



# Proposed direction relating to exceptions to the postal deliveries Universal Service Obligation and approval of alternative delivery points

Consultation

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## Section 1

# Summary

- 1.1 The Postal Services Act 2011 (“the Act”) sets out that as part of the universal postal service in the United Kingdom, there must be a delivery every Monday to Saturday of letters, and every Monday to Friday of other postal packets to the home or premises of every person or to delivery points approved by Ofcom. Ofcom secures this by designating Royal Mail as the universal service provider (“USP”) and by imposing on it a designated USP condition (“DUSP condition”) which, among other things, requires it to make daily deliveries.
- 1.2 However, Section 33(2)(b) of the Act states that the obligation to make daily deliveries does not need to be met in such geographical conditions or other circumstances as Ofcom consider to be exceptional.<sup>1</sup> Ofcom can specify the circumstances we consider to be exceptional by making a direction.
- 1.3 The universal service obligation, fulfilled by Royal Mail, is central to the role that post plays in society and is relied upon by many residential users and small and medium businesses. Ofcom’s ‘Review of Postal Users’ Needs’, published in March 2013, found that post is highly valued by residential users and businesses across the UK.<sup>2</sup> Ofcom takes the issue of exceptions to Royal Mail’s obligations to provide those services very seriously.
- 1.4 The existing direction, which was made by Ofcom on 23 February 2012 (the “Ofcom Deliveries Direction”), will expire on 31 December 2013. We consider that there is an ongoing need to have clear rules and procedures that govern the exceptions to the delivery obligations (“delivery exceptions”).
- 1.5 At the same time as Ofcom made the Ofcom Deliveries Direction we also issued a formal approval under DUSP condition 1.4.1 and 1.4.2 regarding approval of identifiable delivery points for delivery of postal packets where delivery to the original addressee cannot be made (the “existing approval”).<sup>3</sup> Ofcom’s existing approval has no expiry date. However, we have reviewed it along with the Ofcom Deliveries Direction because there are close links between the two.
- 1.6 This consultation document comprises our formal notification of our proposal to make a direction specifying the circumstances we consider to be exceptional, a formal notification of our proposal to give an approval of alternative delivery points, and an explanatory statement setting our reasons for each proposal and the effect of the proposals.
- 1.7 In general, subject to consultation responses, we consider that the current arrangements are proportionate and effective. However, we have identified a number of areas where we can make improvements. In particular, we have taken account of the proportion of delivery exceptions which are likely to relate to rural users (e.g.

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<sup>1</sup> Section 33(3)(b) Postal Services Act 2011.

<sup>2</sup> Ofcom, *Review of Postal Users’ Needs – Statement*, March 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-user-needs/statement/statement1.pdf>.

<sup>3</sup> Annex 2 in <http://stakeholders.ofcom.org.uk/binaries/consultations/posta-direction/statement/direction.pdf>.

difficulty of access due to private roads, island locations etc) and our duties in relation to such users. The improvements we have identified include:

- setting out all the relevant requirements relating to delivery exceptions in the direction itself, rather than relying on references in policy documents;
- no longer differentiating between permanent and temporary delivery exceptions, a distinction which had little practical effect;
- clearly distinguishing between the circumstances which we consider to be exceptional, and the processes and procedural matters we require in association with determining specific cases;
- defining clearer thresholds where the existing policy is unavoidably dependent on terms that may be considered subjective (for example, when a road is in “poor condition” and what alternative delivery arrangements are “reasonable”); and
- allowing postal users to seek a review and appeal of an exception at any time (currently there is a time limit after which no such reviews or appeals can be made) and ensuring long term exceptions are reminded of the right of review on a regular basis;
- requiring steps to be taken to protect users, particularly users whose circumstances may mean that they are vulnerable;
- ensuring the deliveries direction covers all the circumstances envisaged in the previous regulatory framework, for example to account for delivery points which are not secure;
- reducing repetition in the drafting; and
- making the direction permanent rather than time limited as is currently the case.

1.8 Subject to consultation responses, we also consider that the current alternative delivery points approval is proportionate and effective. However, we propose the following changes to improve clarity:

- removing duplication within the approval and also between the approval and the deliveries exceptions direction;
- ensuring the approval covers all the circumstances envisaged in the previous regulatory framework, for example to account for multi-occupancy addresses; and
- defining clearer thresholds where the existing policy is unavoidably dependent on terms that may be considered subjective (for example, when a delivery point is “reasonably close” and on what basis it is “suitable”).

1.9 This consultation comprises:

- an explanatory statement setting out our reasons for proposing to make the direction, and the effect of the proposals in the main body of the document;
- our formal notification of our proposed direction is at Annex 4; and

- our formal notification of our proposed approval of alternative delivery points is at Annex 5.
- 1.10 We seek feedback from interested parties. Ofcom invites comments on these proposals by 22 November 2013.
- 1.11 We are also consulting on exceptions to the postal collections universal service obligation and that consultation was published alongside this document.

## Section 2

# Introduction

## Relevant background

- 2.1 As noted above, the Act sets out that as part of the universal postal service in the United Kingdom, there must be a delivery every Monday to Saturday of letters, and every Monday to Friday of other postal packets.<sup>4</sup> We secure this by designating Royal Mail as the universal service provider and by imposing on it a designated USP condition (“DUSP condition”) which, among other things, requires it to make daily deliveries to the home or premises of every person or to alternative delivery points approved by Ofcom. However, Section 33(2)(b) of the Act states that the obligation to make daily deliveries does not need to be met in such geographical conditions or other circumstances as Ofcom consider to be exceptional.<sup>5</sup>
- 2.2 Ofcom specifies the circumstances we consider to be exceptional by making a direction under DUSP condition 1.3.2. The Ofcom Deliveries Direction will expire on 31 December 2013.
- 2.3 Ofcom’s existing approval of alternative delivery points was also given on 23 February 2012. It has no expiry date. However, we have reviewed it along with the exceptions direction because there are close links between the two.
- 2.4 As noted above, Ofcom takes very seriously the issue of exceptions to the universal service obligation to make deliveries. Although exceptions to the deliveries obligation represent a very small proportion (0.01%) of all addresses,<sup>6</sup> it is important that the circumstances Ofcom considers to be exceptional are clearly set out for users and Royal Mail.
- 2.5 We provisionally consider that there is an ongoing need to specify exceptions to the universal service obligation to deliver letters or postal packets to every home or premises every working day, and to approve certain alternative delivery points.
- 2.6 The existing direction deals not only with the circumstances which Ofcom consider to be exceptional, but also with various procedural matters and obligations on Royal Mail to make alternative arrangements for those whose home or premises are subject to an exception. On this point, at the time of issuing this consultation, the period for comments on a separate consultation had just closed, (7 October 2013).<sup>7</sup> This consultation proposes to amend the DUSP condition to add a new provision DUSP 1.3.2A, to read:

“OFCOM may by direction impose requirements for the universal service provider—

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<sup>4</sup> Requirement 1, section 31, Postal Services Act 2011.

<sup>5</sup> Section 33(2)(b) Postal Services Act 2011.

<sup>6</sup> There were 3,000 delivery exceptions (taken from Royal Mail’s annual list of exceptions 2012) and Royal Mail delivers to around 29 million addresses in the UK (<http://www.royalmailgroup.com/about-us/who-we-are-0>).

<sup>7</sup> *Technical and minor amendments in postal regulation - Notifications of proposed technical and other minor amendments to the Universal Postal Service Order and related conditions*, (Ofcom) 5 September 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/post/summary/condoc.pdf>.

- (a) to establish and comply with procedures in relation to determining whether the circumstances specified in any direction issued under DUSP 1.3.2 have arisen in any particular case;
  - (b) to establish and comply with reporting and notification obligations in relation to such exceptions; and
  - (c) to make alternative delivery or collection arrangements where appropriate.”
- 2.7 The intention of this change is to make it clearer that Ofcom’s direction-making power may be used to require the universal service provider to make arrangements of this type, and enable us to separate the definition of what is “exceptional” from associated procedural matters. This consultation document assumes that the amendment will be implemented as Ofcom proposed. However, clearly, that is subject to Ofcom’s review of all consultation responses on the change to add DUSP condition 1.3.2A.
- 2.8 We therefore propose to issue a direction to replace the Ofcom Deliveries Direction, under DUSP Condition 1.3.2, and, (subject to the consultation responses to our separate consultation proposing a new DUSP condition 1.3.2A) under DUSP condition 1.3.2A. We are also proposing to give an approval of alternative delivery points, which would replace the existing approval.
- 2.9 The structure of this document is as follows:
- Section 3 sets out the legal framework;
  - Section 4 sets out our assessment of the Ofcom Deliveries Direction and proposed changes;
  - Section 5 sets out our assessment of the current approval and proposed changes;
  - Annex 4 is our formal notification of our proposed direction; and
  - Annex 5 is our formal notification of our proposed approval.
- 2.10 Ofcom invites comments on the proposed direction and approval by 22 November 2013. Following our consideration of the responses we will aim to issue a decision before 31 December 2013.

## **General impact assessment**

- 2.11 The analysis presented in Sections 4 and 5 of this document constitutes an impact assessment, as defined in section 7 of the Communications Act 2003 (the “2003 Act”).
- 2.12 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the 2003 Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the



great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see our guidelines.<sup>8</sup>

- 2.13 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, in relation to what we propose.

## Equality impact assessment

- 2.14 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply<sup>10</sup>. Equality impact assessments (EIAs) assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity. We have given careful consideration to whether or not our proposals to extend the direction and replace the approval will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. Our assessment of the potential impact on equality of certain groups is outlined below.
- 2.15 While we have not received any evidence to suggest that the Ofcom Deliveries Direction relating to exceptional circumstances for deliveries has been to the detriment of any particular group in society, certain aspects of the direction have the potential to impact protected groups more than the rest of society. For example, certain people may find it difficult to travel further to obtain their mail if they do not receive a delivery to the door.
- 2.16 We provisionally consider that for the most part, any such impacts may be mitigated by other aspects of the direction, and that where there is no alternative the impacts represent a proportionate means of achieving a legitimate aim (the protection of the health and safety of Royal Mail employees and the avoidance of the universal service representing a disproportionate cost to society). Ofcom also has a duty to further the interests of consumers and citizens and issuing a direction setting out when exceptions can be made provides clarity and certainty to Royal Mail and users and reduces Royal Mail's ability to apply inconsistent exceptions or exceptions for reasons other than those set out in the direction. Also, Royal Mail itself is subject to the Equality Act 2010 in relation to its provision of services to the public.
- 2.17 We set out in section 4 how we propose to deal with these matters in our proposed direction.

