

## ANNEX 15

# Statutory Notification: proposed Notification Condition

### NOTIFICATION OF PROPOSALS TO IMPOSE A REGULATORY CONDITION IN ACCORDANCE WITH SECTION 41 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

#### BACKGROUND

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

**B.** On 1 October 2011 the Secretary of State issued a direction under section 41(4) of the Act requiring Ofcom to impose a notification condition under section 41 of the Act no later than 1 April 2012.

#### PROPOSALS

**1.** Ofcom hereby proposes, in accordance with (and pursuant to powers under) section 41 of, and paragraph 3 of Schedule 6 to, the Act, to impose on every person providing, or intending to provide a service within the scope of the universal postal service of a description as set out in the Schedule hereto, a notification condition to make provision for matters set out in section 41 of the Act to notify Ofcom of a person’s intention to do certain matters specified in the Schedule hereto.

**2.** The proposed notification condition is specified in the Schedule hereto.

**3.** The effect of, and Ofcom’s reasons for making, these proposals are set out in the accompanying consultation document hereto.

#### OFCOM’S DUTIES AND LEGAL TESTS

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

**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 proposal set out in this Notification by no later than **31 January 2012**.

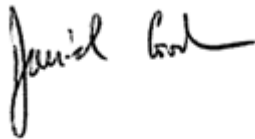
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) and to the European Commission in accordance with paragraph 5(2)(a) of Schedule 6 to the Act.

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

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

Signed by **Daniel Gordon**

A handwritten signature in black ink, appearing to read "Daniel Gordon". The signature is written in a cursive style with a long, sweeping underline.

**Director of Competition Policy**

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

**13 December 2011**

## SCHEDULE

### NOTIFICATION CONDITION

#### 1.1 Application, definitions and interpretation

<b>N1.1.1</b>	This Notification Condition shall apply to any person who is providing, or is intending to provide, a <u>service within the scope of the universal service</u> of a description specified in Condition N1.2.1 of this Notification Condition.
<b>N1.1.2</b>	In this Notification Condition—  <b>(a)</b> “ <b>Act</b> ” means the Postal Services Act 2011 (c.5);  <b>(b)</b> “ <b>letters</b> ” has the same meaning as set out in section 65(1) of the Act save that it does not include postal packets as defined in subsection (b) of that definition;  <b>(c)</b> “ <b>letters business</b> ” has the same meaning as set out in section 41(7) of the Act, save that the meaning of “letters” in that definition shall have the meaning set out in this Notification Condition;  <b>(d)</b> “ <b>Ofcom</b> ” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;  <b>(e)</b> “ <b>Relevant Period</b> ” means any period of three consecutive months.
<b>N1.1.3</b>	For the purpose of interpreting this Notification Condition—  <b>(a)</b> except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 2 of this Part above and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act;  <b>(b)</b> headings and titles shall be disregarded;  <b>(c)</b> expressions cognate with those referred to in this Notification Condition shall be construed accordingly; and  <b>(d)</b> the Interpretation Act 1978 (c. 30) shall apply as if this Notification Condition were an Act of Parliament.

## **1.2. Requirement to notify intention to provide specified delivery services**

<b>N1.2.1</b>	Any person must give written notice to <u>Ofcom</u> at least three months before the person intends to do any of the following:  (a) provide a <u>letters business</u> consisting of the delivery of at least two and a half million <u>letters</u> in all or any part of the United Kingdom within a <u>Relevant Period</u> ;  (b) where the person is already providing a <u>letters business</u> that meets the specification set out in subparagraph (a) of this Condition N1.2.1, and regardless of whether the person has previously made one or more notifications under this Condition, the expansion of that <u>letters business</u> through the delivery of an additional two and a half million or more <u>letters</u> in all or any part of the United Kingdom within a <u>Relevant Period</u> .
<b>N1.2.2</b>	Written notice given to <u>Ofcom</u> pursuant to Condition N1.2.1 must include the following information:  (a) details of the forecast volume of <u>letters</u> to be delivered within the <u>Relevant Period</u> to which the notification relates;  (b) details of the geographical areas in which the <u>letters business</u> to which the notification relates is forecast to operate; and  (c) details of when the <u>letters business</u> to which the notification relates is to be put into effect.
<b>N1.2.3</b>	This Notification Conditions shall not apply to such extent as <u>Ofcom</u> may direct.
<b>N1.2.4</b>	Any person to whom this Notification Condition applies shall comply with any direction <u>Ofcom</u> may make from time to time under this Notification Condition.

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

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

<b>Defined term</b>	<b>Section of the Act</b>
<i>Service within the scope of the universal service</i>	40