



An exception to Royal Mail's universal service obligation

- no universal service day for the day after the Battle of the Boyne bank holiday in Northern Ireland

Consultation

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Section 1

Executive Summary

- 1.1 Royal Mail has requested a direction under the relevant regulatory condition – Designated Universal Service Providers (“DUSP”) condition 1.3.2(a) – for the day after the Battle of the Boyne holiday in Northern Ireland to be permanently designated as an exception to the universal service¹. Ofcom is seeking views on the extent to which they may be affected if this day is designated as an exception to the universal service.
- 1.2 DUSP condition 1.3.2 states that, exceptions to the universal service obligations can be allowed, meaning that Royal Mail will not have to meet its universal service obligations in relation to the delivery or collection of mail on that day as follows:
- “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:
- a) On any day which is (in the territory concerned) a public holiday; or
 - b) In such geographic conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes.”
- 1.3 “Public holiday” is defined in the DUSP as including “in relation to a particular territory, any day in relation to which OFCOM has by direction stated that exceptional circumstances require it to be treated as a public holiday”².
- 1.4 Following the expiry on 31 October 2012 of a Direction³ by the former postal regulator, Postcomm, covering exceptions to Royal Mail's Universal Service Obligation, Ofcom proposes to issue a Direction to allow Royal Mail an exception from performing its universal service obligations for the day following the Battle of the Boyne bank holiday in Northern Ireland⁴, on the basis that exceptional circumstances require it to be treated as a public holiday. We are not proposing any additional changes from the decision in Postcomm's 2009 Direction, except that we previously extended the Direction for three years. We are now proposing that this exception would be effective until further notice.
- 1.5 If Ofcom allows the exception, Royal Mail must ensure that its customer communications make clear when deliveries and collections will be made over the period in question. Customers with business collections from Royal Mail and access operators must be provided with sufficient advance notice of any arrangements that may affect their contractual relationship with Royal Mail. Affected dates must be

¹ See Annex A.

² DUSP condition 1.1.2(aa).

³ *Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document* (Postal Services Commission, October 2009), <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>.

⁴ Except when 12 July (the day the Battle of the Boyne bank holiday is normally observed) is a Saturday. In that case, the Battle of the Boyne bank holiday would instead be observed on the following Monday, i.e. 14 July, and the no universal service day would be the Saturday 12 July rather than the day following the bank holiday Monday. See the table at paragraph 4.4 below which sets out how the no universal service day would fall depending on what day of the week the Battle of the Boyne bank holiday falls.

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publicised widely including in callers' offices and advance notice must be given to Post Office Limited.

1.6 Ofcom invites comments on this proposal by 11 January 2013.

Section 2

Introduction

Purpose of this document

2.1 This document:

- outlines our proposal to give a direction under DUSP condition 1.3.2 for the day after the Battle of the Boyne bank holiday in Northern Ireland to be permanently designated as an exception to the universal service⁵ (see Annex 1) ; and
- seeks views on the extent to which they may be affected if this day is designated as an exception to the universal service.

Relevant background

- 2.2 In October 2009, the previous postal regulator, Postcomm, issued a decision document and direction⁶ following a consultation on Royal Mail's application for exceptions to its universal service obligation for 26 December 2009 in the UK, where a bank holiday falls on a Saturday in the UK, Easter Monday in Scotland and local holidays in Northern Ireland and Scotland ("the Postcomm Direction"). The Postcomm Direction included an exception for a local holiday on the day following the Battle of the Boyne bank holiday in Northern Ireland.⁷
- 2.3 No issues have been raised with Postcomm or Ofcom with regard to any of the dates excepted from the universal service obligation under the Postcomm Direction.
- 2.4 The Postcomm Direction expired on 31 October 2012. On 5 October 2012, Royal Mail wrote to Ofcom requesting a direction under DUSP condition 1.3.2 excepting Royal Mail in perpetuity from performing its universal service obligations for the day following the Battle of the Boyne bank holiday in Northern Ireland.