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<sup>8</sup> *Better Policy Making – Ofcom's approach to Impact Assessment*, Ofcom, 21 July 2005 [http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better\\_Policy\\_Making.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf).

## Section 3

# Relevant legal framework

## The universal service

3.1 Section 31 (Minimum requirements) of the Act “sets out the services that must, as a minimum, be included in a universal postal service”. It goes on to set out seven minimum requirements. In this document we are concerned with “Requirement 1: delivery of letters or other postal packets”, which states:

(1) At least one delivery of letters every Monday to Saturday - (a) to the home or premises of every individual or other person in the United Kingdom, or (b) to such identifiable points for the delivery of postal packets as Ofcom may approve.

(2) At least one delivery of other postal packets every Monday to Friday to the places within paragraph 1(a) or (b).

(3) The references in this requirement to the delivery of letters or other postal packets include the delivery of packets posted outside the United Kingdom.

3.2 Ofcom secures this by designating Royal Mail as the universal service provider and by imposing on it a “DUSP condition” which, among other things, requires it to make daily deliveries.

3.3 Under Schedule 6 paragraph 2(1), Ofcom’s power to impose a regulatory condition includes a power to impose a requirement to comply with directions given by Ofcom with respect to the matters to which the condition relates, and to impose obligations framed by reference to the approval of Ofcom.

## Exceptions to the universal service delivery obligation

3.4 Under section 33(2) of the Act:

“The requirements in section 31 in respect of the delivery or collection of letters or other postal packets (requirements 1 and 2):

....do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.

3.5 In accordance with section 33(2) of the Act and the Order, DUSP condition 1.3.2 permits the following exceptions to Royal Mail’s universal service obligations:

“The requirements in this DUSP Condition in respect of the delivery or collection of postal packets and the target routing times of services do not need to be met:

in such geographic conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes.”

## Related matters

3.6 The existing direction deals not only with the circumstances which Ofcom consider to be exceptional, but also various procedural matters and obligations on Royal Mail

relating to alternative delivery arrangements for those whose home or premises are subject to an exception. As at the date we are publishing this consultation, a separate consultation has just closed on 7 October 2013,<sup>9</sup> on amending the DUSP condition to add a new provision, DUSP condition 1.3.2A, to read:

“Ofcom may by direction impose requirements for the universal service provider—

- (a) to establish and comply with procedures in relation to determining whether the circumstances specified in any direction issued under DUSP 1.3.2 have arisen in any particular case;
- (b) to establish and comply with reporting and notification obligations in relation to such exceptions; and
- (c) to make alternative delivery or collection arrangements where appropriate.”

3.7 This would make it clearer that Ofcom’s direction-making power may be used to require the universal service provider to make arrangements of this type, and enable us to separate the definition of what is “exceptional” from associated procedural matters. The current consultation assumes that the amendment will be implemented as Ofcom proposed, but that is clearly subject to Ofcom’s review of all consultation responses.

## Approval of alternative delivery points

3.8 Under the DUSP condition, the possibility of delivery to alternative delivery points, rather than to the home itself or the premises themselves, arises in relation to DUSP 1.2.2 (which defines when “delivery” is effected), DUSP 1.4.1 (which imposes the universal service delivery obligation in relation to letters) and DUSP 1.4.2 (which imposes the universal service delivery obligation in relation to other postal packets). In relation to all of these, Ofcom’s approval of the alternative delivery point is required.

## Test for giving a direction or approval

3.9 Paragraph 4 of Schedule 6 of the Act sets out the procedure which Ofcom must follow to give a direction affecting a regulatory condition imposed on a postal operator, including where Ofcom wishes to give a direction under DUSP condition 1.3.2 and 1.3.2A or give an approval for the purposes of DUSP 1.2.2(c), 1.4.1(a) or 1.4.2(a).

3.10 Under paragraph 4(2) of Schedule 6, Ofcom may only give a direction, approval or consent if satisfied that to do so:

- is objectively justifiable;
- does not discriminate unduly against particular persons or a particular description of persons;
- is proportionate to what it is intended to achieve; and

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<sup>9</sup> *Technical and minor amendments in postal regulation - Notifications of proposed technical and other minor amendments to the Universal Postal Service Order and related conditions*, (Ofcom) 5 September 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/post/summary/condoc.pdf>.

- is transparent in relation to what it is intended to achieve.
- 3.11 In accordance with paragraph 4(3) of Schedule 6, before the direction or approval is given, Ofcom must publish a notification stating that there is a proposal (by Ofcom) to give the direction or approval, which:
- sets out Ofcom's proposal and its effect;
  - gives reasons for the making of the proposal; and
  - specifies the period within which representations may be made about the proposal. This must be at least one month beginning with the day after the day the notification is published, unless there are exceptional circumstances justifying a shorter period.

## General duties

- 3.12 Ofcom's duty to secure the provision of a universal postal service is set out in section 29 of the Act. In this respect, section 29(1) provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service.
- 3.13 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be Ofcom's principal duty, in carrying out our functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 3.14 This principal duty applies also to functions carried out by us in relation to postal services. Section 3(6A) of the 2003 Act provides that where we are carrying out any of our functions in relation to postal services, the duty under section 29 of the Act takes priority over our general duties in the 2003 Act in the case of conflict between the two.
- 3.15 In performing our general duties, we are also required under section 3(4) of the 2003 Act to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations appear potentially relevant, including:
- the opinions of consumers in relevant markets and of members of the public generally; and
  - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 3.16 Section 3(5) of the 2003 Act provides that in performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 3.17 Pursuant to section 3(3) of the 2003 Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.

3.18 In this regard, we note Ofcom's general regulatory principles<sup>10</sup> including in particular the following in the present context:

- ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
- seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and
- consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.

3.19 Finally, we have an ongoing duty under section 6 of the 2003 Act to keep the carrying out of our functions under review with a view to ensuring that regulation by Ofcom does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.

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<sup>10</sup> A link to the full list of the principles can be found here: <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>.

## Section 4

# Ofcom's assessment and proposed changes to the direction

## Introduction

4.1 The current Ofcom Deliveries Direction has been (with some changes) in place since 31 January 2003. It was last reviewed by Postcomm in 2006 and last extended on 23 February 2012<sup>11</sup> by Ofcom. The direction and associated policy set out:

- the duration of the direction;
- the circumstances in which exceptions can be made;
- a requirement to offer reasonable alternative delivery arrangements;
- a requirement to notify users of the appeal process;
- a requirement to notify Ofcom in writing if an exception affects more than one address for more than one working day;
- a requirement to report to Ofcom and to the Council (now Consumer Futures) where deliveries have been suspended for twelve months or more; and
- details of the appeals process.

## Categories of exception

4.2 The Ofcom Deliveries Direction specifies three categories for exceptions to the universal service daily delivery obligation:

- hazard to health and safety which makes it unreasonable to require daily deliveries (for example, a dangerous dog or dangerous terrain);
- difficulty of access for example:
  - premises which are located on an island or other place only accessible by air or boat where:
    - there is a limited scheduled air or ferry service or
    - there is no public transport service or
    - access via premises owned by a third party is not possible
  - premises which require round trips over private roads or tracks (whether or not they are the subject of public rights of way) which are in poor condition (but not in such poor condition as to preclude delivery on health and safety grounds) and are in excess of a distance

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<sup>11</sup> <http://stakeholders.ofcom.org.uk/consultations/direction-extension/direction>.

of 15 minutes by a vehicle driven in a safe manner (or by foot if access by vehicle is not reasonably practicable);<sup>12</sup> and

- customer request.
- 4.3 An individual exception or suspension may include one or more of these categories i.e. an exception could be made on the grounds of both health and safety and difficulty of access.
- 4.4 The Ofcom Deliveries Direction also specifies whether the exception is of a long or short term nature.
- 4.5 Table 1 below sets out the number of health and safety and long term difficulty of access delivery exceptions in place at October 2012.<sup>13</sup>

**Table 1: Number of delivery exceptions**

Categories of exception	2012
Difficulty of Access	2,165
Long Term Health & Safety	388
Short Term Health & Safety	447
<b>Total</b>	<b>3,000</b>

Source: Royal Mail (October 2012)<sup>14</sup>

- 4.6 Delivery exceptions do not currently cover circumstances that might be described as emergencies, such as widespread flooding, epidemic disease or security alerts. This is because section 33(3)(a) of the Act states that nothing in section 31 of the Act on the minimum requirements is to be read as "requiring a service to continue without interruption, suspension or restriction in cases of an emergency". We have reflected this in the DUSP condition. However, DUSP 1.11.1 requires the universal service provider to maintain appropriate contingency plans to ensure as far as practicable the provision of the universal service (including daily deliveries) without interruption, suspension or restriction in the event locally, regionally or nationally of an emergency, and to implement those plans as appropriate where such events occur.

## Ofcom's assessment and proposals

### User satisfaction with the current arrangements

- 4.7 In order to consider whether the current arrangements are satisfactory to users of the universal postal service we have:
- reviewed relevant Ofcom market research;

<sup>12</sup> There is no limit on the additional distance travelled by a postal delivery vehicle to reach an address over a public road or over a private road to the address which is maintained in adequate condition. Customers affected by this rule may receive a daily delivery to an approved alternative delivery point.

<sup>13</sup> Currently Temporary Difficulty of Access and Customer Request exceptions are not included in the annual report, in line with the requirements of the Ofcom Deliveries Direction.

