

Decision to grant an exception to Royal Mail's universal service obligations

No requirement for deliveries and collections throughout the United Kingdom on 1 January 2022

[Statement: Decision to grant an exception to Royal Mail's universal service obligations](#) – Welsh overview

STATEMENT

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1. Overview

As the Designated Universal Service Provider ("DUSP"), Royal Mail is required to provide a universal postal service, including delivery and collection of letters, six days per week, Monday to Saturday. This obligation does not however apply on public holidays, which includes bank holidays and any other date which Ofcom directs. These are known as 'exceptions.'

Royal Mail has requested that Ofcom issue a direction to make 1 January 2022 an 'exception' because this date falls on a Saturday. 1 January is generally a public holiday. However, in 2022, when this date falls on a Saturday, the following Monday has been designated as the official public holiday. This would mean that, in the absence of a direction from Ofcom, Saturday 1 January 2022 would be a normal working day on which Royal Mail would be required to deliver and collect letters. Royal Mail's request is that Ofcom grants this exception in addition to it observing the non-working day on Monday 3 January 2022.

On 12 November 2021, Ofcom consulted on a proposed direction that would implement Royal Mail's request. The consultation closed on 13 December 2021. We received seven responses to our consultation, none of which objected to the proposal. Taking account of those responses, we have decided to agree to Royal Mail's request.

What we have decided – in brief

Ofcom has issued a direction providing an exception to the universal service throughout the United Kingdom for 1 January 2022, because this falls on a Saturday. This means that Royal Mail will not have to collect or deliver mail on that day.

The overview section in this document is a simplified high-level summary only. Our final decision and associated reasoning are set out in the full document.

2. Background and legal framework

Background

- 2.1 As the DUSP, Royal Mail is required to collect and deliver letters every Monday to Saturday, excluding public holidays. While public holidays include the traditional holidays of Christmas Day and Good Friday, as well as bank holidays, Ofcom may also direct that specific days (which may not technically be bank holidays) become exceptions to the universal service obligations.
- 2.2 1 January is usually a public holiday in the UK.¹ However, if it falls on a Saturday, the public holiday ordinarily moves to the following Monday (3 January) and Saturday 1 January is treated as an ordinary Saturday. This would mean that the universal service obligations on Royal Mail to collect and deliver letters would not apply on 3 January, it being a public holiday, but that they would apply on Saturday 1 January. This specific issue will arise on 1 January 2022.²
- 2.3 On 5 November 2021, Royal Mail asked Ofcom to make a direction exempting it from its universal service obligations on 1 January 2022 because this date falls on a Saturday. In the remainder of this Section, we set out the legal framework relevant to Royal Mail's request and summarise Royal Mail's request.

Relevant legal framework

Royal Mail's duty to provide the universal service

- 2.4 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.

¹ Bank holidays in England and Wales, Scotland and Northern Ireland are set under the Banking and Financial Dealings Act 1971. Additional bank holidays may be provided for in a given year by Royal Proclamation (for example the upcoming jubilee bank holiday in June 2022). 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.

² The GOV.UK website currently lists all the expected bank and public holidays for England, Wales, Scotland and Northern Ireland in 2022. 1 January would normally be designated a Bank Holiday if it falls on a weekday. However, in 2022, 1 January falls on a Saturday and therefore Monday 3 January 2022 is the substitute bank holiday.

2.5 Ofcom has met its requirements under section 30 of the Act by making the Postal Services (Universal Postal Service) Order 2012 ("the Order")³. 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 (as the DUSP) under the DUSP conditions.

2.6 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"

2.7 Under DUSP condition 1.5.1 Royal Mail must ensure that:

"Except as set out in DUSP 1.3, the universal service provider shall provide at least one collection-

(a) every Monday to Saturday, from public access points for letters for the services described in DUSP 1.4..."

Exceptions to the universal service obligations

2.8 DUSP condition 1.3.2 permits certain exceptions to Royal Mail's universal service obligations. Specifically, it provides that:

"The requirements in this DUSP Condition in respect of the delivery or collection of postal packets do not need to be met:

a) on any day which is (in the territory concerned) a public holiday; or

b) in such geographical conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes."

