) Code Postal Packets during the relevant year which were lost, stolen, damaged or interfered with; and

(b) details of any trends, patterns or other notable features (such as above average incident levels at certain premises) in relation to the incidence of loss or theft of, damage to, or interference with, Code Postal Packets.

For the purposes of these reports, the references to “lost” and “loss” exclude items that are delivered after 15 working days of their due day of delivery and within the reporting year. Such items are to be reported in these reports as “substantially delayed”.

7.7 Code operators must also submit to Ofcom and the Council with each annual report submitted under paragraph 7.6, a statement of the measures that the Code operator intends to take to remedy any failures or patterns of failure to achieve the Mail Integrity Objectives and to reduce the numbers of Code Postal Packets lost, stolen, damaged or interfered with.

7.8 Code operators must allocate responsibility to specific personnel within their organisations for meeting the recording, reporting and other requirements of this paragraph 7.

## **8 Agents and Sub-Contractors**

8.1 Each Code operator shall ensure that, so far as is reasonably practicable, all of:

(a) its franchisees, agents or sub-contractors (if any) who are involved in the conveyance, receipt, collection, sortation, delivery or handling of Code Postal Packets, comply with this Code as if this Code applied to the franchisee, agent or sub-contractor; and

(b) its agents or sub-contractors (if any) who are responsible for providing Relevant Employees to work for the Code operator, comply with this Code as if this Code applied to such agent or sub-contractor.

8.2 Where the franchisee, agent or sub-contractor is a Code operator, it shall be sufficient for the Code operator which lets the franchise, appoints the agent or engages the sub-contractor, as the case may be, to rely on the direct application of this Code to that Code operator in fulfilment of its obligations under paragraph 8.1(a).

### ***Table of terms defined in the Act***

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

<b><i>Defined term</i></b>	<b><i>Section</i></b>
<i>Letter</i>	<i>65(1)</i>
<i>Ofcom</i>	<i>90</i>
<i>Postal packet</i>	<i>27(2)</i>
<i>Universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>