Ofcom's proposal

- 2.5 Ofcom proposes to issue a new direction, providing an exception to the universal service for the day after the Battle of the Boyne bank holiday⁸, to take effect until further notice.

⁵ See Annex A.

⁶ *Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document* (Postal Services Commission, October 2009), <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>

⁷ Except when 12 July (the day the Battle of the Boyne bank holiday is normally observed) is a Saturday. In that case, the Battle of the Boyne bank holiday would be observed on the following Monday instead, i.e. 14 July, and the no universal service day would be the Saturday 12 July rather than the day following the bank holiday Monday.

⁸ Except when 12 July is a Saturday, as under the Postcomm Direction (as explained in footnote 7 above). See the table at paragraph 4.4 below which sets out how the no universal service day would fall depending on what day of the week the Battle of the Boyne bank holiday falls.

Section 3

Relevant legal framework

The universal service

- 3.1 Royal Mail is the designated universal service provider and subject to designated universal service provider ("DUSP") conditions.⁹
- 3.2 Section 30(1) of the Postal Services Act 2011 ("the Act") provides that Ofcom must set out in an order a description of the services Ofcom considers should be provided in the United Kingdom as a universal postal service and the standards with which those services must comply. The universal service must include the minimum requirements set out in section 31 of the Act. These include:
- the delivery of letters every Monday to Saturday and of other postal packets every Monday to Friday to the home or premises of every individual or other person in the United Kingdom; and
 - the collection of letters every Monday to Saturday and of other postal packets every Monday to Friday from post boxes and other access points.
- 3.3 Ofcom has met its requirements under section 30 of the Act by making the Postal Services (Universal Postal Service) Order 2012 ("the Order"). Articles 6 and 7 of the Order set out the universal service requirements for collection and delivery, as required under section 31 of the Act. These are mirrored in the obligations imposed on Royal Mail under the DUSP conditions.
- 3.4 Under DUSP condition 1.4.1 Royal Mail must ensure that:
- "Except as set out in DUSP 1.3, the universal service provider shall offer to provide at least one delivery of letters originating from anywhere in the world every Monday to Saturday-
- a) to the home or premises of every individual or other person in the UK; and
 - b) to delivery points approved by OFCOM for the purposes of this Condition".
- 3.5 Under DUSP condition 1.5.1 Royal Mail must ensure that:
- "Except as set out in DUSP 1.3, the universal service provider shall offer to provide at least one collection-
- a) every Monday to Saturday, from public access points for letters for the services described in DUSP 1.4; and
 - b) every Monday to Friday, from public access points for other postal packets for the services described in DUSP 1.4".

⁹ In accordance with the Postal Services (Universal Postal Service) Order 2012 and pursuant to the Designated USP Conditions imposed on Royal Mail under section 36 of the Act, <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/annex7.pdf>

Exceptions to the universal service

- 3.6 Section 33(2) of the Act sets out the legal basis for exceptions to the universal service obligations under section 31 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):

- a) do not need to be met on any day which is (in part of the United Kingdom concerned) a public holiday¹⁰, and
- b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.

- 3.7 Articles 6(3) and 7(2) of the Order also provide that an exception to the universal service obligations for delivery and collection applies on a day which is (in the part of the United Kingdom concerned) a public holiday.

- 3.8 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:

- a) on any day which is (in the territory concerned) a public holiday; or
- b) in such geographic conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes.”