<sup>14</sup> From Royal Mail's website:

<http://www.royalmailgroup.com/sites/default/files/Comparison%20of%20delivery%20points.pdf>



- reviewed complaints received by Ofcom; and
  - asked Consumer Futures, the consumer organisation with responsibility for postal users' issues, for its opinion.
- 4.8 Ofcom's quantitative residential 'tracker' survey from 2013 includes research into users' satisfaction with the provision of deliveries. This showed that 71% of UK users were very or fairly satisfied with the time of delivery, compared to 73% of rural users and 85% of users located off-shore.<sup>15</sup> It also showed that 79% of UK users, compared to 92% of off-shore users and 78% of rural users, were very or fairly satisfied with the reliability/consistency of deliveries.<sup>16</sup> We consider that these general levels of satisfaction are encouraging, but would not capture the concerns of users directly affected by exceptions as there are such a small number of these.
- 4.9 We have reviewed the complaints received directly by Ofcom since we took over responsibility for postal regulation in October 2011. Out of a total of 1,011 complaints on postal issues, only ten complaints related to delivery exceptions. Three of these complaints<sup>17</sup> related to individual Delivery Office Managers failing to inform users of the correct appeals process. In these cases, we informed the complainant of the appeal process and highlighted the failures to Royal Mail's compliance team. Royal Mail took steps to ensure Delivery Office Managers were reminded to comply with the correct process going forward and to resolve the individual complaints. Royal Mail provided Ofcom with relevant correspondence in each case to show that these cases had been resolved, or agreement reached on alternative arrangements, with the addressee. We have also received one letter from an MP which related to a delivery exception. We have also reviewed the data<sup>18</sup> provided by the Citizens Advice consumer service.<sup>19</sup> The number of contacts received about failure to deliver to a secure point (e.g. a letterbox) represented a very small proportion<sup>20</sup> of total contacts about Royal Mail. It should be noted that the Citizens Advice consumer service does not separately identify delivery exception contacts.
- 4.10 We have also reviewed complaints received by Royal Mail. However, Royal Mail doesn't deal with complaints relating to delivery exceptions through its central Customer Services. Instead it handles such complaints through its local delivery offices. Royal Mail has informed us<sup>21</sup> that most cases are resolved before or at stage 1, while stage 2 allows Royal Mail to conduct an independent review of its original decision and, if necessary, further health and safety assessments. Stage 3 of the process is the final fall back for unresolved cases and Ofcom expects to only deal with the most difficult cases. To date, Ofcom has only dealt with one formal stage 3 appeal. Prior to that, Postcomm dealt with seven stage 3 appeals between 2003 to 2011. Additionally, Royal Mail notifies Ofcom of cases involving temporary suspensions, where the suspension has lasted more than one working day and where the suspension affects more than one address. For example, where there is a dangerous dog roaming free in a street so the postman cannot deliver to any of the

<sup>15</sup> The 'off-shore locations' comprise the Scottish Islands and the Isle of Wight.

<sup>16</sup> <http://stakeholders.ofcom.org.uk/market-data-research/statistics/>.

<sup>17</sup> From September 2012 to September 2013 (two complaints received by Ofcom in January 2013 and one in April 2013).

<sup>18</sup> Based on number of contacts received by the consumer service between April 2012 and March 2013 and which were categorised as concerning Royal Mail and failure to deliver to a secure point.

<sup>19</sup> The Citizens Advice consumer service provides free, confidential and impartial advice on consumer issues.

<sup>20</sup> The actual numbers and data were provided to us on a confidential basis.

<sup>21</sup> Feedback from Royal Mail to Ofcom, correspondence dated 5 July 2013.



addresses. Between January and July 2013, Royal Mail notified us of ten such cases. None of these notifications have been associated with appeals to Ofcom by those affected and in each case Royal Mail has made interim delivery arrangements and worked with addressees to resolve the issue.

- 4.11 Consumer Futures has told us that it routinely reviews the annual reports provided by Royal Mail in order to identify if there have been any marked increases in the number of delivery exceptions and also would review any cases brought to its attention by its regional offices in the Nations.<sup>22</sup> It has confirmed that since the creation of Consumer Focus (the forerunner of Consumer Futures) in 2008, there have been no marked increases in numbers of exceptions and it has not identified any concerns associated with exceptions. Consumer Futures did raise a general concern in relation to ensuring that Royal Mail follows the correct process when a delivery point becomes subject to exceptional circumstances.<sup>23</sup> However, its overall view is that the current approach to delivery exceptions is working effectively and that the detail that it currently receives is necessary to help it monitor the number of delivery exceptions that are currently in place.

### **Appropriate categories of exceptions**

- 4.12 In our review we have considered whether the current categories of delivery exception are appropriate and whether they provide sufficient transparency of the reasons for the delivery exceptions. In summary, we propose to:
- remove the distinction between long term and short term exceptions;
  - provide more detail on the threshold for health and safety exceptions;
  - ensure the direction covers all the circumstances envisaged in the previous regulatory framework, for example to account for delivery points which are not secure; and
  - specify more detailed sub-categories for difficulty of access.
- 4.13 This does not change the fact that, as we set out in paragraph 4.3 above, an individual exception may include one or more of these categories i.e. an exception could be made on the grounds of both health and safety and difficulty of access.

### **Long-term and short-term exceptions**

- 4.14 Our review has identified that the distinction between long and short term exceptions in the existing direction has little practical impact on Royal Mail. The distinction which matters most is that between delivery exceptions which have been in place for less than twelve months and those which have been in place for twelve months or more, since it is at twelve months that more detailed reporting and review obligations arise.
- 4.15 We propose to remove the distinction between long term and short term categories in our definition of exceptional circumstances, and to refer where relevant merely to the length of time for which exceptional circumstances have existed.

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<sup>22</sup> This is in addition to considering any issues brought to their attention e.g. by press articles, MP contact etc.

<sup>23</sup> The proposed direction clarifies the regulatory requirements in relation to exceptions making it clear what is required of Royal Mail when exceptional circumstances arise. We, and Consumer Futures, will continue to monitor exceptions going forwards.

## Health and safety category

- 4.16 Ofcom provisionally remains of the view that health and safety risks should in principle be considered exceptional circumstances such that the universal service provider should not be required to make daily deliveries to the affected delivery points.
- 4.17 Health and safety exceptions may arise in relation to relatively permanent physical access conditions at the premises, such as the need to cross difficult or dangerous terrain to reach the premises, or from the rough condition of a track leading to the premises.
- 4.18 As shown in Table 1 above, 835 delivery points were affected by health and safety delivery exceptions. Of these:
- 608 delivery points were categorised by Royal Mail as dangerous, e.g. rough tracks, frequent road traffic accidents by premises);
  - 277 were related to health and safety risks posed by dogs or livestock at the delivery point;
  - 105 delivery points were exceptions due to abusive customers; and
  - 157 delivery points were exceptions due to crime, e.g. where a threat to Royal Mail's employees has been reported to the local police.<sup>24</sup>
- 4.19 Please note some delivery points are treated as exceptions in more than one of the sub-categories above.
- 4.20 Ofcom considers it the responsibility of the user (or sometimes of a third party) – and not of Royal Mail – to keep access to their property in reasonable condition. In some cases involving rough tracks it may be the case that a daily journey by a Royal Mail postal delivery vehicle would increase health risks to staff (e.g. of back injury) to an unacceptable level, whereas occasional access to the premises by delivery vehicles making other types of delivery may lead to acceptable levels of health and safety risks.
- 4.21 Health and safety exceptional circumstances also arise in less permanent circumstances. Examples would be where the occupier keeps dangerous dogs or where Royal Mail's employees have been subjected to threatening behaviour or to attacks.
- 4.22 We consider that the direction could be clearer than it is at present about when a health and safety-related exception is appropriate. In particular, it could be clearer that the exception arises when a hazard arises, rather than only after the hazard has been formally assessed by Royal Mail. Therefore, at paragraphs 5 and 6 of the proposed direction we have set out that a delivery exception for health and safety reasons is one that involves an "immediate hazard to the health or safety of employees, sub-contractors or agents of Royal Mail such that it is not reasonable to require them to make the delivery" where there is "no reasonable means of overcoming the hazard"

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<sup>24</sup> This more detailed data is from Royal Mail's 2012 Delivery Exceptions report which is not published as it contains confidential data.

- 4.23 We also intend to clarify when and how an assessment must be made. While health and safety exceptional circumstances may arise suddenly, such that a delivery must be suspended immediately to avoid harm to the postal worker Ofcom considers that Royal Mail ought to provide for competent personnel to carry out a formal health and safety assessment within two weeks of the circumstances arising, and proposes to direct that this be the case. Previously, there was no such time limit imposed on Royal Mail.

#### Delivery points with insufficient security category

- 4.24 The existing deliveries direction does not provide for an exception to arise when the delivery point concerned is not secure – for example, when the premises concerned are temporary (e.g. a tent) or derelict. However, the existing approval of alternative delivery points makes it clear that it is foreseen that Royal Mail will not have to deliver in these circumstances, since it approves as a delivery point the point to which Royal Mail returns such items.
- 4.25 We provisionally consider it appropriate that the delivery exception should provide for an exception to the delivery obligation to arise where the delivery point concerned is insufficiently secure to receive postal packets and we have provided for this in paragraph 7 of the proposed direction.

#### Difficulty of access category

- 4.26 As shown in Table 1 above, Royal Mail reported in 2012 that 2,165 delivery points were affected by long term difficulty of access delivery exceptions. These break down as follows:
- Lack of road access, i.e. islands without scheduled services that allow six days per week deliveries. Currently 681 delivery points are affected by lack of road access, predominately in Scotland (596 of the 681 delivery points).
  - Inadequately maintained private roads currently accounts for 1,484 delivery points, typically in rural areas.<sup>25</sup>
- 4.27 Please note some delivery points are treated as exceptions in more than one of the sub-categories above. There are also exceptions relating to ‘other’ difficulty of access circumstances (e.g. locked gate or overgrown garden), but the current policy statement classifies these as short term exceptions which are not subject to formal reporting requirements.
- 4.28 Ofcom provisionally remains of the view that difficulty of access should in principle be considered exceptional circumstances such that the universal service provider should not be required to make daily deliveries to affected delivery points. The alternative would be to maintain an obligation on the universal service provider which in some cases would be impossible to meet, and in others could not be met without disproportionate cost and disruption in the provision of the universal service.

#### *Difficulty of access: lack of road access*

- 4.29 Some places in the United Kingdom, (usually islands), are not reachable by land. Access relies on scheduled air and/or ferry services from the Great Britain or

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<sup>25</sup> This more detailed data is from Royal Mail’s 2012 Delivery Exceptions report which is not published as it contains confidential data.

Northern Ireland mainland. For some of these places, a scheduled service does not run every day from Monday to Saturday. In order for Royal Mail to collect from these locations six days a week, it would be necessary to make alternative arrangements to normally scheduled travel services. In practice, this could mean creating new travel infrastructure on days when existing services do not run.