2.9 "Public holiday" is defined in the condition as "Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom, and, in relation to a particular territory or place, any day in relation to which OFCOM has by direction provided for an exception at that place under DUSP 1.3.2"⁴ (emphasis added).

Test for giving a direction

2.10 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 Amended in [December 2013](#).

⁴ DUSP condition 1.1.2(aa).

- 2.11 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.
- 2.12 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;
 - 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

- 2.13 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.
- 2.14 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be Ofcom's principal duty, in carrying out its 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.
- 2.15 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.
- 2.16 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.
- 2.17 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.

- 2.18 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.
- 2.19 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.

Royal Mail's request

- 2.20 As explained above, on 5 November 2021, Royal Mail asked Ofcom to issue a direction under DUSP 1.3.2(a) to designate 1 January 2022 as an exception to the universal service as it falls on a Saturday. The exception would be in addition to the substitute public holiday of 3 January 2022 (and, in Scotland, it would also be in addition to the substitute public holiday on 4 January 2022).⁵ Royal Mail provided a number of reasons to justify its request.
- 2.21 First, it has suggested that the impact on customers would be minimal. Royal Mail has argued that there is less demand for postal services on Saturdays generally, with many businesses closed, and suggests this is particularly the case on New Year's Day. Accordingly, Royal Mail suggests that demand for postal services is expected to be low and hence the impact on customers would be low. In addition, Royal Mail has noted that it understands Post Office branches are expected to be closed on 1 January 2022 and has explained that and it will ensure that its consumer communications make clear when deliveries and collections will be made over the New Year period.
- 2.22 Second, Royal Mail has explained that this non-working day would be consistent with its duty of care to its staff. In particular, Royal Mail notes that its staff have worked extremely hard over the last 20 months during the Covid-19 pandemic and that its *"people need this break over the New Year period."*⁶
- 2.23 Third, Royal Mail has noted this would be consistent with the practice under the previous regulatory regime administered by Postcomm. In particular, Royal Mail notes that in 2010 Postcomm made a decision to except Royal Mail from its obligations to provide services on both 1 January, when it fell on a Saturday, and the following Monday 3 January.
- 2.24 In light of these points, Royal Mail said: "we consider the impact of our proposal on customers to be minimal versus the costs of standing up our full network and benefits to our people of getting a well-deserved rest after Christmas."⁷

⁵ In Scotland, 2 January 2022 is ordinarily a public holiday. However, where that date falls on a Saturday or Sunday, it is ordinarily substituted for another week day. In 2022, 2 January falls on a Sunday and is being substituted for 4 January 2022. See [UK bank holidays \(www.gov.uk\)](http://www.gov.uk).

⁶ Royal Mail, *Letter to Ofcom of 5 November 2021*

⁷ Royal Mail, *Letter to Ofcom of 5 November 2021*

2.25 Finally, Royal Mail has also emphasised that it takes its responsibilities as a part of the UK's critical national infrastructure seriously. It says it will continue to collect Covid test kits from priority post boxes over this period and that it will engage with the Consumer Advocacy Bodies to ensure that its communications reach as many vulnerable groups as possible.

General impact assessment

2.26 The analysis presented in Section 3 of this document constitutes an impact assessment, as defined in section 7 of the 2003 Act.

2.27 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.⁸

2.28 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 our proposals.

Equality impact assessment

2.29 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 reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

2.30 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.

2.31 We have therefore given careful consideration as to whether granting exceptions to the universal service obligation for Saturday 1 January 2022 will have a particular impact on any particular group within society. We do not believe it will because the exception would apply to all addresses and all access points in the UK.

⁸ See [Ofcom's approach to impact assessments](#).

3. Summary of consultation responses

Introduction

- 3.1 On 12 November 2021, Ofcom published a consultation setting out Royal Mail's request (as detailed in section 2).⁹ The consultation explained that Ofcom was minded to agree to Royal Mail's request and to issue a direction under DUSP Condition 1.3.2(a) for 1 January 2022 to be designated as an exception to the universal service because it falls on a Saturday. The consultation provided notification of a proposed direction to give effect to that proposed exception. The consultation closed on 13 December 2021.
- 3.2 This section summarises responses to the consultation, non-confidential copies of which are published on our website.