- 3.9 “Public holiday” is defined in the DUSP as including “in relation to a particular territory, any day in relation to which OFCOM has by direction stated that exceptional circumstances require it to be treated as a public holiday” (DUSP 1.1.2(aa)).¹¹

Public and bank holidays

- 3.10 Public holidays in England and Wales include the traditional common law holidays of Christmas and Good Friday, as well as bank holidays. Bank holidays in England and Wales, Scotland and Northern Ireland are set under the Banking and Financial Dealings Act 1971¹². Additional bank holidays may be provided for in a given year by Royal Proclamation (for example the Jubilee bank holiday in 2012).¹³ In Scotland and Northern Ireland different public and statutory bank holidays are observed to those in England and Wales.¹⁴ The Directgov website currently lists all the expected bank and public holidays for England, Wales, Scotland and Northern Ireland in 2012-15¹⁵.

¹⁰ “Public holiday” is not defined in the Act.

¹¹ DUSP 1.1.3 (f) provides that the days which the Postcomm Direction determined should be exceptions to the public service, should be treated as public holidays for the purposes of DUSP 1.1.2(aa). As explained at paragraph 2.4 above, this Direction expired on 31 October 2012

¹² <http://www.legislation.gov.uk/ukpga/1971/80/section/1>.

¹³ When the usual date of a bank or public holiday falls on a Saturday (or Sunday), a substitute day is also given by Royal Proclamation, normally the following Monday.

¹⁴ In Scotland, there are also local holidays which can be determined by local authorities, or which are based on local traditional or cultural events and which will be observed by the majority of businesses and people in the local area in the place of an official statutory bank holiday. Royal Mail says that it has observed these holidays in the relevant parts of Scotland for

3.11 There are currently ten permanent bank holidays in Northern Ireland:

- New Year's Day;
- St Patrick's Day (17 March);
- Good Friday;
- Easter Monday;
- First Monday in May;
- Last Monday in May;
- Anniversary of the Battle of the Boyne (12 July);
- Last Monday in August;
- Christmas Day; and
- Boxing Day.

3.12 More information on bank holidays in Northern Ireland in 2012-14 can be found on the NIdirect website.¹⁶

Test for giving a direction

3.13 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(a).

3.14 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
- is transparent in relation to what it is intended to achieve.

3.15 In accordance with paragraph 4(3) of Schedule 6, before the direction is given, Ofcom must publish a notification stating that there is a proposal to give the direction and which:

- sets out the direction to which the proposal relates and its effect;

at least thirty years. See <http://www.royalmail.com/delivery/mail-advice/public-holidays#106000843>

¹⁵ http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG_073741

¹⁶ <http://www.nidirect.gov.uk/bank-holidays>

- gives reasons for the making of the proposal; and
- specifies the period within which representations may be made about the proposal, which must be at least one month beginning with the day after the notification is published, unless there are exceptional circumstances justifying a shorter period.

General duties

- 3.16 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.
- 3.17 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.
- 3.18 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.
- 3.19 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.
- 3.20 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.
- 3.21 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.
- 3.22 In this regard, we note Ofcom's general regulatory principles¹⁷ 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;

¹⁷ See this link for a full list of the principles, <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

- 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.
- 3.23 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.

General impact assessment

- 3.24 The analysis presented in Section 5 of this document constitutes an impact assessment, as defined in section 7 of the 2003 Act.
- 3.25 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 guidelines¹⁸.
- 3.26 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

- 3.27 In carrying out our functions, we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation;
 - advance equality of opportunity between different groups; and
 - foster good relations between different groups,
- in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 3.28 We also have obligations to consider the likely impact of proposed policies on the promotion of equality of opportunity and the promotion of good relations between

¹⁸ *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

people of a different religious belief, political opinion or racial group in Northern Ireland in accordance with our Northern Ireland Equality Scheme.¹⁹

- 3.29 Such equality impact assessments also assist us in making sure that we are meeting our principal duty under section 3 of the 2003 Act discussed above.
- 3.30 We have therefore given careful consideration as to whether granting exceptions to the universal service obligation for the day following the Battle of the Boyne bank holiday will have a particular impact on any particular group within society. We do not believe it does because the exception would apply to all address points within Northern Ireland and would observe local tradition. Royal Mail believes that its practices are generally in line with the communities it serves.