- 4.30 Ofcom provisionally remains of the view that it would not be reasonable to require Royal Mail to convey letters on other days, when there is no operationally compatible scheduled transport service and there are no alternative means of access. However, we also remain of the view that it is appropriate for such users to have a delivery at least once a week. The proposed direction therefore provides, in paragraph 8, that:
- Delivery points located in places that can only be accessed by water or air, from the nearest delivery office on the mainland of Great Britain or the mainland of Northern Ireland, should be classed as exceptions to the extent that there is no operationally compatible service on the day concerned.
  - The exception does not exist on the days when an operationally compatible scheduled air or ferry service is available, so deliveries are required on those days.
  - In cases where there is no service, or any service runs less than once a week (for example, if ferry services stop in winter), Royal Mail must make arrangements to deliver once a week.

*Difficulty of access: private roads*

- 4.31 Some addresses are significantly more difficult to reach than others. For addresses where delivery is difficult because of poor access conditions along a private road or track, Ofcom provisionally remains of the view that it is proportionate for there to be some kind of limit. However, we consider that this should continue to only apply to private roads that are not maintained in adequate condition. We continue to consider that there should be no limit on the additional road distance travelled on foot or by a postal delivery vehicle to reach an address, over a footpath, public road, or an adequately maintained private road. Currently the Ofcom Deliveries Direction requires “the need to make round trips to premises over private roads or tracks (whether or not they are the subject of public rights of way) which are in poor condition (but not in such poor condition as to preclude delivery on health and safety grounds) in excess of 15 minutes – (i) by a vehicle driven in a safe manner, or (ii) by foot if access by vehicle is not reasonably practical.”
- 4.32 For clarity, transparency and enforceability, we propose some changes to the wording of the direction in relation to this category of exception. This is with a view, in particular, to ensuring that “poor” condition is as precise a term as possible and that the exception cannot be triggered merely by reducing speeds unnecessarily.
- 4.33 Our provisional is to accept that fifteen minutes remains an appropriate upper limit for the travelling time in these circumstances. However, in order to ensure that only journey time and not time spent at the delivery point itself is taken into account, we propose that this should be calculated as a limit of 7.5 minutes for a single leg of the journey (implying a round trip of 15 minutes) on the time Royal Mail has to spend delivering on foot, or by the vehicle used for the delivery route, along private roads or tracks where conditions are poor. In addition, it should be noted that if there are other properties further along the same private road or track then the 7.5 minute limit begins again each time starting from the previous property in each case.

- 4.34 We provisionally consider that it is reasonable to expect a RM employee to drive a non-off road vehicle to a delivery point which is within 7.5 minutes journey (from the point at which the private road or track conditions become poor), where the conditions mean that the vehicle has to be driven at a speed of five miles per hour or less. We consider this to be a reasonable speed as it is a limit commonly applied to private roads requiring careful driving due to the need for the driver to notice speed humps or other traffic calming measures which require careful observation in order to avoid damage to the vehicle.
- 4.35 For the exception to apply:
- a private road must be in poor condition, which we have defined as meaning it is either unsuited to vehicles that are not specifically designed for off-road use; or safe use by such vehicles requires them to travel at a speed below five miles per hour;
  - the 7.5 minutes is measured by vehicle travelling at the lesser of:
    - a speed that is safe in all the circumstances; and
    - five miles per hour.
  - where vehicular access is not possible, it is measured by foot at a walking pace that is safe in all the circumstances.

*Difficulty of access: other*

- 4.36 Access problems may arise where access to a customer's home or premises has been blocked by the occupier, or where the occupier has made it extremely difficult or impossible for Royal Mail to reach a delivery point at the home or premises. Examples would be where the occupier has locked a gate, blocking entrance to the premises, where there is no letter box and no other delivery point has been provided, or where access can only be achieved via premises owned by a third party, who refuses access.
- 4.37 Ofcom provisionally remains of the view that the universal service provider should not be expected to pay to access premises in order to deliver mail, nor that postal workers should be required to scale fences or other physical barriers. If access is not granted, then the premises concerned should be subject to exceptional circumstances on difficulty of access grounds, and we have provided for this in paragraph 10 of the proposed direction.

Customer request category

- 4.38 Ofcom considers that a daily delivery is provided for the benefit of the occupier of the premises concerned, such that it is inappropriate to force it upon those who do not wish to have it. However, where an alternative arrangement involves a chargeable product or service e.g. a redirection or Keepsafe, the customer will be required to pay the fee and adhere to the terms and conditions of the product or service.
- 4.39 Ofcom provisionally remains of the view that this is an exceptional circumstance. Therefore, for clarity and transparency Ofcom proposes, as set out in paragraphs 11 and 12 of the proposed direction, to specify customer request as exceptional circumstances. The exceptional circumstances will exist only insofar as the occupier

requests and will fall away as soon as the occupier withdraws the request. A previous occupier's request will not bind, for example, a new tenant in the premises.

## **Arrangements for users who may be vulnerable**

- 4.40 The impact of an exception is likely to be greater on some individuals than others. For example, certain users, e.g. due to age, disability or ill health may rely more on postal deliveries or may find it more difficult to travel further to an alternative delivery point such as a delivery office. Also, certain users may find complaining about an exception difficult.
- 4.41 Royal Mail (like all service providers) is subject to the Equality Act 2010 in its provision of services. Also, currently the policy statement, not the direction, requires Royal Mail, when it is contacted directly, to make an effort to reach an arrangement which causes customers who may face the above difficulties minimum difficulty.
- 4.42 We provisionally consider it appropriate to clarify the existing requirements (currently in the policy statement) and therefore to require that when Royal Mail becomes aware of a person who for reasons of age, disability or ill-health may be particularly disadvantaged by the suspension of a daily delivery, Royal Mail should consider and document its view on whether it would be appropriate and proportionate to make deliveries in spite of any exceptional circumstances, and whether alternative arrangements ought to be made. This would mean that Royal Mail would be required to make it clear in its internal guidance for employees that the needs of users whose circumstances may mean that they are vulnerable are relevant to decisions on exceptions. Our provisional approach is in paragraph 13 of the proposed direction.
- 4.43 We have also considered the effect of the review/appeal arrangements on all users and in particular, any specific users who may be disadvantaged in bringing an appeal in respect of any exception made. For example due to age, ill health, disability or where English is not the user's first language. Paragraphs 4.54 to 4.73 below provide the detail, but in summary, we consider that it would be appropriate for the direction to require the universal service provider specifically to make appropriate facilities available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that reason disadvantaged in the review/appeals process.

## **Alternative delivery arrangements**

- 4.44 When Royal Mail considers that exceptional circumstances exist in relation to a home or premises, the Ofcom Deliveries Direction requires it to notify affected persons<sup>26</sup> of its offer to make reasonable alternative delivery arrangements to an approved alternative delivery point. The direction sets out that the alternative delivery point should be clearly identifiable, secure and safe but does not specify specific alternatives.
- 4.45 However, we provisionally consider that the direction should specify more explicitly what alternative delivery arrangements should be offered by Royal Mail to improve transparency and reduce the scope for disputes based on misunderstandings of what Ofcom requires.
- 4.46 In determining what alternative delivery points are appropriate to include in the direction, we have considered whether it is appropriate to require alternative delivery

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<sup>26</sup> Other than where a customer has requested daily deliveries not to be made to their address.

arrangements to be made at all. However, if we did not require Royal Mail to make alternative delivery arrangements, this could lead to the affected persons not receiving any post directed to their home or premises. We consider that this would be disproportionately detrimental to the interests of postal service users.

- 4.47 We have also considered what alternative delivery arrangements it is appropriate and possible for the universal service provider to be required to offer. We note that in many cases, the reason for the exceptional circumstances arising is likely to be due, at least in part, to the circumstances outside of the control of the universal service provider. In light of this, we provisionally consider that it would be appropriate to require the universal service provider to bear only fairly low costs. However, this should not prevent Royal Mail and a user coming to an agreement about such an alternative delivery point, e.g. a roadside box, but will not require Royal Mail to provide it.
- 4.48 We have considered what arrangements are within Royal Mail's control and are proportionate and appropriate to be offered to affected users. We therefore provisionally consider that it would be appropriate and proportionate, when exceptional circumstances other than customer request arise, for Royal Mail to be required to ensure:
- that postal packets be available for collection free of charge from the local delivery office; and
  - that, on the affected person's request, postal packets be redirected free of charge to an alternative address<sup>27</sup> served by the same delivery office.
- 4.49 We also propose that this redirection requirement be subject to a similar proviso as the paid-for redirection service that is required as part of the universal service. Therefore, Royal Mail is not required to redirect postal packets where the provision of the service in relation to those postal packets would create a substantial risk of crime.
- 4.50 Those users whose premises are subject to exceptional circumstances, who are dissatisfied with the arrangements above, may either make an alternative arrangement (e.g. at their own cost provide a roadside box) or may, at their own expense, set up a redirection service to an address outside the local delivery office area.
- 4.51 If a user provides their own roadside box, they are seeking to establish an "alternative delivery point". If Ofcom approves an alternative delivery point, the universal service provider becomes subject to the obligation to deliver to it, (except of course to the extent that exceptional circumstances or an emergency arise.) In order to avoid the burden of approving individual delivery points of this type, Ofcom has approved a type/class of delivery point that can be applied in individual cases.<sup>28</sup> Both the existing alternative delivery point approval, and our proposed version, provide for users to establish alternative delivery arrangements. Ofcom's proposals in relation to approving alternative delivery points are set out in section 5 and our proposed approval is set out in Annex 5.
- 4.52 Our provisional approach is set out in paragraphs 14 and 15 of the proposed direction.

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<sup>27</sup> Which could include a post office.

<sup>28</sup> <http://stakeholders.ofcom.org.uk/consultations/direction-extension/direction>.

