



Direction relating to exceptions to the postal deliveries Universal Service Obligation and approval of alternative delivery points

Statement

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Section 1

Summary

- 1.1 The Postal Services Act 2011 (“the Act”) sets out that as part of the universal postal service in the United Kingdom, there must be a delivery every Monday to Saturday of letters, and every Monday to Friday of other postal packets to the home or premises of every person or to delivery points approved by Ofcom. Ofcom secures this by designating Royal Mail as the universal service provider (“USP”) and by imposing on it a designated USP condition (“DUSP condition”) which, among other things, requires it to make daily deliveries.
- 1.2 However, Section 33(2)(b) of the Act states that the obligation to make daily deliveries does not need to be met in such geographical conditions or other circumstances as Ofcom consider to be exceptional. Ofcom can specify the circumstances we consider to be exceptional by making a direction.
- 1.3 The universal service obligation, fulfilled by Royal Mail, is central to the role that post plays in society and is relied upon by many residential users and small and medium businesses. Ofcom’s *Review of Postal Users’ Needs*, published in March 2013, found that post is highly valued by residential users and businesses across the UK. Ofcom takes the issue of exceptions to Royal Mail’s obligations to provide those services very seriously.
- 1.4 The existing direction, which was made by Ofcom on 23 February 2012 (the “Ofcom Deliveries Direction”), expires on 31 December 2013. At the same time as Ofcom made the Ofcom Deliveries Direction we also issued a formal approval under DUSP condition 1.4.1 and 1.4.2 regarding approval of identifiable delivery points for delivery of postal packets where delivery to the original addressee cannot be made (the “existing approval”).
- 1.5 We consider that there is an ongoing need to have clear rules and procedures that govern the exceptions to the delivery obligations (“delivery exceptions”). Therefore, on 21 October 2013, we published a consultation (“the October consultation”) with our proposed direction for deliveries and our proposed changes to the existing approval due to the close links between the direction for deliveries and the approval.
- 1.6 The October consultation identified a number of areas where improvements could be made to the direction for deliveries and the approval relating to alternative delivery points. We have fully considered the three responses to the October consultation in making our decision on delivery exceptions and approvals.
- 1.7 We intend to make the direction and approval broadly as specified in the October consultation. However, in light of the responses and our further analysis, we have made the following minor amendments to our original proposals:
 - Third party blockages: to clarify that where there is an exception under the category “difficulty of access (other)” this could be due to factors other than those caused by the act or default of persons controlling access;
 - Reviews: to only require Royal Mail to carry out reviews of exceptions on “reasonable” request to reduce the risk of vexatious requests but ensure exceptions are subject to scrutiny;

- Reviews: to limit the potential costs Royal Mail is exposed to, whilst still providing the necessary protection for, and cover the needs of, users, when providing assistance for users who by reason of age, disability, language or ill health may be disadvantaged when seeking a review of an exception. The proposed direction did not have a limit and therefore may not have been proportionate;
 - Reporting: to remove the requirement for Royal Mail to report annually on exceptions which result from a customer request. This returns us to the current situation, as such exceptions are not currently reported on.
- 1.8 This statement comprises our analysis of the consultation responses, the formal notification of our direction specifying the circumstances we consider to be exceptional and the formal notification of our approval of alternative delivery points.
- 1.9 This direction and approval take effect on 31 December 2013 and will remain in place unless otherwise revoked.
- 1.10 We have also, today, published a statement on exceptions to the postal collections universal service obligation.

Section 2

Introduction

Relevant background

- 2.1 The universal service obligation, to be fulfilled by Royal Mail, is central to the role that post plays in society and is relied upon by many residential users and small and medium businesses. Ofcom's *Review of Postal Users' Needs*, published in March 2013, found that post is highly valued by residential users and businesses across the UK.¹
- 2.2 The Act sets out that as part of the universal postal service in the United Kingdom, there must be a delivery every Monday to Saturday of letters, and every Monday to Friday of other postal packets.² We secure this by designating Royal Mail as the universal service provider and by imposing on it a DUSP condition which, among other things, requires it to make daily deliveries to the home or premises of every person or to alternative delivery points approved by Ofcom.
- 2.3 However, Section 33(2)(b) of the Act states that the obligation to make daily deliveries does not need to be met in such geographical conditions or other circumstances as Ofcom consider to be exceptional.³ Ofcom can specify the circumstances we consider to be exceptional by making a direction under DUSP condition 1.3.2. The Ofcom Deliveries Direction will expire on 31 December 2013.
- 2.4 At the same time as Ofcom made the Ofcom Deliveries Direction we also issued a formal approval under DUSP condition 1.4.1 and 1.4.2 regarding approval of identifiable delivery points for delivery of postal packets where delivery to the original addressee cannot be made, i.e. the "existing approval".⁴
- 2.5 As noted above, Ofcom takes very seriously the issue of exceptions to the universal service obligation to make deliveries. Although exceptions to the deliveries obligation represent a very small proportion (0.01%) of all addresses,⁵ it is important that the circumstances Ofcom considers to be exceptional are clearly set out for users and Royal Mail.
- 2.6 We consider that there is an ongoing need to specify exceptions to the universal service obligation to deliver letters or postal packets to every home or premises every working day, and to approve certain alternative delivery points. Therefore, on 21 October 2013,⁶ we consulted on a proposed direction to replace the Ofcom Deliveries Direction, including our reasons for and the expected effect of our proposals, together with proposed changes to the existing approval.