¹⁹ Published in accordance with our duties under section 75 of the Northern Ireland Act 1998. <http://stakeholders.ofcom.org.uk/binaries/consultations/950336/statement/Revised-NI-Equality-Scheme.pdf>

Section 4

Royal Mail's request

- 4.1 On 5 October 2012, Royal Mail submitted a request for a Direction under DUSP condition 1.3.2 for an exception to its universal service obligation: that the day following the Battle of the Boyne holiday (or the appropriate substitute day where 12 July falls on Saturday or Sunday) be considered a no universal postal service day in perpetuity in Northern Ireland.
- 4.2 This no service day, where Royal Mail does not have to provide the universal postal service, only applies to postal services in Northern Ireland – deliveries and collections in the rest of the UK will be unaffected, apart from mail sent to and from Northern Ireland.
- 4.3 Royal Mail wants a no universal postal service day for collections as well as deliveries so as to remove the obligation to collect from all post boxes, many of which have previously been found to contain no mail on the day after the Battle of the Boyne bank holiday. It proposes to make collections from those post boxes which it expects from experience to contain mail, post offices that are open and business customers by arrangement where advanced notice of sufficient volume has been received. Such mail will be processed or advanced through the system as far as possible, given the constraints on staffing levels, ready for the next working day.
- 4.4 Royal Mail does accept downstream access (DSA)²⁰ on the day following the Battle of the Boyne bank holiday. This applies to the whole of Northern Ireland as the only hand over point is at the Northern Ireland Mail Centre in Belfast. The mail is accepted on the same basis as the mail that Royal Mail will collect from customers' premises or heavily used post boxes as discussed above. It is an advanced posting, accepted to ease the operational strain on the business on the next normal working day.
- 4.5 The anniversary of the Battle of the Boyne day (12 July) is a widely observed statutory bank holiday in Northern Ireland. Royal Mail has said that most businesses also remain closed on the day following the Battle of Boyne bank holiday (normally 13 July), which, whilst not a public or bank holiday, is generally recognised as a local holiday. The Northern Ireland Civil Service and Crown Post Offices also traditionally take leave on 13 July.
- 4.6 The day following the Battle of the Boyne holiday is usually 13 July but as the Battle of the Boyne day (12 July) can fall on any day of the week, the date of the Battle of the Boyne bank holiday and local holiday can vary. Royal Mail's proposed no universal postal service day would also vary accordingly as shown in the following table:

²⁰ Downstream access is mail that has been collected and distributed by a competitor, but is handed over to Royal Mail mail centres for final processing onto local delivery offices, where they are delivered.

Day 12 July falls on	Battle of the Boyne bank holiday	No universal service day	Normal service resumes	Example of years relevant
Friday	Friday 12 July	Saturday 13 July	Monday 15 July	2013
Saturday	Monday 14 July	Saturday 12 July	Tuesday 15 July	2014
Sunday	Monday 13 July	Tuesday 14 July	Wednesday 15 July	2015
Monday to Thursday	12 July	13 July	14 July	

- 4.7 The proposed no universal postal service day would therefore fall on the day following the Battle of the Boyne bank holiday, apart from when 12 July is a Saturday and the bank holiday occurs on the following Monday in lieu of the Saturday (as in 2014). In that case, the proposed no service day would not be the Tuesday following the bank holiday Monday (i.e. 15 July) – instead it would be the previous Saturday (i.e. 12 July which is the actual anniversary of the Battle of the Boyne).

Mail user expectations

- 4.8 Royal Mail believes that it remains in the interest of the majority of its customers in the area concerned to align this day with the holiday taken by local authorities and other local businesses. It argues that whilst a customer outside Northern Ireland may expect their mail to be delivered, if the day after Battle of the Boyne holiday is being observed by the recipient it is less likely that the mail will be expected or acted upon.
- 4.9 Royal Mail submitted evidence in support of the application for a Direction in 2009²¹ that there was a reduced demand for postal services on this day, and has now provided updated data for social mail, posted in post boxes, for the last 3 years, excluding any business mail collected from customers' premises. This indicates that the small amount of mail posted on 13 July continues to be substantially lower in relation to the average daily postings.