## Notifications

- 4.53 Under the existing direction, Royal Mail is required to inform the affected party about its decision to suspend (temporarily or in the long term) daily deliveries to a specific address. Royal Mail must inform the user “where possible in writing” and include an explanation for the suspension, what remedial actions are required before daily deliveries can be reinstated<sup>29</sup> and notify them of “the process of appeal”. We consider it particularly important that Royal Mail notifies all affected persons of the review and appeals process.
- 4.54 Ofcom provisionally considers that it continues to be appropriate to require Royal Mail to notify affected persons of its view that exceptional circumstances exist, their nature, potential remedial action and the review and appeals process. In order to be clear that Royal Mail's view is not final, we think it important that users are notified from the outset that ultimate appeal lies with Ofcom.
- 4.55 We also consider that any notification should continue to be provided in writing. However, we acknowledge that in some cases, the nature of the exceptional circumstances may mean that physical delivery to the premises is not possible. We therefore consider it appropriate to specify the alternative methods of notification which Royal Mail may use, and to require any notification to be done as soon as practicable.
- 4.56 As discussed above, Royal Mail must notify a user of their right to have a delivery exception reviewed as soon as is practicable after the exception arises. However, some of the existing exceptions have been, and will remain, in place for many years. Although, as discussed below, Royal Mail will review exceptions, we consider there is a material risk of confirmation bias<sup>30</sup> in this process, and we are concerned that addressees may not be aware that it is possible to seek a review of the exception at any time. We are concerned in particular that where properties change hands, the new occupant may not be made aware of the possibility of deliveries resuming, for example by taking remedial action in relation to a private road or track leading to the property. These types of addressees would be unlikely to generate complaints to Royal Mail, Ofcom or consumer bodies.
- 4.57 We therefore provisionally propose that Royal Mail should be required to re-notify certain addressees, whose delivery points have been subject to exceptional circumstances for twelve months or more, of their right to seek a review. The notification should set out why the address is an exception, what remedial action would be required to change its status and the right of the customer to appeal to Royal Mail and ultimately Ofcom, if necessary. We have considered which addresses should be re-notified and how often such a notice should be provided. We consider that annual notifications would be too frequent. Occupants of premises subject to long term exceptions are unlikely to need an annual reminder. Also, as set out above, when the exception arises, addresses are provided with a notice which includes details of the review process. If we required a notice to be provided to addresses which had been excepted for twelve months or more, this could lead to them receiving two notices in one year (if the exception was made that year). This could therefore be an unnecessary burden on Royal Mail. However, we do want to ensure addressees (including properties which may have changed ownership) are made

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<sup>29</sup> The reinstatement of delivery would be subject to a further assessment once the remedial actions had been taken.

<sup>30</sup> i.e. the tendency to seek information that confirms existing beliefs and overlook information that refutes them.



aware of their right seek a review on a regular basis. We therefore provisionally consider that a reminder once every two years, given to premises excepted for two years or more (to avoid double notification in any one year), would be sufficient. We consider that the cost of this change to Royal Mail is proportionate since the overall number of delivery exceptions is low, and the cost of notifying affected addressees would be minimal.

- 4.58 The Ofcom Deliveries Direction requires Royal Mail to notify Ofcom of cases involving temporary suspension for health and safety reasons, where the suspension has lasted more than one working day and where the suspension affects more than one address. For example, where there is a dangerous dog roaming free in a street so the postman cannot deliver to any of the addresses. However, in practice Royal Mail has notified Postcomm and Ofcom of multiple exceptions even if it does not relate to health and safety. Between January and July 2013, Royal Mail notified us of ten such cases. None of these notifications have been associated with appeals to Ofcom by those affected and in each case Royal Mail has made interim delivery arrangements and worked with addressees to resolve the issue.
- 4.59 However, Ofcom provisionally remains of the view that this notification obligation is objectively justifiable and proportionate. The burden on Royal Mail is low and such cases are particularly likely to lead to complaints and questions posed directly to Ofcom if Royal Mail does not handle them in an appropriate manner. In such cases, we would need to respond appropriately and on a timely basis. Also, early knowledge of such cases will enable Ofcom to quickly identify any sudden increase in the volume of exceptions which might indicate a possibility that Royal Mail's exceptions policy was being applied more often than was strictly necessary.
- 4.60 Ofcom therefore proposes to require the universal service provider to continue to make such notifications, but for the purposes of transparency, the requirement will cover all exceptions affecting more than one property.
- 4.61 Our provisional approach is set out in paragraphs 16 to 23 of the proposed direction.

## **Reviews and appeals**

- 4.62 Over time, the universal service provider may not be aware of changes to circumstances such that deliveries could resume.
- 4.63 In the current policy statement, for example in paragraphs 4.4 and 4.5, there is a requirement for Royal Mail to review most exceptions annually. We provisionally consider that it remains appropriate for Royal Mail to annually review the circumstances relating to exceptions but this obligation should relate to every exception. We therefore propose to include in the direction the requirement to review all exceptions on an annual basis, for example, to identify whether circumstances have changed, e.g. ferry timetables affecting delivery times or a new user has purchased a property subject to a customer requested exception.
- 4.64 In our current policy statement, for example in paragraph 4.4, we also require Royal Mail to carry out a review on request of whether exceptional circumstances exist. We continue to consider it important that the universal service provider be required to carry out a review if requested and should react on a timely basis to such requests. Therefore, our proposed direction requires Royal Mail to complete a review within one month of a request. It would be open to Royal Mail to consider the extent to which it was appropriate to rely on any information previously obtained in relation to

such a review, or whether new information was needed. The decision would, however, be subject to the normal review and appeals process.

- 4.65 The Ofcom Deliveries Direction requires Royal Mail to have a three stage review and appeal process and it prescribes the person who must carry out the review at each stage (e.g. Stage 1: a Royal Mail Delivery Sector Manager or equivalent). We provisionally continue to consider that the process should be set out in the direction (for the reasons set out below) and that we should specify appropriate routes for escalation. However, we provisionally consider that this could be achieved without specifying the job titles of the persons involved, and so have changed this in our proposed direction.
- 4.66 Royal Mail has informed us<sup>31</sup> that most cases are resolved before or at stage 1, while stage 2 allows Royal Mail to conduct an independent review of its original decision and, if necessary, further health and safety assessments. Stage 3 of the process is the final fall back for unresolved cases and Ofcom expects to only deal with the most difficult cases. To date, Ofcom has only dealt with one formal stage 3 appeal. Prior to that, Postcomm dealt with seven stage 3 appeals between 2003 to 2011.
- 4.67 Royal Mail provides standard letters and written guidance<sup>32</sup> for those involved in the appeals process.<sup>33</sup> Royal Mail has informed us<sup>34</sup> that Delivery Managers are encouraged to resolve potential issues as amicably and swiftly as possible, with many cases of exceptional circumstances lasting only a few days and not resulting in an appeal. We accept that it is incentivised to resolve cases quickly, to avoid the burden of dealing with an appeal.
- 4.68 We asked Consumer Futures for its views on the review and appeal process. It informed us<sup>35</sup> that it (including its Scotland, Northern Ireland and Wales offices) has not identified any concerns with the current arrangements.
- 4.69 As part of our Equality Impact Assessment, we have considered the effect of the review/appeal arrangements on all users and, in particular, any specific users who may be disadvantaged in bringing a review. For example due to ill-health, age, disability or because English is not the user's first language. We recognise that some users may find it harder to exercise their rights to seek a review or bring an appeal.
- 4.70 We consider that the only way to prevent this issue from arising at all would be for the user not to have a role in challenging Royal Mail's determinations. Therefore, someone else would need to do it. The most obvious choice is Ofcom since it is our role to determine what is "exceptional". However, we consider that this approach would be disproportionate as it would require Ofcom to review every exception Royal Mail made. Further, unlike the person affected, we would not have pre-existing knowledge of the local circumstances and it would require more effort for us to understand the situation. The cost of this work would ultimately fall on postal service providers and therefore on postal service users. Were another third party to take on the role, it would face similar challenges and would also be likely to require funding, which may come from postal service providers. Additionally, we could not regulate how the third party carried out this role.

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<sup>31</sup> Feedback from Royal Mail to Ofcom, correspondence dated 5 July 2013.

<sup>32</sup> Royal Mail provided copies of the exception procedures and associated standard letters at a meeting with Ofcom on 16 September 2013.

<sup>33</sup> Where multiple properties are excepted these are reported centrally for onward cascade to Ofcom and customer/media facing colleagues.

<sup>34</sup> Meeting between Royal Mail and Ofcom 16 September 2013.

<sup>35</sup> Feedback from Consumer Futures to Ofcom, correspondence dated 18 September 2013

- 4.71 However, we consider that the risk to users who may be disadvantaged in bringing and completing an appeal may be appropriately mitigated as follows.
- 4.72 First, we provisionally consider that the time limits on bringing an appeal should be removed. Although we recognise that Royal Mail has indicated it would prefer to keep them, it has advised us<sup>36</sup> that it does not and would not, in any event, apply them strictly, and we consider that removing them would make it more likely that a user could access any help they may need to engage in the process.
- 4.73 Second, our proposed direction is drafted so as to allow any person to seek a review. Therefore, any specific users who may be disadvantaged in bringing a review can seek assistance in order to take forward a review as there can be no question over the right of any person to seek a review, enabling a family member, a friend, carer, local Citizens Advice or other representative, to initiate and take forward a review. This would not need to be somebody from the local area. We have considered whether this approach is proportionate in light of the risk that vexatious objections would be pursued, which would impose an inappropriate burden on Royal Mail. However, we provisionally consider that:
- the number of exceptions is fairly low; and
  - the likelihood of persons seeking reviews purely to be vexatious is very low, there being no possible financial reward and limited likelihood of purely vexatious reviews leading to a different outcome.
- 4.74 Third, we consider that it would be appropriate for the direction to require the universal service provider specifically to make appropriate facilities available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that reason disadvantaged in the review process. Depending on the circumstances, this requirement might be met by, for example, provision of interpreters or translations, Braille facilities or advocacy support.
- 4.75 Royal Mail has told us<sup>37</sup> that if a user needs extra help, its Customer Services staff will escalate their case to a specialist team who can provide services such as Braille and a range of other appropriate tools to assist in dealing with the complaint. We therefore do not consider that this provision would impose any extra costs on Royal Mail.
- 4.76 Overall, we provisionally consider that the three stage appeal process remains appropriate with the changes set out above. Our proposed requirements are set out in paragraphs 24 to 29 of the proposed direction.
- 4.77 On receipt of an appeal, we would consider whether Royal Mail had properly determined that "exceptional" circumstances existed in the case.
- 4.78 For health and safety appeal cases we would normally employ a health and safety consultant to provide us with expert, independent advice. The consultant's advice would be used to identify what, if anything, could and would have to be done to make access sufficiently safe for daily deliveries to resume:
- If our consultant's advice was that the health and safety problem could be overcome, but at a cost, Ofcom would decide in light of the available evidence

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<sup>36</sup> Meeting between Royal Mail and Ofcom 16 September 2013.

<sup>37</sup> Meeting between Royal Mail and Ofcom 16 September 2013.

whether it was reasonable to expect Royal Mail to take steps to overcome the problem, or whether the circumstances were genuinely exceptional.

- Before reaching a final determination, we would take into account our consultant's advice, along with any other relevant evidence. If the consultant's view differed from Royal Mail's view of the health and safety risks of the delivery route and/or remedial actions required, then we would put these differences to Royal Mail before making a final determination.