Summary of responses

- 3.3 We received seven responses to our consultation. No respondent objected to the proposal.
- a) Citizens Advice Scotland ('CAS') said it generally agreed with the proposals so long as there was no detrimental impact on consumers, particularly those in rural areas and vulnerable groups. CAS added that Royal Mail should be asked to consider any particular impact the exemption may have on consumers and consider any relevant feedback from the impact of the delivery exemption that occurred on 2 January 2021 in Scotland. CAS requested that any complaints associated with this should be shared with Ofcom and advocacy bodies to inform any future consultations in relation to a proposed delivery exception.
 - b) CAS added that, if the exemption is granted, it must be clearly communicated to consumers and businesses across a variety of channels well in advance of 1 January 2022, including websites, social media and through posters placed in Post Office branches.
 - c) Unite, the CWU and two individuals agreed with our proposal noting in particular the demands placed on Royal Mail employees over the last two years. Unite also noted that certain other large companies have announced an additional non-working day on Saturday 1 January 2022.
 - d) The CWU agreed with our proposal emphasising the demands placed on Royal Mail employees recently. The CWU added that it considered it important to differentiate between deliveries on Saturday 1 January 2022 (New Year's Day) and Saturdays more generally. It said that while volumes are likely to be lower on 1 January, the CWU did not believe this would be the case for most Saturdays throughout the year.

⁹ Ofcom, [Proposal to grant an exception to Royal Mail's universal service obligations – No requirement for deliveries and collections throughout the United Kingdom on 1 January 2022](#), 12 November 2021.

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e) One individual expressed concern about Royal Mail's recent quality of service performance. This response was confidential.

f) Royal Mail confirmed its support for the proposed direction.

3.4 We set out in Section 4 below our final decision on this matter, taking account of these consultation responses.

4. Ofcom's decision

Summary

4.1 For the reasons set out below, Ofcom has decided to grant Royal Mail's request. Ofcom has issued a direction under DUSP Condition 1.3.2(a) for 1 January 2022 to be designated as an exception to the universal service because it falls on a Saturday. This means that Royal Mail will not have to collect or deliver letters on that day.¹⁰

Ofcom's decision

4.2 In 2009¹¹ and 2010¹², Postcomm granted Royal Mail an exception for 1 January when this fell on a Saturday and, in those circumstances, 3 January.¹³ In making that decision, Postcomm took into account that:

- a) There is typically a sharp decline in mail volumes after Christmas and especially on New Years' Eve. This meant the costs to Royal Mail of providing the service would be disproportionate to the volumes of mail expected.
- b) Demand for postal services was expected to be low on the relevant dates and hence the impact on customers would be low.
- c) Royal Mail had explained that it would set out extensive customer communications to ensure customers know which services would be available over the New Year period.

4.3 Ofcom considers that these factors are likely to apply to 1 January 2022. Indeed, Royal Mail has noted as part of its request that only 3.6% of business collection customers currently have a scheduled collection on Saturday. We are also mindful of Royal Mail's commitment to continue to collect Covid test kits from its priority post boxes on 1 January 2021 which will, in our view, further mitigate the risk of consumer harm from granting this exception.

4.4 We also note that in our Review of postal users' needs, published in 2020, we set out the findings of our quantitative market research, including that "*the majority of residential and*

¹⁰ It would also mean that, for the purpose of 'target routing times' under DUSP 1.6, that day would become a non-working day.

¹¹ Postcomm, [Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, and local holidays in Northern Ireland and Scotland – A decision document](#), October 2009.

¹² Postcomm, [Exceptions to Royal Mail's Universal Service Obligation: 1, 3 and 4 January 2011 – Decision document](#), November 2010.

¹³ In 2009 Postcomm granted an exception for 1 January when it fell on a Saturday and in 2010 it amended this decision to include an exception on Mondays following such a Saturday (i.e. a Monday 3 January). Postcomm's 2010 decision was therefore to except Monday 3 January, with Saturday 1 January already having been excepted. This differs slightly from this consultation which relates to a proposed exception for a Saturday 1 January in circumstances where Monday 3 January is already excepted.