²¹ <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>

	Postings on 13 July*	Average daily posting in July*	Drop in postings %
2010	[X]	[X]	47%
2011	[X]	[X]	45%
2012	[X]	[X]	40%

** Figures confidential*

Employee relations

- 4.10 Royal Mail has a long-standing practice of permitting its employees to take the day after the Battle of the Boyne bank holiday as annual leave if they wish to and a large percentage of Royal Mail employees choose to take this day as part of their annual leave. Royal Mail considers that a wholesale and blanket attempt to change this long standing arrangement across the whole of Northern Ireland would be highly contentious.

Londonderry

- 4.11 The day after the Battle of the Boyne holiday is traditionally less observed in the Londonderry area and staff do not generally take annual leave on this day. However, Royal Mail says that a no universal postal service day is needed for all Northern Ireland, including Londonderry, as there would only be a skeleton staff at the Mail Centre and as such no mail would be supplied to the delivery offices. If Londonderry were not included in the no universal postal service day, then the skeleton Mail Centre staff would have to process all mail posted outside Northern Ireland to identify the two postcode areas and arrange for it to be dispatched there. The Londonderry staff will deliver what mail is available for delivery on the day following Battle of the Boyne.
- 4.12 Also there would be no collections across most of Northern Ireland on that day, so even where the Londonderry staff make a collection from post boxes in that locality, they would be unable to transmit the mail any further into the network. Wherever staff choose not to take a day's leave, Royal Mail will use those staff in the most efficient manner available, for example staff will undertake some limited business collections of large volumes of mail in order to ensure it is ready for processing on the next working day, thereby reducing the strain on the system.

Communications

- 4.13 Royal Mail states that if its request is approved, it will place information about Northern Ireland collection and delivery arrangements for the day after the Battle of the Boyne on its website. It will also request that Post Office Ltd place information about closures and alternative delivery and collection dates on its website.

Section 5

Ofcom's assessment of Royal Mail's request

Recommendation

- 5.1 Ofcom is minded to accept Royal Mail's request for an exception to the universal service collection and delivery, until further notice, for:
- The day following the Battle of the Boyne bank holiday in Northern Ireland (except where 12 July is a Saturday, in which case the no universal postal service day will be that Saturday)

Assessment

- 5.2 Postcomm did not receive any objections to its original consultation regarding this "no service day" where Royal Mail does not have to fulfil its universal service obligations. Neither Ofcom nor Royal Mail have received any customer complaints to date regarding the no universal service day on this day.
- 5.3 In response to the original consultation, Consumer Focus (Northern Ireland) said that mail volumes were low after the Battle of the Boyne bank holiday. Royal Mail provided evidence²² to show that there is a reduced demand for postal services on the day following the Battle of the Boyne bank holiday, which is due to the closure of some local businesses and local organisations such as the Northern Ireland Civil Service and the construction and manufacturing industries taking holidays during a number of weeks in July. The latest data Royal Mail has collected (see paragraph 4.9) suggests that volumes of social mail posted on 13 July continue to decline in relation to the average daily postings for July. Ofcom recognises that not all businesses observe the local holiday and expects normal services to resume immediately after the no universal postal service day.
- 5.4 If we accept Royal Mail's request, Royal Mail must ensure that its customer communications are updated and adequate to enable both senders and recipients of mail to find out in advance which dates Royal Mail will observe. Royal Mail should display information publicising any arrangements on its website, in callers' offices and Post Offices. Post Office Ltd should be given advance notice of arrangements so that Post Office counter staff can inform their customers, for example, when Special Delivery items would arrive.