- 4.79 For difficulty of access cases, before determining the delivery service to be provided to the customer, Ofcom would also review all relevant facts.
- 4.80 We do not envisage receiving appeal cases relating to the customer request category other than from new occupiers appealing against a Royal Mail decision not to reinstate daily deliveries when requested to do so. However, if a final stage appeal were received, we would determine the appeal on the basis of the facts of the case.
- 4.81 We would notify appellants and Royal Mail of our determination of their appeal. If we considered that Royal Mail's decision had been incorrect we could take enforcement action in relation to Royal Mail's duty to make deliveries, which could potentially result in a financial penalty and/or a notification requiring Royal Mail to take specified steps for complying with the regulatory requirement.

### **Annual reporting requirements**

- 4.82 In our policy statement, Ofcom asked Royal Mail to provide an annual report to Ofcom and Consumer Futures of long term exceptions. We also asked that Royal Mail publish an annual overview comparing the number of exceptions.<sup>38</sup>
- 4.83 Ofcom provisionally considers that it remains appropriate and not unduly onerous for Royal Mail to report annually on the number of exceptions. It allows Ofcom and consumer representatives to monitor the application in practice of the provisions of a direction we may make under DUSP condition 1.3.2, and it would not be possible to monitor adequately with less information. We consider that the reporting obligation should relate to all exceptions which have existed for twelve months or more. This means that going forward Royal Mail would have to add details of any customer request, or 'other' difficulty of access exceptions (i.e. for reasons other than lack of road access and private roads) to its annual reporting. We do not consider that this would create any disproportionate burden on Royal Mail, as local delivery office managers routinely capture details on all exceptions in any event. We also propose to require the report to include the date when the relevant exception arose. We also continue to consider it important that the general public be able to access information on the volume of delivery exceptions, both for the purposes of exercising their rights and to ensure Royal Mail and Ofcom's conduct is sufficiently transparent. However, we consider it inappropriate to publish or require the publication of the specific addresses, as to do so could adversely impact affected individuals.
- 4.84 As set out in paragraphs 30 to 32 of the proposed direction, we therefore provisionally propose to direct Royal Mail to report annually (to Ofcom and Consumer Futures) on the exceptions which have been in place for twelve months or more

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<sup>38</sup>See for example paragraphs 4.45 and 4.46 of the statement accompanying Ofcom's *Direction designating geographical conditions and other circumstances as exceptional for the purpose of deliveries* (Ofcom, 23 February 2012), <http://stakeholders.ofcom.org.uk/binaries/consultations/posta-direction/statement/direction.pdf>.

including the date and reasons for the exception. We propose to require Royal Mail to publish this report on its website. However, the published report should only include data at overall and postcode level and not include specific addresses.

## Changes to duration

- 4.85 The Ofcom Deliveries Direction is drafted so as to expire on 31 December 2013. We do not propose to set an expiry date in our proposed direction. This should reduce the regulatory burden both on Ofcom and stakeholders in terms of producing and responding to consultations. The change does not prevent Ofcom reviewing or revoking the directions as and when appropriate and following review, either at our own initiative or if requested. It also aligns with our policy decision relating to allowing an exception to the universal service obligation for the day after the Battle of the Boyne bank holiday in Northern Ireland published on 13 February 2013.<sup>39</sup>

## Legal Tests

- 4.86 We consider that the proposed direction would be:
- **objectively justifiable** since the exceptional circumstances we propose to specify relate to obvious difficulties in provision of the universal service, and must be evidenced in the ways we specify. The associated matters – notifications, reviews and appeals and alternative delivery points – all relate to balancing the interests of Royal Mail and postal service users in a way which will ensure decisions are made at an operationally appropriate level while securing the rights of those addressees Royal Mail considers to be subject to exceptional circumstances.
  - **not unduly discriminatory** as the direction sets out a framework that ensures consistency of treatment for all UK households and provides clarity regarding on what grounds an address may be excepted, while providing in certain small respects for different treatment in favour of certain types of users for the reasons set out in this consultation;
  - **proportionate** because the exceptions provided for are (in our view) the minimum needed to ensure that Royal Mail is not required to make deliveries where it would be clearly disproportionate or impossible for it to do so, having regard to the importance of the universal service. Application of broadly the same policy since 2003 has led to a low number of addresses on the excepted list and very few appeals. We have also taken account of the regulatory burden on Ofcom and stakeholders, in particular with regard to notifications, reviews and appeals, alternative delivery arrangements and the duration of the proposed direction.
  - **transparent** because we would be tightening the drafting to make clearer what circumstances Ofcom consider to be exceptional and what processes we require to be followed in determining cases. We would also be building transparency into the regulatory regime, by imposing the publication obligations set out above.

Therefore, we consider that our proposal to make the direction set out in Annex 4 meets the relevant legal tests.

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<sup>39</sup> <http://stakeholders.ofcom.org.uk/consultations/uso-exception/>.

## Section 5

# Ofcom's assessment and proposed changes to the approval

## Introduction

- 5.1 The current alternative delivery points approval was last extended on 23 February 2012<sup>40</sup> by Ofcom.
- 5.2 In order to fall within the approval, a delivery point has to be—
- clearly identifiable by Royal Mail and by addressees of postal packets as being the point to which mail addressed to a specific address should be delivered;
  - generally suitable as a receptacle for letters, and relevant postal packets; and
  - safe for Royal Mail staff to make the delivery.
- 5.3 It approves, as delivery points:
- redirection addresses;
  - PO Boxes and other retention facilities at post offices or other sites;
  - any reasonable nearby point for the receipt of postal packets provided by or on behalf of any addressee;
  - the point to which Royal Mail conveys postal packets which cannot be delivered securely;
  - any point which, in relation to any geographical condition or other circumstance being designated as exceptional by Ofcom, is agreed or determined to be an alternative point for the receipt of postal packets for a particular home or premises; and
  - any reasonable point that is provided by Royal Mail for the receipt of postal packets delivered using a Postbus service.
- 5.4 We provisionally consider that the policy aims underlying the approval remain broadly appropriate. We are not aware of any additional types of delivery point that ought to be included; nor are we aware of any reason not to continue to approve the existing ones.
- 5.5 However, we consider that changes are needed to the approval to:
- remove of out-of-date references to the initial conditions which applied from 1 October 2011 until 1 April 2012;
  - remove duplication and other unnecessary provisions; and

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<sup>40</sup> <http://stakeholders.ofcom.org.uk/consultations/direction-extension/direction>

- improve the transparency of the drafting.
- 5.6 Three of the existing types of approved alternative delivery point rely, in essence, upon an agreement between Royal Mail and the addressee concerned. These are redirections, PO boxes and other retention and collection facilities, and alternative delivery points that are agreed because exceptional circumstances have arisen in relation to the usual delivery point.
- 5.7 We see no reason for the regulator to limit the scope for addressees to agree different delivery arrangements with Royal Mail. We provisionally consider that Ofcom ought to approve any delivery point that the addressee and Royal Mail can agree, and our proposed approval is drafted accordingly (see paragraph 7 of the proposed approval).
- 5.8 We remain of the view that Ofcom should approve alternative delivery points provided by or on behalf of the addressee concerned, so long as these are close enough or convenient that reaching them does not place an inappropriate burden on Royal Mail. We consider that regulatory certainty and minimising the scope for dispute means the approval should be transparent on its face as to when the obligation on Royal Mail to deliver to such a point arises.
- 5.9 We have therefore drafted a more precise definition of the maximum distance that Royal Mail can be required to travel to an alternative delivery point, based on the definition that has historically applied and that we propose to apply in relation to exceptional circumstances for deliveries (a 7.5 minute journey at a safe speed on foot and the lesser of a safe speed or five miles per hour by vehicle). Our provisional approach is in paragraph 9 of the proposed approval.
- 5.10 We do not consider there is any need to provide for insecure delivery points in this approval, since these are more appropriately seen as an exception to the requirement to deliver and should be dealt with by direction. It follows from this reasoning that there is also no need to specify that alternative delivery points be “suitable”, since suitability has historically been assessed by reference to security and our proposed direction on exceptional circumstances would cover the point. Similarly, we do not see any need to provide for Postbus delivery points in this approval, since Postbuses deliver to homes and premises just as any normal delivery van does. There remains a need to specify that the delivery point be safe, because although an unsafe delivery point would be subject to health and safety exceptional circumstances such that no delivery obligation would arise, absent provision in this approval it would be Royal Mail’s responsibility under the direction to take reasonable steps to overcome the hazard.
- 5.11 We consider that there is, however, a need to add explicit provision to this approval in respect of a type of alternative delivery arrangement that has existed for many years: that is, central delivery points for multi-occupancy buildings. We remain of the view that it would be disproportionate to require Royal Mail to deliver to each individual household or separate office in a multi-occupied building, where the occupants share a concierge or central mailroom. Our provisional approach is in paragraph 9 of the proposed approval.
- 5.12 Finally, the existing approval provides for any decision by Royal Mail to stand pending the outcome of the review and appeals process set out in the direction specifying exceptional circumstances for deliveries. We do not consider this to be appropriate, because:

- it may have the effect of fettering Ofcom's discretion as to the circumstances in which Ofcom should take enforcement action;
  - it links the approval, pending appeal, to a subjective decision by Royal Mail, when it is for Ofcom to determine what delivery points to approve; and
  - it gives Royal Mail no incentive to make reasonable decisions in the first place, since it would be protected from the consequences of making even the most egregiously unreasonable decisions.
- 5.13 If, however, we leave the question open, it means RM has to take its own view in the knowledge that its decision may be disputed, and so ought to be incentivised to act reasonably.
- 5.14 We do not consider that there is any need for an appeals process within this approval. Agreements are by definition not subject to dispute. Disputes about whether a delivery point is sufficiently secure will come under the exceptions direction and be subject to that appeals process. Any other disputes may be dealt with by Royal Mail as a complaint and ultimately by Ofcom as we would any other complaint alleging that Royal Mail has breached a regulatory condition.

## Legal Tests

- 5.15 We consider that the proposed approval would be:
- **objectively justifiable** since the points we propose to approve are justified for the reasons set out above;
  - **not unduly discriminatory** as the approval applies equally to every addressee;
  - **proportionate** because the obligations imposed on Royal Mail are consistent with its normal business practice and are only what is needed to secure that addressees receive their post; and
  - **transparent** in that the purpose of the approval is precisely what it says it is; and we would be tightening the drafting to make it clearer what points Ofcom approves.