¹ Ofcom, *Review of Postal Users' Needs – Statement*, March 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-user-needs/statement/statement1.pdf>.

² Requirement 1, section 31, Postal Services Act 2011.

³ Section 33(2)(b) Postal Services Act 2011.

⁴ Annex 2 in <http://stakeholders.ofcom.org.uk/binaries/consultations/posta-direction/statement/direction.pdf>.

⁵ There are 2,986 delivery exceptions (taken from Royal Mail's annual list of exceptions 2013 and Royal Mail delivers to around 29 million addresses in the UK (<http://www.royalmailgroup.com/about-us/who-we-are-0>)).

⁶ <http://stakeholders.ofcom.org.uk/consultations/post-deliveries-uso/>.

- 2.7 We received three responses which we have considered fully. A summary of these and our assessment are set out in Section 4. All responses are published in full on Ofcom's website⁷. Responses were received from:
- Royal Mail;
 - Consumer Futures; and
 - Sam Squirrel Box.
- 2.8 This statement comprises our analysis of the responses and our formal notification of a direction specifying the circumstances we consider to be exceptional and the formal notification of an approval of alternative delivery points. The structure of the remainder of this document is as follows:
- Section 3 sets out the legal framework;
 - Section 4 summarises the consultation responses, our assessment and our decision regarding the direction;
 - Section 5 summarises the consultation responses, our assessment and our decision regarding the approval;
 - our formal notification of our direction is at Annex 1; and
 - our formal notification of our approval is at Annex 2.
- 2.9 The direction and approval will take effect from 31 December 2013 and will remain in place unless otherwise revoked.

General impact assessment

- 2.10 The analysis presented in this document is intended to complement the analysis contained in the October consultation. Together, that analysis constitutes an impact assessment, as defined in section 7 of the Communications Act 2003 (the "2003 Act"). In Sections 4 and 5 we set out our analysis and decisions, including their impact on stakeholders.
- 2.11 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

⁷ <http://stakeholders.ofcom.org.uk/consultations/post-deliveries-uso/>.

⁸ *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.

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

Equality impact assessment

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

Section 3

Relevant legal framework

The universal service

- 3.1 Under section 31 of the Act, as part of the universal postal service in the United Kingdom, there must be at least one delivery every Monday to Saturday of letters, and every Monday to Friday of other postal packets, to the home or premises of every individual or other person in the UK, or to such identifiable points for the delivery of postal packets as Ofcom may approve.
- 3.2 Ofcom secures this by designating Royal Mail as the universal service provider and by imposing on it a DUSP condition which, among other things, requires it to make daily deliveries.
- 3.3 Under Schedule 6 paragraph 2(1), Ofcom's power to impose a regulatory condition includes a power to impose a requirement to comply with directions given by Ofcom with respect to the matters to which the condition relates, and to impose obligations framed by reference to the approval of Ofcom.

Exceptions to the universal service delivery obligation

- 3.4 Under section 33(2) of the Act:

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

....do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.
- 3.5 In accordance with section 33(2) of the Act, DUSP condition 1.3.2 permits the following exceptions to Royal Mail's universal service obligations:

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

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

Related matters

- 3.6 The Ofcom Deliveries direction deals not only with the circumstances which Ofcom consider to be exceptional, but also various procedural matters and obligations to make alternative arrangements for those whose home or premises are subject to an exception. A separate statement published on 10 December 2013⁹ amended the DUSP condition to add a new provision DUSP 1.3.2A, to read:

⁹ *Technical and minor amendments in postal regulation - Notifications of technical and other minor amendments to the Universal Postal Service Order and related conditions*, (Ofcom) 10 December 2013, http://stakeholders.ofcom.org.uk/consultations/post/statement/?utm_source=updates&utm_medium=email&utm_campaign=post-statement.

“OFCOM may by direction set out the things which must be done when exceptional circumstances under DUSP 1.3.2(b) may have arisen in any particular case, including but not limited to: reporting, notification, appeals, reviews and the establishment of alternative delivery or collection arrangements.”

- 3.7 This makes it clearer that Ofcom’s direction-making power may be used to require the universal service provider to make arrangements of this type, and enables us to separate the definition of what is “exceptional” from associated procedural matters.

Approval of alternative delivery points

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

Test for giving a direction or approval

- 3.10 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 and 1.3.2A or give an approval for the purposes of DUSP 1.2.2(c), 1.4.1(a) or 1.4.2(a).
- 3.11 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.

General duties

- 3.12 Ofcom’s duty to secure the provision of a universal postal service is set out in section 29 of the Act. In this respect, section 29(1) provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service.
- 3.13 Section 3 of the Communications Act 2003 (the “2003 Act”) provides that it shall be Ofcom’s principal duty, in carrying out our functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

- 3.14 This principal duty applies also to functions carried out by us in relation to postal services. Section 3(6A) of the 2003 Act provides that where we are carrying out any of our functions in relation to postal services, the duty under section 29 of the Act takes priority over our general duties in the 2003 Act in the case of conflict between the two.
- 3.15 In performing our general duties, we are also required under section 3(4) of the 2003 Act to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations appear potentially relevant, including:
- the opinions of consumers in relevant markets and of members of the public generally; and
 - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 3.16 Section 3(5) of the 2003 Act provides that in performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 3.17 Pursuant to section 3(3) of the 2003 Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.
- 3.18 In this regard, we note Ofcom's general regulatory principles¹⁰ including in particular the following in the present context:
- ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and
 - consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.
- 3.19 Finally, we have an ongoing duty under section 6 of the 2003 Act to keep the carrying out of our functions under review with a view to ensuring that regulation by Ofcom does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.