Legal Tests

- 5.5 We consider that the exception would be:
- **objectively justifiable** because there is less demand for postal services and postal volumes in Northern Ireland fall during this period due to the closure of many businesses and public sector organisations, including the Northern Ireland Civil Service and Crown Post Offices, and because it is a continuation of long-standing practice in Northern Ireland;

²² <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>

- **not unduly discriminatory** because the exception would apply to all households in Northern Ireland and would observe local tradition. Royal Mail believes that its practices are generally in line with the communities it serves;
- **proportionate** because it is consistent with Royal Mail's current arrangements for collection and delivery services in the local areas concerned and is aligned with local communities' needs for collection and delivery services (we note that there have been no customer complaints received by Postcomm, Ofcom or Royal Mail regarding the lack of a universal service on that day); and
- **transparent** because, should approval be granted, Royal Mail would publicise any closures widely on its website, in callers' offices and in written publications such as leaflets informing customers of last posting dates. Royal Mail would also give Post Office Ltd advance notice of any arrangements so that Post Office Ltd could inform its customers, for example when Special Delivery items would arrive.

5.6 Therefore we consider that the proposal to grant approval to Royal Mail's application for an exception to its universal service obligation on the day following the Battle of the Boyne bank holiday in Northern Ireland (or on the Saturday prior to the bank holiday when 12 July falls on a Saturday) satisfies the statutory criteria at paragraph 4(2) of Schedule 6 of the Act for granting an approval giving effect to a regulatory condition.

5.7 It would be helpful if respondents could answer the following questions:

- Do you agree that there should be an exception to the universal service (i.e. no deliveries or collections by Royal Mail except for limited deliveries and collections in Londonderry only) on the next working day following the Battle of the Boyne bank holiday in Northern Ireland? Please explain your answer.
- If you live and/or work in Northern Ireland, how important is it for you or for your business to have deliveries and/or collections on the next working day after the Battle of the Boyne bank holiday? Please explain your answer.
- If you are posting mail to Northern Ireland, how important is it for your item(s) to be delivered on the next working day after the Battle of the Boyne holiday?
- Are there any other issues you think Ofcom should be made aware of in its consideration of whether an exception to the universal service should be allowed for next working day after the Battle of the Boyne bank holiday? Please provide details where relevant.

Annex 1

Statutory Notification

Notification of proposal to issue a direction under Designated USP condition 1 in accordance with paragraph 4 of Schedule 6 to the Postal Services Act 2011

Proposal to give a direction under Designated USP condition 1.3.2(a) designating an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services for the day after the Battle of the Boyne bank holiday in Northern Ireland

Background

(A) On 27 March 2012, OFCOM published a statement entitled "Securing the Universal Postal Service: Decision on the new regulatory framework" (the "March Statement") in which, amongst other things, OFCOM imposed Designated USP ("DUSP") conditions on Royal Mail in accordance with sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act.

(B) The DUSP conditions impose, amongst other things, requirements on Royal Mail to offer a minimum level of delivery and collection services for postal packets (as defined in section 27 of the Act), and target routing times (as defined in the DUSP conditions) of services, throughout the United Kingdom, in accordance with section 31 of the Act.

(C) DUSP condition 1.3.2 sets out the circumstances in which the requirements in respect of the delivery or collection of postal packets and the target routing times of services do not need to be met. Pursuant to DUSP condition 1.3.2(a), one of the circumstances is "on any day which is (in the territory concerned) a public holiday". Pursuant to DUSP 1.1.2(aa), the definition of "public holiday" for the purposes of DUSP condition 1 includes, in relation to a particular territory, any day in relation to which OFCOM has by direction stated that exceptional circumstances require it to be treated as a public holiday.