SME participants in our qualitative research accepted that retaining a Saturday delivery of letters was not essential to meet their needs.”¹⁴

- 4.5 In reaching this view we have noted the points made by CAS that any proposed change to service must not detrimentally impact consumers, particularly those in rural areas and vulnerable groups. In light of the limited anticipated mail volumes over Christmas and New Years' Eve, we do not consider that the proposed change to service would detrimentally impact consumers and businesses.
- 4.6 We agree with the points raised by CAS that it is essential Royal Mail communicates very clearly the impact on services on 1 January 2022. We note that Royal Mail has committed, and already taken steps, to ensure that it provides clear communications to ensure that customers are aware of when deliveries and collections will take place over the New Year period. We also note that Royal Mail has identified specific steps to ensure its communications reach as many vulnerable consumers as possible.
- 4.7 We note that one respondent expressed concerns about Royal Mail's recent quality of service performance. Though this is not directly relevant to the granting of Royal Mail's request for delivery exception, we note that Ofcom takes quality of service seriously and monitors Royal Mail's performance on an ongoing basis. We report on Royal Mail's quality of service performance annually in our Annual Monitoring Updates. Our latest Annual Monitoring Update for Postal Services (2020-21), explained that we will continue to be pragmatic and proportionate in considering Royal Mail's quality of service performance, taking account of any relevant matters beyond Royal Mail's control, including any continuing impacts of the pandemic.
- 4.8 In light of the above, we have decided that it is appropriate to agree to Royal Mail's request. We are mindful, in making this decision, of the costs of providing the universal service on Saturday 1 January 2022 for what are expected to be low volumes of mail. We have also taken into account Royal Mail's submissions regarding the beneficial impact of this additional non-working day on its staff.

Legal tests

- 4.9 We consider that the exception would be:
- **objectively justifiable** because the impact of no collections and deliveries on Saturday 1 January 2022 is expected to be minimal. There is less demand for postal services on Saturdays generally with many businesses closed and this is particularly the case on a Saturday 1 January when most businesses and public sector organisations will be closed;

¹⁴ Ofcom, [Review of postal users' needs](#), November 2020. We note the points raised by the CWU in relation to Saturday deliveries in general. This decision relates solely to Saturday 1 January 2022 and has no implications for any other Saturday deliveries.

- **not unduly discriminatory** because the exception would apply to the whole of the UK and therefore there would be no deliveries to each delivery point and no collections from each access point in the UK on that day;
- **proportionate** because it does not go further than is necessary to except Royal Mail from carrying out its universal service obligation on 1 January 2022. It is also consistent with previous regulatory practice when Postcomm issued a direction for that day to be a “no service day”; and
- **transparent** because the reasons for the exception, the legal basis and Ofcom's provisional assessment of the exception are set out in this consultation document. The consultation also includes a proposed direction excepting Royal Mail from its requirements to make deliveries and collections on Saturday 1 January 2022.

4.10 Therefore, we consider that our decision to give a direction excepting Royal Mail from its universal service obligations on Saturday 1 January 2022 satisfies the statutory criteria at paragraph 4(2) of Schedule 6 of the Act for giving a direction affecting a regulatory condition imposed on a postal operator.

A1. Direction under Designated USP Condition 1

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 and collection of postal packets on 1 January 2022.

Background

- (A) On 5 November 2021, 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 and collection of postal packets on 1 January 2022.
- (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:
 - (C) considered every representation about the proposal that is made to OFCOM within the period specified in the notification; and
 - (D) 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) On 12 November 2021 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 midday on 13 December 2021.
- (F) 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.
- (G) 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. The day specified in paragraph 2 shall be treated as a public holiday 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 and collection of postal packets.
2. The day referred to in paragraph 1 above is the 1 January 2022.

Commencement and interpretation

3. This Direction shall take effect on 16 December 2021.
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 March 2017 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
 - (c) "Royal Mail" means Royal Mail Group Limited, 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;
 - (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

A rectangular box containing a handwritten signature in black ink that reads "M. Gibbs".

Director of Post

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

16 December 2021