¹⁰ See this link for a full list of the principles, <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>.

Section 4

Ofcom's assessment and decision on the deliveries direction

- 4.1 Section 4 of the October consultation set out our proposals for the exceptions direction based on our analysis of the current arrangements and relevant Ofcom market research and complaints numbers.
- 4.2 In this section we summarise the responses to the October consultation and set out our analysis and decisions for each proposal made in the October consultation. Save to the extent and as modified by what is set out below, in this decision we adopt all the reasoning set out in the October consultation.
- 4.3 We received two responses to the October consultation which related to the deliveries direction and we have considered them fully. All responses have been published in full on Ofcom's website.¹¹ Responses were received from:
- Royal Mail; and
 - Consumer Futures.
- 4.4 Both respondents were broadly supportive of our proposals and agreed that the direction should be made. Royal Mail agreed with our assessment that the current arrangements are proportionate and effective. Consumer Futures considered that the changes that we proposed were beneficial, in the consumer interest and will bolster the current arrangements in place. However, the respondents did provide some specific feedback on the drafting of the proposed direction. These are discussed in the relevant sub sections below.

Appropriate categories of exception

- 4.5 In the October consultation we proposed to:
- remove the distinction between long term and short term exceptions;
 - provide more detail on the threshold for health and safety exceptions;
 - ensure the direction covers all the circumstances envisaged in the previous regulatory framework, for example, to account for delivery points which are not secure; and
 - specify more detailed sub-categories for difficulty of access.
- 4.6 In the October consultation we clarified that an individual exception may include one or more categories i.e. an exception could be made on the grounds of both health and safety and difficulty of access.

¹¹ <http://stakeholders.ofcom.org.uk/consultations/post-collection-uso/>.

Long-term and short-term exceptions

Proposal

- 4.7 In the October consultation we proposed to remove the distinction between long term and short term categories in our definition of exceptional circumstances, and to refer, where relevant, only to the length of time for which exceptional circumstances have existed. This was because our review identified that the distinction between long and short term exceptions in the Ofcom Deliveries Direction has no practical impact on Royal Mail and that the distinctions which matter more are those which trigger specific obligations. For example, reporting obligations for exceptional circumstances which persist for twelve months, and a duty to consider taking action triggered at six months.

Responses

- 4.8 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.9 We remain of the view, for the reasons set out in paragraph 4.7 and in the October consultation, that there is no need for the direction to class exceptions as “long term” or “short term”.

Health and safety category

Proposal

- 4.10 In the October consultation we proposed that health and safety risks should, in principle, be considered exceptional circumstances such that the universal service provider should not be required to make daily deliveries to affected delivery points. Health and safety exceptions may arise in relation to relatively permanent physical access conditions at the premises, such as the need to cross difficult or dangerous terrain to reach the premises, or from the rough condition of a track leading to the premises, or less permanent circumstances such as where the occupier keeps dangerous dogs or where Royal Mail’s employees have been subjected to threatening behaviour or to attacks.
- 4.11 However, we considered that the direction could be clearer about when a health and safety-related exception would apply. In particular, it could be clearer that the exception arises when a hazard arises, rather than only after the hazard has been formally assessed by Royal Mail. We also proposed to clarify when and how an assessment must be made.

Responses

- 4.12 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.13 We remain of the view, for the reasons set out in our October consultation and in paragraphs 4.10 and 4.11 above, that the direction should specify when health and safety exceptions would apply and when and how an assessment should be made. In

this respect, we have made the direction with no changes from the version on which we consulted.

Delivery points with insufficient security category

Proposal

- 4.14 In the October consultation we proposed to provide for an exception when the delivery point concerned is not secure – for example, when the premises concerned are temporary (e.g. a tent or mobile caravan) or derelict. As the approval of alternative delivery points formerly made it clear that Royal Mail was not intended to have to deliver in these circumstances, we considered it appropriate that there should be a category of exceptional circumstances covering delivery points which are insufficiently secure to receive postal packets.

Responses

- 4.15 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.16 We remain of the view, for the reasons set out in our October consultation and in paragraph 4.14 above, that the direction should provide for an exception when the delivery point concerned is not secure. In this respect, we have made the direction with no changes from the version on which we consulted.

Difficulty of access category

Proposal

- 4.17 As set out in our October consultation, we consider that difficulty of access should, in principle, be considered exceptional circumstances such that the universal service provider should not be required to make daily deliveries to affected delivery points. The alternative would be to maintain an obligation on the universal service provider which in some cases would be impossible to meet, and in others could not be met without disproportionate cost and disruption in the provision of the universal service.
- 4.18 We considered that there were three categories of 'difficulty of access': lack of road access, third party blockage and other causes.