(D) In October 2009, the Postal Services Commission (Postcomm - having responsibility for the regulation of postal services) issued a decision document entitled "*Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document*" which provided for certain exceptions to Royal Mail's universal service obligation, including an exception for a local holiday on the day following the Battle of the Boyne bank holiday in Northern Ireland. This decision was given effect by the accompanying direction (the "Postcomm Direction").

(E) The Postcomm Direction expired on 31 October 2012. On 5 October 2012, Royal Mail wrote to OFCOM requesting a direction under DUSP condition 1.3.2 for the day following the Battle of the Boyne day bank holiday in Northern Ireland.

Proposal in this notification

1. OFCOM hereby proposes, in accordance with paragraph 4 of Schedule 6 to the Act, to issue a direction under DUSP condition 1.3.2(a) providing for an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services in Northern Ireland on the day after

the Battle of the Boyne bank holiday, except in a year where 12 July is a Saturday, in which case the exception will apply to Saturday 12 July.

2. The proposed direction is set out in the Schedule hereto.
3. The proposed direction will apply on the date on which it is published.
4. The effect of, and OFCOM's reasons for, giving the proposed direction is set out in the accompanying consultation document.

Ofcom's duties and legal tests

5. OFCOM are satisfied that giving this direction 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 transparent in relation to what it is intended to achieve, as required under paragraph 4(2) of Schedule 6 to the Act.

6. In making this proposal, OFCOM have considered and acted in accordance with their principal duty in section 29 of the Act and their general duties in section 3 of the Communications Act 2003.

Making representations

7. Representations may be made to OFCOM about the proposal set out in this Notification by no later than 11 January 2013.

8. 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. 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.

Interpretation

9. In this Notification, unless the context otherwise requires, and subject to paragraph 10 below, words or expressions used in this Notification shall have the same meaning as they have been ascribed for the purposes of DUSP Condition 1.

10. In this Notification—

(a) “**Act**” means the Postal Services Act 2011 (c.5);

(b) “**DUSP conditions**” means the Designated USP conditions imposed on Royal Mail with effect from 1 April 2012 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and

(c) “**Royal Mail**” means Royal Mail Group Ltd, whose registered company number in England and Wales is 04138203.

11. For the purpose of interpreting this Notification—

(a) headings and titles shall be disregarded;

(b) expressions cognate with those referred to in this Notification shall be construed accordingly;

(c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

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

Signed by

Chris Taylor

Director, Consumer Policy, Consumer Group

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

[DATE]

SCHEDULE 1

DIRECTION UNDER DESIGNATED USP CONDITION 1

[Proposed] Direction under Designated USP condition 1.3.2(a) designating an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services for the day after the Battle of the Boyne bank holiday in Northern Ireland

Background

- (A) On 5 October 2012, Royal Mail wrote to OFCOM requesting a Direction under DUSP condition 1.3.2 excepting Royal Mail from its requirements imposed under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services, for the day after the Battle of the Boyne bank holiday in Northern Ireland.
- (B) Prior to making a direction affecting a regulatory condition imposed on a postal operator, including under DUSP condition 1.3.2(a), in accordance with paragraph 4(3) of Schedule 6 to the Act, OFCOM must publish a notification of its proposal to give the direction and its reasons for making the proposal. In accordance with paragraph 4(8) of Schedule 6 to the Act, OFCOM may only give effect to a proposal to make a direction if it has:
 - (a) considered every representation about the proposal that is made to OFCOM within the period specified in the 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.
- (C) On 6 December 2012 OFCOM published, in accordance with paragraph 4(3) of Schedule 6 to the Act, such a notification of its proposal to give a direction for the reasons set out in the consultation document accompanying that notification. In accordance with paragraph 4(4) of Schedule 6 to the Act, the notification invited representations to OFCOM by 11 January 2013.
- (D) OFCOM have considered every representation about the proposed Direction received and duly made to it [and 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].
- (E) For the reasons set out in the explanatory statement accompanying this Direction, OFCOM are satisfied that giving this Direction satisfies the general test set out in paragraph 4(2) of Schedule 6 to the Act, and OFCOM have considered and acted in accordance with their principal duty in section 29 of the Act and their general duties in section 3 of the Communications Act 2003.