Therefore we consider that our proposal to give the approval set out in Annex 5 meets the relevant legal tests.



## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 22 November 2013**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeolders.ofcom.org.uk/consultations/> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [michelle.koretz@ofcom.org.uk](mailto:michelle.koretz@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Michelle Koretz  
Floor 2  
Dept Consumer Affairs  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4 below. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Michelle Koretz on 020 7 981 3659.

## Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

## Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement by 31 December 2013.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## **Annex 2**

# **Ofcom's consultation principles**

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

## **Before the consultation**

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

## **During the consultation**

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

## **After the consultation**

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

# Statutory Notification: proposed direction under designated USP condition 1.3.2 and 1.3.2A regarding deliveries

## NOTIFICATION OF PROPOSALS TO MAKE A DIRECTION UNDER DESIGNATED USP CONDITION 1.3.2 and 1.3.2A IN ACCORDANCE WITH SECTION 33(2)(b) OF, AND PARAGRAPH 4 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

A. On 27 March 2012, following a consultation, Ofcom published a statement entitled ‘Securing the Universal Postal Service - Decision on the new regulatory framework’<sup>41</sup> setting out various decisions, including the imposition of regulatory conditions under section 36 and 37 of the Postal Services Act 2011 (the “Act”).

B. Designated USP condition 1 (“DUSP 1”) relates to requirements on the universal service provider, including obligations as to daily deliveries.

C. The obligations as to daily deliveries are not required to be met in such circumstances as Ofcom consider to be exceptional, and to this end the direction Ofcom made on 23 February 2012, *Direction designating geographical conditions and other circumstances as exceptional for the purpose of deliveries*, is deemed by DUSP 1.3.5 to have been made under DUSP 1.3.2. That direction will expire on 31 December 2013.

D. On 5 September 2013 Ofcom consulted on changes to DUSP 1. The consultation proposes to add a condition to DUSP 1. DUSP 1.3.2A would, if the proposals were implemented without modification, read:

“OFCOM may by direction impose requirements for the universal service provider—

- (a) to establish and comply with procedures in relation to determining whether the circumstances specified in any direction issued under DUSP 1.3.2 have arisen in any particular case;
- (b) to establish and comply with reporting and notification obligations in relation to such exceptions; and
- (c) to make alternative delivery or collection arrangements where appropriate.”

### PROPOSAL

1. Ofcom hereby proposes, under Designated USP Condition 1.3.2 and (subject to consultation) 1.3.2A and paragraph 4 of Schedule 6 to the Act and pursuant to powers and duties in section 33(2)(b) of the Act, to make a direction
  - (a) specifying geographical conditions and other circumstances which Ofcom consider exceptional such that the requirements relating to the delivery of letters and other postal packets set out in s.31 of the Act, regulation 6 of the Postal Services (Universal

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<sup>41</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

Postal Service) Order 2012 and Designated USP Condition 1.4.1 and 1.4.2 do not need to be met; and

(b) requiring the universal service provider to

- (i) establish and comply with procedures in relation to determining whether the circumstances so specified have arisen in any particular case;
- (ii) establish and comply with reporting and notification obligations in relation to such exceptions; and
- (iii) make alternative delivery arrangements where appropriate.

2. The proposed direction 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 4(2) of Schedule 6 to the Act.

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 **22 November 2013**.

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 4(8) 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.

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

Signed by Chris Taylor



Director, Consumer Policy

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

**21 October 2013**

## SCHEDULE

### **DIRECTION GIVEN UNDER DESIGNATED USP CONDITION 1.3.2 AND 1.3.2A DESIGNATING GEOGRAPHICAL CONDITIONS AND OTHER CIRCUMSTANCES AS EXCEPTIONAL FOR THE PURPOSE OF DELIVERIES AND REQUIRING ASSOCIATED PROCEDURES, NOTIFICATIONS, REPORTING AND ALTERNATIVE DELIVERY ARRANGEMENTS**

**Ofcom hereby directs as follows**

#### **Commencement**

1. This Direction shall come into effect on 31 December 2013.

#### **Interpretation**

2. In this Direction—
  - a. **“Consumer Futures”** means:
    - (i) prior to 1 April 2013, the Council; and
    - (ii) after 1 April 2013, each of the National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux and the General Consumer Council of Northern Ireland;
  - b. **“delivery office”** means premises used by the universal service provider to sort mail;
  - c. **“delivery point”** means any home or premises of any individual or other person in the UK; and any delivery point approved by OFCOM for the purposes of Designated USP Condition 1;
  - d. **“scheduled service”** means a ferry or aeroplane service:
    - (i) which is available to the general public;
    - (ii) in relation to which a timetable is published; and
    - (iii) the running of which on any particular day does not depend on more than one passenger being aboard;
  - e. **“working day”** means any day which is not a Sunday or a public holiday in the place where the delivery point concerned is located.
3. For the purpose of interpreting this Direction—
  - 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 Designated USP Condition 1;
  - b. except in so far as the context otherwise requires, or as ascribed for the purposes of Designated USP Condition 1, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Postal Services Act 2011;
  - c. headings and titles shall be disregarded;
  - d. expressions cognate with those referred to in this Direction shall be construed accordingly; and
  - e. the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.



## **Exceptions**

4. The circumstances specified in paragraphs 5 to 11 are exceptional for the purposes of deliveries to the delivery points concerned.

### *Health and safety*

5. The circumstances specified in this paragraph are that:
  - (a) delivering to the delivery point concerned involves an immediate hazard to the health or safety of employees, sub-contractors or agents of the universal service provider such that it is not reasonable to require them to make the delivery; and
  - (b) there is no reasonable means of overcoming the hazard so as to deliver postal packets.
6. For the purposes of paragraph 5, an immediate hazard to health or safety which persists for longer than two weeks must be evidenced by a formal health and safety risk assessment and a general assessment of the circumstances, which must be conducted by an appropriately competent and experienced individual as soon as reasonably practical after the universal service provider has become aware of the circumstances in question.

### *Insecurity*

7. The circumstances specified in this paragraph are that the delivery point concerned is insecure such that a postal packet delivered there may be easily abstracted by an unauthorised third party.

### *Difficulty of access: lack of road access*

8. The circumstances specified in this paragraph are, in relation to any particular day, that:
  - (a) the delivery point concerned is located in a place in the United Kingdom that is only accessible by water or air from the nearest delivery office on the mainland of Great Britain or the mainland of Northern Ireland; and
  - (b) a scheduled service to that place is either:
    - (i) not available on the day upon which the delivery is required; or
    - (ii) available upon the day upon which the delivery is required only at times which are not reasonably compatible with the universal service provider's operations; and
  - (c) deliveries are made to the delivery point concerned at least once a week, except where the circumstances described in paragraph 5 (*Health and safety*) exist throughout each working day in the week.

### *Difficulty of access: private roads*

9. The circumstances specified in this paragraph are that:
  - (a) the delivery point is located in a place to which the only access is by private road or track;
  - (b) the private road or track concerned is in a poor condition, as a consequence of which:
    - (i) it is unsuited to vehicles that are not specifically designed for off-road use; or
    - (ii) safe use by such vehicles requires them to travel at an average speed below 5 miles per hour; and
  - (c) reaching the delivery point takes 7.5 minutes or more from the nearer of

- (i) the nearest public road; and
- (ii) the nearest delivery point that is less than 7.5 minutes away from the nearest public road;
- (d) for the purposes of sub-paragraph (c), the time taken to reach the relevant point is to be measured:
  - (i) if access using a vehicle not specifically designed for off-road use is impracticable, by foot at a walking pace that is safe in all the circumstances; or
  - (ii) otherwise, by vehicle travelling at the lesser of:
    - 1. a speed that is safe in all the circumstances; and
    - 2. 5 miles per hour.

*Difficulty of access: other*

10. The circumstances specified in this paragraph are that:
- (a) the delivery point is located in a place to which the only access is controlled by any person other than the universal service provider;
  - (b) that other person by their own act or by default prevents access or renders access extremely difficult;
  - (c) the act or default does not consist of either:
    - (i) failure to maintain a private road or track; or
    - (ii) choosing to locate the home or premises in the place concerned.

*Customer request*

11. The circumstances specified in this paragraph are that all the occupiers of a home or premises at an address reasonably do not wish deliveries to be made, only to the extent that they do not wish deliveries to be made.
12. For the purposes of paragraph 11, the wishes of the occupiers of the premises must be evidenced by a request delivered to the universal service provider which, on its face, reasonably appears to have been made by or on behalf of all the occupiers of the address concerned.

**Exceptions affecting users who may be particularly disadvantaged**

13. If exceptional circumstances have arisen in relation to a delivery point known by the universal service provider to be used by a person who for reasons of age, disability or ill-health may be particularly disadvantaged by the suspension of deliveries, the universal service provider shall:
- (a) consider whether it would be appropriate and proportionate to make deliveries in spite of the exceptional circumstances;
  - (b) consider whether and what alternative delivery arrangements ought to be made; and
  - (c) retain written records of its thinking in relation to (a) and (b) for at least 6 months.

**Alternative delivery arrangements**

14. In every case in which pursuant to this Direction the universal service provider does not deliver to a particular delivery point, except if the exceptional circumstances concerned arise under paragraph 11 (*Customer request*), the universal service provider shall:

- (a) make postal packets for that delivery point available for collection from the local delivery office, post office or other mutually agreed secure delivery point by an appropriate identified person free of charge; and
  - (b) offer to deliver any such postal packet free of charge to any alternative address ordinarily served by the same delivery office; and to effect such arrangements within one week of the individual's request offer.
15. The universal service provider is not required to meet the obligation set out in paragraph 14(b) where, in relation to postal packets to a particular addressee or from a particular sender or class of sender, the provision of the service in relation to those postal packets would create a substantial risk of crime.