Difficulty of access: lack of road access

- 4.19 Some places in the United Kingdom, usually islands, cannot be reached by land. Access relies on scheduled air and/or ferry services from the Great Britain or Northern Ireland mainland. For some of these places, a scheduled service does not run every day from Monday to Saturday. In order for Royal Mail to collect from these locations six days a week, it would be necessary to make alternative arrangements to normally scheduled travel services. In practice, this could mean creating new travel infrastructure on days when existing services do not run.
- 4.20 We proposed that it would not be reasonable to require Royal Mail to convey letters on other days, when there is no operationally compatible scheduled transport service and there are no alternative means of access. However, we also remain of the view

that it is appropriate for such users to have a delivery at least once a week. The proposed direction therefore provided that:

- Delivery points located in places that can only be accessed by water or air, from the nearest delivery office on the mainland of Great Britain or the mainland of Northern Ireland, should be classed as exceptions to the extent that there is no operationally compatible service on the day concerned.
- The exception does not exist on the days when an operationally compatible scheduled air or ferry service is available, so deliveries are required on those days.
- In cases where there is no service, or any service runs less than once a week (for example, if ferry services stop in winter), Royal Mail must make arrangements to deliver once a week.

Difficulty of access: private roads

- 4.21 Some addresses are significantly more difficult to reach than others and we considered that where delivery is difficult because of poor access conditions along a private road or track which is not maintained in adequate condition, it is appropriate and objectively justifiable for there to be some kind of limit. For clarity, transparency and enforceability, we proposed to ensure that “poor” condition is as precise a term as possible and that the exception cannot be triggered merely by reducing speeds unnecessarily.
- 4.22 We accepted that fifteen minutes remained an appropriate upper limit for the travelling time in these circumstances. We proposed that the fifteen minutes be calculated as a limit of 7.5 minutes for a single leg of the journey (implying a round trip of 15 minutes) on the time Royal Mail has to spend delivering on foot, or by the vehicle used for the delivery route, along private roads or tracks where conditions are poor. In addition, if there were other properties further along the same private road or track then the 7.5 minute limit would begin again each time starting from the previous property in each case.
- 4.23 We considered that it was reasonable to expect a Royal Mail employee to drive a non-off road vehicle to a delivery point which is within 7.5 minutes journey (from the point at which the private road or track conditions become poor), where the conditions mean that the vehicle has to be driven at a speed of five miles per hour or less. We considered this to be a reasonable speed as it is a limit commonly applied to private roads requiring careful driving due to the need for the driver to notice speed humps or other traffic calming measures which require careful observation in order to avoid damage to the vehicle. In the case of most exceptions, the reason why the vehicle needs to be driven slowly is due to poor road conditions such as potholes which also require careful observation in order to avoid damage to the vehicle.
- 4.24 For the exception to apply:
- a private road must be in poor condition, which we proposed to define as meaning it is either unsuited to vehicles that are not specifically designed for off-road use; or safe use by such vehicles requires them to travel at a speed below five miles per hour;
 - the 7.5 minutes is measured by a vehicle travelling at the lesser of:

- a speed that is safe in all the circumstances; and
 - five miles per hour.
- where vehicular access is not possible, it is measured by foot at a walking pace that is safe in all the circumstances.

Difficulty of access: other

- 4.25 In the October consultation, we proposed that the universal service provider should not be expected to pay to access premises in order to deliver mail, nor that postal workers should be required to scale fences or other physical barriers. For example, access problems may arise where access to a customer's home or premises has been blocked by the occupier (e.g. a locked gate or where access can only be achieved via premises owned by a third party, who refuses access). If access is not granted, then the premises concerned should be subject to exceptional circumstances on difficulty of access grounds.

Responses

- 4.26 In its response, Royal Mail was supportive of this category, however, it suggested amending the direction to make clear that the category relating to "difficulty of access: other" would apply for blockages regardless of the cause of the blocked access. It highlighted that the proposed drafting had some potential ambiguity on this point and asked that we remove the reference to "that other person by their own act or by default prevents access or renders access extremely difficult" and instead make it clear that the category applies where access has been restricted or access has been denied.

Analysis and conclusions

- 4.27 We remain of the view, for the reasons set out in our October consultation and above, that difficulty of access should constitute exceptional circumstances. In relation to "lack of road access" and "private roads in poor condition" we have made the direction with no changes from the version on which we consulted.
- 4.28 In relation to the 'difficulty of access: other' category we considered Royal Mail's response and acknowledge that there may be some circumstances where a blockage restricting access to a delivery point may not be linked to an act or default of the person controlling access. Our proposed direction created a difficulty of access exception where a delivery point was located in a place to which access is controlled by any person other than the universal service provider and the problem was caused by that person's act or default. The direction as we have made it provides for the exception whenever access to the delivery point is prevented or rendered extremely difficult by circumstances other than circumstances covered by the other "difficulty of access" exceptions or circumstances within Royal Mail's control. This allows for the possibility of other matters causing access problems, for example, birds nesting (which are protected by law) in a delivery point.

Customer request category

Proposal

- 4.29 In the October consultation, we reasoned that a daily delivery is provided for the benefit of the occupier of the premises concerned, such that it is inappropriate to force it upon those who do not wish to have it. Therefore, a category is needed to cover off such exceptional circumstances, which would exist only insofar as the occupier requests and would fall away as soon as the occupier withdraws the request. A previous occupier's request would not bind a new owner, tenant or other occupier in the premises.

Responses

- 4.30 Royal Mail queried why it needed to include customer requests in its annual reporting requirement. We have addressed this under paragraph 4.96 below.

Analysis and conclusions

- 4.31 We remain of the view, for the reasons set out in our October consultation and above, that the direction should provide for an exception at the request of the occupiers of a home or premises at an address. In this respect, we have made the direction with no changes from the version on which we consulted. We consider the proposed requirement to report on customer requests below.