Decision

Pursuant to and for the purposes of DUSP conditions 1.1.2(aa) and 1.3.2(a) OFCOM hereby direct as follows:

1. Exceptional circumstances require the day specified in paragraph 2 to be treated as a public holiday in Northern Ireland for the purposes of the definition of "public holiday" in DUSP condition 1, and pursuant to DUSP condition 1.3.2(a) that day shall therefore constitute an exception to the requirements imposed on Royal Mail under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services.
2. The day referred to in paragraph 1 above is the day immediately following the Battle of the Boyne bank holiday in each year, except in a year when the 12 July falls on a Saturday, in which case the day will be Saturday 12 July, as shown in the following table:

Day 12 July falls on	Battle of the Boyne bank holiday	Day of exception to universal service	Normal service resumes	Example of years relevant
Monday to Thursday	12 July	13 July	14 July	
Friday	Friday 12 July	Saturday 13 July	Monday 15 July	2013
Saturday	Monday 14 July	Saturday 12 July	Tuesday 15 July	2014
Sunday	Monday 13 July	Tuesday 14 July	Wednesday 15 July	2015

Commencement and interpretation

3. This Direction shall take effect on **[30 January 2013]**.
4. In this Direction, unless the context otherwise requires, and subject to paragraph 5 below, words or expressions used shall have the same meaning as they have been ascribed for the purposes of DUSP condition 1.
5. In this Direction—
 - (a) "**Act**" means the Postal Services Act 2011 (c.5);
 - (b) "**DUSP Conditions**" means the Designated USP conditions imposed on Royal Mail with effect from 1 April 2012 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
 - (c) "**Royal Mail**" means Royal Mail Group Ltd, whose registered company number in England and Wales is 04138203.
6. For the purpose of interpreting this Direction—
 - (a) headings and titles shall be disregarded;

An exception to Royal Mail's universal service obligation

(b) expressions cognate with those referred to in this Notification shall be construed accordingly;

(c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

Signed by

Chris Taylor

Director, Consumer Policy, Consumer Group

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

[30 January 2013]

Annex 2

Responding to this consultation

How to respond

- A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on Friday 11 January 2013.
- A2.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/uso-exception/howtorespond/form> 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.
- A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email michelle.koretz@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A2.4 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.
- A2.5 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

- A2.6 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

- A2.7 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, 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.

- A2.8 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.
- A2.9 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

- A2.10 Following the end of the consultation period, Ofcom intends to publish a statement by 31 January 2013.
- A2.11 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

Ofcom's consultation processes

- A2.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A2.13 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. 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.
- A2.14 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

Annex 3

Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A3.2 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

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 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.

A3.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A3.6 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.

A3.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A3.8 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 4

Consultation response cover sheet

- A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A4.2 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.
- A4.3 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.
- A4.4 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/.
- A4.5 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)

Annex 5

Consultation questions

- A5.1 If you wish to respond to the consultation, it would be helpful if you could answer the following questions:

Do you agree that there should be an exception to the universal service (i.e. no deliveries or collections by Royal Mail except for limited deliveries and collections in Londonderry only) on the next working day following the Battle of the Boyne bank holiday in Northern Ireland? Please explain your answer.

If you live and/or work in Northern Ireland, how important is it for you or for your business to have deliveries and/or collections on the next working day after the Battle of the Boyne bank holiday? Please explain your answer.

If you are posting mail to Northern Ireland, how important is it for your item(s) to be delivered on the next working day after the Battle of the Boyne holiday?

Are there any other issues you think Ofcom should be made aware of in its consideration of whether an exception to the universal service should be allowed for next working day after the Battle of the Boyne bank holiday? Please provide details where relevant.