### **Notifications**

16. The universal service provider shall as soon as is practicable after they have arisen, notify the existence of any exceptional circumstances other than those set out in paragraph 11 (*Customer request*) to, as relevant:
- (a) the occupier of each home or premises affected; or
  - (b) each person with whom the affected approved delivery point is associated.
17. The notice shall contain the following information:
- (a) The delivery point affected;
  - (b) An explanation of why the universal service provider considers exceptional circumstances to exist;
  - (c) The effect the exceptional circumstances will have upon deliveries;
  - (d) The alternative delivery arrangements available and what the individual would need to do to take advantage of the option of delivery to an alternative address;
  - (e) A description of any remedial actions which would enable deliveries to resume;
  - (f) The anticipated date of resumption of deliveries, where known;
  - (g) The existence of the right to seek a review;
  - (h) How a request for a review should be made, which shall include postal, telephone and email methods of communication; and
  - (i) That if the person is dissatisfied with the outcome of the review it may be followed by a second stage review and ultimately an appeal to Ofcom.
18. The notice must be delivered in writing to the delivery point concerned if either:
- (a) the occurrence of the exceptional circumstances has been publicly announced or notified to the universal service provider more than one week in advance; or
  - (b) the exceptional circumstances concerned are those set out in paragraph 8 (*Difficulty of access: lack of road access*) or 9 (*Difficulty of access: private roads*).
19. If paragraph 18 does not apply, the notice may be given by:
- (a) delivering it in writing to the affected home or premises;
  - (b) giving it to the relevant individual; or
  - (c) affixing it to the nearest conspicuous point that is compatible with health and safety;
  - (d) emailing the relevant individual; or

- (e) speaking to the relevant individual by telephone, as long as a detailed note is kept of the call.
- 20. Paragraph 16 does not apply in relation to exceptional circumstances that are ongoing as at the date of this Direction, as a result of which the universal service provider had already suspended deliveries to a delivery point, in reliance on any previous direction given by the Postal Services Commission or OFCOM, setting out exceptional circumstances for the purposes of deliveries.
- 21. In relation to delivery points for which exceptional circumstances have persisted for 24 months or more, the universal service provider must, no later than three months from 31 March 2014 and thereafter by the same day and month every two years, issue a reminder notice to, as relevant:
  - (a) the occupier of the home or premises; or
  - (b) each person with whom any other affected approved delivery point is associated.
- 22. The reminder notice shall contain the information specified in paragraph 17(a), (b), (e), (g), (h) and (i) and shall be given in accordance with paragraphs 18 and 19.
- 23. The universal service provider must notify OFCOM within one week of any case in which exceptional circumstances have persisted for more than one working day and affect more than one delivery point, including:
  - (a) The address of each affected delivery point;
  - (b) The reasons why the universal service provider considers exceptional circumstances to exist;
  - (c) The steps taken, if any, to resolve the issue; and
  - (d) The date upon which the universal service provider anticipates resuming deliveries to the affected delivery points.

### **Reviews and appeals**

- 24. The universal service provider shall complete a review of whether exceptional circumstances exist in the case of an excepted delivery point:
  - (a) within one month of a request made by any person in accordance with the information specified in paragraph 17(h),
  - (b) in any event, no later than 12 months from the date of the later of the exceptional circumstances arising and the date of the last review.
- 25. The universal service provider shall notify the person who requested the review promptly in writing of:
  - (a) the outcome of the review; and
  - (b) if the outcome is that exceptional circumstances exist in relation to the delivery point concerned, the person's right to seek a second stage review and how such a request should be made, which shall include postal, telephone and email methods of communication.
- 26. The universal service provider shall complete a second stage review of whether exceptional circumstances exist in the case of a delivery point within 2 months from receipt of a request made in accordance with paragraph 25(b).
- 27. The universal service provider shall notify the person who requested the second stage review promptly in writing of:
  - (a) the outcome of the second stage review; and

- (b) if the outcome is that exceptional circumstances exist in relation to the delivery point concerned, the person's right to appeal to OFCOM, giving such contact details as OFCOM shall provide to the universal service provider for the purposes of this paragraph from time to time.
- 28. Ofcom's decision as to whether exceptional circumstances have arisen shall be binding.
- 29. The universal service provider shall at its own expense make facilities available to ensure that no person is disadvantaged by reason of age, disability, ill health or because English is not the person's first language, in relation to the making of a review request, the conduct of any review and the conduct of any second stage review.

### **Reporting requirements**

- 30. The universal service provider shall within three months from 31 March each year, provide a report to OFCOM and Consumer Futures on each delivery point in relation to which exceptional circumstances have persisted for 12 months or more pursuant to a direction under DUSP 1.3.2. The report shall include the following in relation to each delivery point:
  - (a) the address of the delivery point;
  - (b) the postcode area;
  - (c) applicable exception under this Direction;
  - (d) where the relevant exceptional circumstances relate only to particular days of the week, the days upon which deliveries are made;
  - (e) the date upon which the relevant exception arose under this or any previous direction, except if the date of both precedes and was unknown at the date of this Direction; and
  - (f) anticipated date upon which deliveries will resume, where known.
- 31. No later than three months from 31 March each year, the universal service provider shall publish the report on its website, excluding the address of the delivery point
- 32. For the purposes of paragraph 31, if a single delivery point is affected by both health and safety and difficulty of access exceptional circumstances, it shall be reported in both relevant categories and the universal service provider shall include a note identifying the delivery point concerned.

# Statutory Notification: proposal to give an approval for the purposes of designated USP condition 1.2.2(c), 1.4.1(b) and 1.4.2(b) regarding identifiable delivery points

## NOTIFICATION OF PROPOSAL TO GIVE AN APPROVAL FOR THE PURPOSES OF DESIGNATED USP CONDITION 1.2.2(b), 1.4.1(b) AND 1.4.2(b) IN ACCORDANCE WITH SECTION 31 REQUIREMENT 1 PARAGRAPH 1(b) OF, AND PARAGRAPH 4 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

A. On 27 March 2012, following a consultation, Ofcom published a statement entitled ‘*Securing the Universal Postal Service - Decision on the new regulatory framework*’<sup>42</sup> setting out various decisions, including the imposition of regulatory conditions under section 36 and 37 of the Postal Services Act 2011 (the “Act”).

B. Designated USP condition 1 (“DUSP 1”) relates to requirements on the universal service provider. They include, under DUSP 1.4.1 and 1.4.2, obligations to provide daily deliveries to the home or premises of every individual or other person in the UK, or to such other identifiable points for the delivery of postal packets as Ofcom may approve.

C. Under DUSP 1.4.3, the approval given by Ofcom on 23 February 2012, *Approval of identifiable points for delivery of relevant postal packets*<sup>43</sup> (the “Former Approval”) is deemed to have been given under DUSP 1.4.1 and 1.4.2 until it expires or is revoked by Ofcom.

### PROPOSAL

1. Ofcom hereby proposes, for the purposes of DUSP 1.2.2(c), 1.4.1(b) and 1.4.2(b) and in accordance with Section 31 Requirement 1 Paragraph 1(b) of, and paragraph 4 of Schedule 6 to the Postal Services Act 2011 to give an approval
  - (a) revoking the Former Approval; and
  - (b) approving delivery points for the purposes of DUSP 1.2.2(c), 1.4.1(b) and 1.4.2(b).
2. The proposed approval 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.

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<sup>42</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

<sup>43</sup> Annex 2, Statement accompanying *Direction designating geographical conditions and other circumstances as exceptional for the purpose of deliveries* (Ofcom), 23 February 2012, <http://stakeholders.ofcom.org.uk/binaries/consultations/posta-direction/statement/direction.pdf>

## OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 4(2) of Schedule 6 to the Act.

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 **22 November 2013**.


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 4(8) 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.

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

Signed by Chris Taylor



Director, Consumer Policy

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

**21 October 2013**

## SCHEDULE

### **APPROVAL OF DELIVERY POINTS GIVEN FOR THE PURPOSES OF DESIGNATED USP CONDITION 1.2.2(c), 1.4.1(b) AND 1.4.2(b)**

#### **Commencement and revocation**

1. This Approval shall come into effect on 31 December 2013.
2. This Approval replaces the approval given by OFCOM on 23 February 2012, *Approval of identifiable points for delivery of relevant postal packets*, which is hereby revoked.
3. This Approval does not affect the approval given by OFCOM on 27 September 2012, *Notification of an approval under Designated USP Condition 1.2.2 and paragraph 4(c) of The Postal Services (Universal Postal Service) Order 2012*,<sup>44</sup> which remains in force.

#### **Interpretation**

4. In this Approval—  
“**multi-occupancy building**” means a building or private premises which contains more than one separate household or commercial office;  
“**safe**”, in relation to a delivery point, means poses no immediate hazard to the health or safety of employees, sub-contractors or agents of the universal service provider such that it is not reasonable to require them to make a delivery.
5. For the purpose of interpreting this Approval—
  - 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 Designated USP Condition 1;
  - b. except in so far as the context otherwise requires, or as ascribed for the purposes of Designated USP Condition 1, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Postal Services Act 2011;
  - c. headings and titles shall be disregarded;
  - d. expressions cognate with those referred to in this Approval shall be construed accordingly; and
  - e. the Interpretation Act 1978 (c. 30) shall apply as if this Approval were an Act of Parliament.

#### **Approval of identifiable delivery points**

6. OFCOM hereby approves the points described in paragraphs 7 to 9 as identifiable points for the delivery of letters and other postal packets for the purposes of Designated USP Condition 1.2.2(c), 1.4.1(b) and 1.4.2(b).

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<sup>44</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-delivery-neighbour/statement/statement.pdf>.



*Agreed points*

7. A point described in this paragraph is any point which is safe and is agreed between the universal service provider and the addressee concerned, for so long as that agreement subsists.

*Multi-occupancy buildings*

8. A point described in this paragraph is any point which is safe and is, in relation to any multi-occupancy building in which the occupants share a concierge or private mail room, the delivery point for that concierge or private mail room.

*Points provided by the addressee*

9. A point described in this paragraph is any point which is:
  - (a) safe,
  - (b) easily identifiable as being provided by or on behalf of the addressee concerned, and is either:
    - (i) at or within an acceptable distance from the front door of the home or premises of the addressee concerned; or
    - (ii) at or within an acceptable distance from the most convenient route to the home or premises of the addressee concerned from the nearest public highway;
  - (c) in this paragraph, an “acceptable distance” is a one way journey of less than 7.5 minutes measured along the shortest path available to a vehicle, to the extent that access by car is possible; and to a pedestrian from the point at which access by car is not possible; and
  - (d) for the purposes of sub-paragraph (e), the time taken to reach the delivery point is to be measured:
    - (i) to the extent that the path is only available to a pedestrian, by foot at a walking pace that is safe in all the circumstances; and
    - (ii) to the extent that the path is available to a vehicle, by vehicle travelling at the lesser of:
      - a. a speed that is safe in all the circumstances; and
      - b. 5 miles per hour.