Arrangements for users who may be particularly disadvantaged

Proposal

- 4.32 In our October consultation we set out that the impact of an exception is likely to be greater on some individuals than others. For example, certain users due to age, disability or ill health may rely more on postal deliveries or may find it more difficult to travel further to an alternative delivery point such as a delivery office. Also, certain users may find complaining or even contacting Royal Mail about an exception difficult.
- 4.33 We acknowledged that Royal Mail (like all service providers) is subject to the Equality Act 2010 in its provision of services. Also, currently the policy statement, not the direction, requires Royal Mail, when it is contacted directly, to make an effort to reach an arrangement which causes customers who may face the above difficulties minimum difficulty.
- 4.34 In the October consultation, we proposed to require that when Royal Mail becomes aware of a person who for reasons of age, disability or ill-health may be particularly disadvantaged by the suspension of a daily delivery, Royal Mail should consider and document its view on whether it would be appropriate and proportionate to make deliveries in spite of any exceptional circumstances, and whether alternative arrangements ought to be made. This would mean that Royal Mail would be required to make it clear in its internal guidance for employees that the needs of users whose circumstances may mean that they are vulnerable are relevant to decisions on exceptions.
- 4.35 We also proposed that the direction should require the universal service provider to make appropriate facilities available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that

reason disadvantaged in the review/appeals process. Paragraph 4.69 below deals with this point.

Responses

- 4.36 In its response, Royal Mail asked that we add wording to paragraph 13 of the direction to make clear that this requirement will not apply if the exception relates to health and safety issues. It asked that we add “for the avoidance of doubt, nothing in 13(a) should be read as taking priority over the universal service provider’s health and safety obligations”. Royal Mail stated that although it will make every effort to ensure vulnerable users’ needs are taken into account, for those exceptions that are due to health and safety concerns, it has a continuing duty of care to its employees.

Analysis and conclusions

- 4.37 Paragraph 13 of the proposed direction requires Royal Mail to consider whether it should make deliveries despite the exception. It does not require Royal Mail to make deliveries despite the exception. If it has assessed the situation and considers that it still cannot deliver, then the direction allows for this. Therefore, we do not consider that the additional wording is required.
- 4.38 In light of the responses and our analysis above, we remain of the view that the direction should provide for Royal Mail to carry out this thought process. In this respect, we have made the direction as we consulted on it.

Alternative delivery arrangements

Proposal

- 4.39 In the October consultation, we proposed that the direction should specify alternative delivery points because if we did not require Royal Mail to make alternative delivery arrangements, this could lead to affected persons not receiving any post directed to their home or premises. We considered that this would be disproportionately detrimental to the interests of postal service users. We also proposed to specify explicitly what alternative delivery arrangements should be offered by Royal Mail to improve transparency and reduce the scope for disputes based on misunderstandings of what Ofcom requires.
- 4.40 As in many cases, the reason for the exceptional circumstances arising is likely to be due, at least in part, to circumstances outside of the control of the universal service provider, we considered that it would be appropriate to require the universal service provider to bear only fairly low costs. However, this should not prevent Royal Mail and a user coming to an agreement about such an alternative delivery point, e.g. a roadside box, but would not require Royal Mail to provide it.
- 4.41 We proposed that the arrangements that are within Royal Mail’s control and are proportionate and appropriate to be offered to affected users were for:
- postal packets to be available for collection free of charge from the local delivery office or post office;

- that, on the affected person's request, postal packets be redirected free of charge to an alternative address¹² served by the same delivery office; and
- Royal Mail should not be required to redirect postal packets where the provision of the service in relation to those postal packets would create a substantial risk of crime.

Responses

- 4.42 In its response, Royal Mail was supportive of the direction specifying clearly what alternative delivery arrangements should be offered. However, Royal Mail considered that the direction placed an unqualified, i.e. unlimited, obligation to offer alternative means of delivery which would place a disproportionate burden on Royal Mail. Therefore, Royal Mail requested that the direction be amended to allow it to assess any customer requests for alternative arrangements to ensure they are appropriate and proportionate. It recommended that paragraph 14 be amended (see italics): "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, *where it considers it appropriate and proportionate to do so*, shall...".
- 4.43 Royal Mail also wanted the direction to state clearly that Royal Mail did not have to provide its "Redirections" product which is a paid for service and recommended additional wording to that effect.
- 4.44 Additionally, Royal Mail considered that "the exemption allowing Royal Mail to not redeliver should apply to any case where there is a legal obligation on Royal Mail not to do so – not just, as currently drafted, where there is a substantial risk of crime" to "...enable Royal Mail to take account of any possible future statutory changes without risking a breach of Ofcom's Direction". It requested additional wording be added to paragraph 15 of the direction: "[...] the provision of the service in relation to those postal packets would create a substantial risk of crime *or give rise to a potential breach of any other legal obligation to which the universal service provider is subject*".

Analysis and conclusions

- 4.45 In relation to alternative delivery arrangements being appropriate and proportionate, we consider that our proposed direction does not place an unqualified obligation to offer alternative means of delivery on Royal Mail as paragraph 14(a) refers to "mutually agreed secure delivery point". Therefore, we do not consider that Royal Mail's proposed amendment is necessary.
- 4.46 However, in light of our review of this paragraph of the direction, we have not included in the direction as we have made it a requirement for Royal Mail to offer users the option of collecting from post offices. This is because although Royal Mail commonly provides this for a short period of time, the Post Office and Royal Mail are separate companies and no longer part of the same group and we therefore consider on reflection that it would not be proportionate to require Royal Mail to provide this in all cases. We do not consider that this will unduly affect the interests of users of postal services, as we have no reason to believe that Royal Mail will not continue to offer this option where it is reasonable for it to do so.

