

Annex 8 – Statutory Notification: proposed modification of direction under designated USP condition 1.3.2 and 1.3.2A regarding deliveries

NOTIFICATION OF A PROPOSED MODIFICATION GIVEN BY OFCOM 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 23 February 2012, following the publication of a consultation, Ofcom published a statement entitled *“Direction designating geographical conditions and other circumstances as exceptional for the purpose of deliveries”*,¹ in which Ofcom published a direction designating geographical conditions and other circumstances as exceptional under the initial condition DUSP 1.4 (the “First Ofcom Delivery Direction”). The First Ofcom Delivery Direction was set to expire on 31 December 2013.
- B. On 18 December 2013, Ofcom published, following a notification of modifications, a statement entitled *“Direction relating to exceptions to the postal deliveries Universal Service Obligation and approval of alternative delivery points”*,² in which Ofcom published in an Annex therein a direction 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 (the “Second Ofcom Delivery Direction”). The Second Ofcom Delivery Direction took effect on 31 December 2013.

PROPOSAL

1. Ofcom hereby proposes, under Designated USP Condition 1.3.2 and 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 modify the Second Ofcom Delivery Direction in the manner specified in the Schedule to this Notification.
2. The proposed modifications are —
 - (a) marked up against the text of the Second Ofcom Delivery Direction to show the changes which are being proposed to its substance, as shown in highlighted yellow; and

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0025/50992/direction.pdf

² https://www.ofcom.org.uk/data/assets/pdf_file/0023/78314/statement_delivery_exceptions.pdf

- (b) propose to take effect on [the date of the publication of the statement of Ofcom's decision].
- 3. The effect of, and Ofcom's reasons for making these proposals are set out in the accompanying explanatory consultation document.

OFCOM'S DUTIES AND LEGAL TESTS

- 4. Ofcom is satisfied that these proposals satisfy the general test in paragraph 4(2) of Schedule 6 to the Act.
- 5. In making these proposals, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

MAKING REPRESENTATIONS

- 6. Representations may be made to Ofcom about the proposals set out in this Notification by no later than 1 November 2022.
- 7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1) 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 paragraph 6 of this Notification; and
 - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
- 9. The Schedule to this Notification shall form part of this Notification.

Signed by David Brown



Director of Financial Economics, Ofcom

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

20 September 2022

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 2014, the Council; and
 - (ii) after 1 April 2014, 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
 - (b) 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 access to the delivery point is prevented or rendered extremely difficult by circumstances other than:
- (a) those set out in paragraph 8(a) and (b); or
 - (b) those set out in paragraph 9(a) and (b); or
 - (c) circumstances within the universal service provider's control.

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 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 any delivery point for which, as at 31 March in any year:

- (a) exceptional circumstances have persisted for 24 months or more, and
- (b) the universal service provider has not issued a reminder notice pursuant to this paragraph within the past 24 months;

then unless the universal service provider knows that the exceptional circumstances concerned have ceased to exist since 31 March, the universal service provider must, within three months of 31 March in that year, issue a reminder notice to, as relevant:

- (i) the occupier of the home or premises; or
- (ii) 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 new case arising 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

23. 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 reasonable 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.
- 24. 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.
- 25. 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 24 5(b).
- 26. 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.
- 27. Ofcom's decision as to whether exceptional circumstances have arisen shall be binding.
- 28. The universal service provider shall at its own reasonable expense make facilities available to ensure that no person is materially 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

- 29. 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 other than those specified in paragraph 11 (customer request) have persisted for 12 months or more pursuant to a direction given or deemed to have been given 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.

30. 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.
31. For the purposes of paragraph 30 ~~1~~, 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.