¹² Which could include a post office.

- 4.47 In relation to Royal Mail's wish for the direction to state clearly that it does not have to offer its Redirection product, we do not consider such an amendment necessary. The direction does not refer to Royal Mail's Redirection product or require Royal Mail to provide a redirections service similar to its Redirection product. Therefore, we do not need to specify this in the direction.
- 4.48 In relation to Royal Mail's request for additional wording to be added to paragraph 15 to cover off future legal obligations, we do not consider that this change is necessary. If any future changes to legislation were to impact on the direction, we could amend the direction as required.
- 4.49 In light of the responses and our analysis above, we remain of the view that the direction should specify alternative delivery arrangements. We have made the direction largely as we consulted on it, apart from the amendment to paragraph 14 as outlined in paragraph 4.46 above.

Notifications

Proposal

- 4.50 In our October consultation we proposed that Royal Mail be required to notify affected persons of its view that exceptional circumstances exist, their nature, potential remedial action and the review and appeals process. In order to be clear that Royal Mail's view is not final, we thought it important that users are notified from the outset that ultimate appeal lies with Ofcom.
- 4.51 We also proposed that any notification should be provided in writing. However, we acknowledged that in some cases, the nature of the exceptional circumstances may mean that physical delivery to the premises is not possible and therefore proposed to specify the alternative methods of notification which Royal Mail may use, and to require any notification to be done as soon as practicable.
- 4.52 As some exceptions may remain in place for many years we considered that addressees may not be aware that it is possible to seek a review of the exception at any time. If a property changes hands, the new occupant may not be made aware of the possibility of deliveries resuming, for example by taking remedial action in relation to a private road or track leading to the property. These types of addressees would be unlikely to generate complaints to Royal Mail, Ofcom or consumer bodies. Therefore, we proposed that Royal Mail should be required to send a reminder once every two years, to premises excepted for two years or more (to avoid double notification in any one year), of their right to seek a review. We considered that the cost of this change to Royal Mail would be proportionate since the overall number of delivery exceptions is low, and the cost of notifying affected addressees would be minimal.
- 4.53 We proposed that Royal Mail should notify Ofcom of cases involving exceptions where the exceptional circumstances have lasted more than one working day and where it affects more than one address. For example, where there is a dangerous dog roaming free in a street so the postman cannot deliver to any of the addresses. We considered that this notification obligation was objectively justifiable and proportionate as the burden on Royal Mail is low and such cases are particularly likely to lead to complaints and questions posed directly to Ofcom if Royal Mail does not handle them in an appropriate manner. In such cases, we would need to respond appropriately and on a timely basis. Also, early knowledge of such cases would enable Ofcom quickly to identify any sudden increase in the volume of exceptions

which might indicate a possibility that Royal Mail's exceptions policy was being applied more often than was strictly necessary.

Responses

- 4.54 Consumer Futures supported our proposals in this area and wanted us to ensure we monitored Royal Mail to ensure that Royal Mail notified users of their right to a review and provided the reminders to addresses excepted for two years or more.
- 4.55 In its response, Royal Mail requested we remove paragraph 18 (which sets out when a notification must be made in writing) as it did not "believe that the different requirements for delivery options, depending on the circumstances that brought about the exception, are relevant" and may be confusing.
- 4.56 Royal Mail also considered the requirement to re-notify customers every 24 months if the exception has persisted for 24 months or more unnecessary, as it engaged with customers regarding the circumstances and available options. In addition, Royal Mail stated that:
- if an excepted property changes hands the new occupier will contact the delivery office to discuss why they do not receive post and will have an opportunity to discuss the exception, tell Royal Mail if the circumstances have changed or agree different arrangements;
 - it carried out an annual review of difficulty of access and health and safety exceptions;
 - should a customer request an increase in the number of days for deliveries, it will reassess its ability to do so;
 - customers will be aware of the reasons for an exception and what needs to change for deliveries to be resumed; and
 - Royal Mail will raise customer awareness of the right of appeal by including a sentence on appeals in all of its standard exception and appeal letters and on its customer facing website.
- 4.57 Royal Mail stated that if Ofcom took forward the 24 month requirement then we should amend paragraph 21 of the direction to reflect current processes e.g. "In relation to delivery points for which exceptional circumstances have persisted for 24 months or more, the universal service provider must within three months of each annual review from 31 March 2014, issue a reminder notice to, as relevant". However, Royal Mail subsequently confirmed (in a follow up email) that if Ofcom did proceed to require a reminder, its preference was to send a reminder every two years.
- 4.58 Royal Mail also suggested a minor amendment in relation to reporting new exceptional circumstances for more than one delivery point. It recommended an amendment to paragraph 23 of the direction to make clear this requirement relates to new cases only: "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."

Analysis and conclusions

- 4.59 In relation to paragraph 18 of the direction (requirement to notify certain affected persons in writing), we consider that the paragraph is necessary and should be retained. We consider that if it is possible for Royal Mail to deliver a written notice to the property then it should do so. Paragraph 18 of the direction sets out where we require written notifications to be delivered to the affected premises in all cases e.g. lack of road access. Paragraph 19 sets out the options Royal Mail may use to notify an affected person for those exceptional circumstances, e.g. health and safety, where it may not be possible for Royal Mail to deliver a notification in writing to the premises.
- 4.60 We consider that the requirement to remind affected persons of their right to seek a review/appeal of the exception is necessary. Whilst we acknowledge and welcome Royal Mail's commitment to increase awareness via its standard letters and website and its engagement with affected persons should they approach Royal Mail, we consider that a backstop requirement should be in place. As we highlighted in our October consultation, our concern is that addressees may not be aware that it is possible to seek a review of the exception at any time, in particular where properties change hands and the new occupant is not made aware of the possibility of deliveries resuming. We consider it would be proportionate, given the small number of exceptions, to put the onus on Royal Mail to remind customers to consider whether they want a review, rather than on occupiers to remember to ask for one. Also, given our changes in relation to reviews being required "on reasonable request" (see paragraphs 4.91 below) this would minimise the likely costs faced by Royal Mail in terms of increased requests for review. Consumer Futures, in its response, supported our proposals that Royal Mail notify users of their right to a review and that Royal Mail provide re-notifications or reminders to addresses excepted for two years or more.
- 4.61 We also do not consider that Royal Mail's proposed wording to paragraph 21 is required as we do not specify when Royal Mail should carry out its annual review (just that one should be carried out for all exceptions). However, in light of our consideration of Royal Mail's response, we do consider that we need to clarify when the 24 month period (for how long the exception is in place) begins. Therefore, in the direction we have made, we have anchored it to a point in time. We consider it makes sense to use the time period set for reporting and the direction we have made therefore requires reminders for exceptions which, as at 31 March of any year, have been in place for 24 months or more. This means that Royal Mail will need to issue its reminders to those exceptions within three months of the 31 March of any year, unless it becomes aware that the exceptional circumstances concerned have ceased to exist. If Royal Mail chooses to also carry out its annual review of all exceptions during that period it can issue the reminder (if appropriate) as it completes each review.
- 4.62 In respect of Royal Mail's suggested change to paragraph 23 of the direction, we do not consider it obvious that an amendment is required since the obligation is to notify within a week. From this, we think it clear that the requirement relates to new cases only. However, in light of Royal Mail's concern we have, for clarity, added Royal Mail's suggested wording to the direction to ensure clarity that this relates to new cases only.
- 4.63 In light of the responses and our analysis above, we consider that the notifications we consulted on should be required. Therefore we have made the direction in this respect as we consulted on it, apart from making the amendments relating to

clarifying when the 24 month period begins (paragraph 4.61 above) and clarifying that paragraph 23 of the direction relates to new cases only (paragraph 4.62) above.

Reviews and appeals

Proposal

- 4.64 In our October consultation we considered that it remained appropriate for Royal Mail to review annually the circumstances relating to every exception. This allows Royal Mail to identify if those circumstances have changed and ensures that reporting to Ofcom is accurate. Therefore, our proposed direction included a requirement to review all exceptions on an annual basis, e.g. ferry timetables affecting collection times or third party access to premises.
- 4.65 We also considered it important that the universal service provider be required to react on a timely basis to any requests for a review of an exception and the direction proposed to require Royal Mail to complete a review within one month of a request. It would be open to Royal Mail to consider the extent to which it was appropriate to rely on any information previously obtained in relation to such a review, or whether new information was needed. The decision would, however, be subject to the normal review and appeals process.
- 4.66 As part of our Equality Impact Assessment, we also considered the effect of the review/appeal arrangements on all users and in particular, any specific users who may be disadvantaged in bringing a review. For example due to age, ill health, disability or where English is not the user's first language. We recognised that some users may find it harder to exercise their rights to seek a review or bring an appeal. Following consideration, we considered that the potential risk to users who may be disadvantaged in bringing and completing a review may be appropriately mitigated as follows.
- 4.67 First, we considered that any time limits on bringing an appeal should be removed as removing them would make it more likely that a user could access any help they may need to engage in the process.
- 4.68 Second, our direction was drafted so as to allow any person to seek a review. Any users who may be disadvantaged in bringing a review could seek assistance in order to take forward a review as there could be no question over the right of any person to seek a review, enabling a family member, a friend, carer, local Citizens Advice or other representative, to initiate and take one forward. We considered whether this approach was proportionate in light of the risk that vexatious objections would be pursued, which would impose an inappropriate burden on Royal Mail. However, we considered that:
- the number of exceptions is low; and
 - the likelihood of persons seeking reviews purely to be vexatious was very low as there would be no financial reward and limited likelihood of purely vexatious reviews leading to a different outcome.
- 4.69 Third, we considered that it would be appropriate for the direction to require the universal service provider to make appropriate facilities available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that reason disadvantaged in the review process. Royal Mail

had told us¹³ that if a user needs extra help, its Customer Services staff will escalate their case to a specialist team who can provide services such as Braille and a range of other appropriate tools to assist in dealing with the complaint. We therefore did not consider that this provision would impose any extra costs on Royal Mail.

- 4.70 We also considered the direction should be clear on what the review and appeals process is and what is required to initiate and progress an appeal. We considered that the least onerous approach, and one which would secure that decisions are taken at the appropriate level within Royal Mail, would be to include a three stage appeal process.
- 4.71 We also clarified the process we would follow if we received an appeal. Ofcom would first confirm that the case had indeed reached stage 3 and then consider whether Royal Mail had properly determined that “exceptional” circumstances existed in the case.
- 4.72 For health and safety appeal cases Ofcom would normally employ a health and safety consultant to provide it with expert, independent advice. The consultant’s advice would be used to identify what, if anything, could and would have to be done to make access sufficiently safe for daily collections to resume:
- If it were clear from Ofcom’s consultant’s advice that the health and safety problem could be overcome, but at a cost, Ofcom would decide in light of the available evidence whether it was reasonable to expect Royal Mail to take steps to overcome the problem, or whether the circumstances were genuinely exceptional.
 - Before reaching a final determination, Ofcom would take into account Ofcom’s consultant’s advice, along with any other relevant evidence. If the consultant’s view differed from Royal Mail’s view of the health and safety risks and/or remedial actions required, then Ofcom would put these differences to Royal Mail before making a final determination.
- 4.73 Ofcom would notify appellants and Royal Mail of our determination of their appeal. If we considered that Royal Mail’s decision had been incorrect we could take enforcement action in relation to Royal Mail’s duty to make collections, which could, potentially, result in a financial penalty and/or a notification requiring Royal Mail to take specified steps for complying with the regulatory requirement.

Responses

- 4.74 Consumer Futures considered that all consumer contacts should be managed centrally through the Royal Mail Customer Services team rather than through the local delivery office. This should assist in streamlining contacts on these issues, assist in improving awareness by consumers of the correct process including their right to appeal, ensure that accurate records of contacts and complaints are recorded, ensure issues are actively and appropriately dealt with and delivery offices actions and compliance with processes are properly monitored.
- 4.75 Royal Mail, in relation to Ofcom reviews of health and safety exceptions, asked that we amend the direction to provide greater detail on the process Ofcom will follow during an appeal and suggested additional wording for the direction. Royal Mail does not believe it is appropriate for Ofcom to overrule exceptions based on health and

¹³ Meeting between Royal Mail and Ofcom, 16 September 2013.

safety assessments. Royal Mail stated that by law it is required, as far as is reasonably practicable, to provide a safe working environment for its employees and others affected by its operations. Therefore, Royal Mail considers that as it has a robust risk assessment policy, which will be followed before any exception is made on health and safety grounds, it is in the best position to judge whether it has satisfied its statutory obligations. Whilst Royal Mail agreed we should have a degree of oversight of any appeal, we should have regard to Royal Mail's legal obligations under Health and Safety legislation. Royal Mail recommended a new paragraph 28 be inserted into the direction and that the current Paragraph 29 be revised as below (amendments in italics):

" 28. Subsequent to the review process set out in paragraphs [24] to [27] should an appeal be brought in front of OFCOM then the following process will apply:

a) OFCOM shall provide written notice to the universal service provider setting out the grounds of the appeal;

b) the universal service provider shall have an opportunity to make written representations responding to the appeal;

c) OFCOM shall, having had due regard to the evidence in front of it and, in particular, any health and safety concerns raised by the universal service provider issue a provisional decision;

d) The universal service provider and the person who requested the appeal shall have the opportunity to make representations in relation to the provisional decision;

e) In circumstances where the universal service provider has made representations that the exceptional circumstance is necessary to protect the health and safety of the universal service provider's employees, or others affected by its operations, OFCOM may require the universal service provider to carry out a further health and safety assessment, such assessment to be carried out by a suitably qualified professional.

f) In the circumstance that a health and safety assessment (as described in (e) above) finds there is a risk to the health and safety of the universal service provider's employees, or others affected by its operations, OFCOM may not require deliveries to be made to the delivery point concerned but may request that the universal service provider reasonable consider alternatives to a collection in the location concerned.

g) OFCOM's final decision shall be issued having given due regard to all the representations made.

29. Subject to the process set out in paragraph 28, Ofcom's final decision as to whether exceptional circumstances have arisen shall be binding."

- 4.76 In relation to who can request a review, Royal Mail asked for clarification that, where a customer wished to be represented by a third party, the customer must provide confirmation of this to Royal Mail.

- 4.77 In relation to the requirement to make appropriate facilities available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that reason disadvantaged in the review process, Royal Mail asked that paragraph 29 of the direction be amended. Royal Mail considered that the direction should be clearer as to the limit of the universal service provider's obligation in providing support to appellants. It recommended the following changes (in italics): "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 or the conduct of any second stage review."
- 4.78 Royal Mail also requested that a customer should only be able to request a review if circumstances have changed and that Royal Mail should be able to require evidence of a legitimate reason to ask for a review, to prevent unjustified requests for reviews from vexatious customers.

Analysis and conclusions

- 4.79 With regard to Consumer Focus's feedback concerning the handling of customer contacts centrally, whilst we acknowledge the potential benefits of this suggestion, we consider that such a change would be an operational matter for Royal Mail.
- 4.80 In relation to Royal Mail's points regarding Ofcom's reviews of health and safety exceptions, we do not consider that it would be consistent with the statutory framework for us to make the change to the direction that Royal Mail has requested and in any event we do not agree that any changes are needed to the direction.
- 4.81 The Act requires the universal service to include daily collections except in circumstances that Ofcom consider to be exceptional.¹⁴ The effect of Royal Mail's proposal would be to place the ultimate decision about whether circumstances were exceptional in Royal Mail's hands and not those of Ofcom.
- 4.82 The exception we proposed would exist in relation to 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; where there is no *reasonable* means of overcoming the hazard.
- 4.83 We do not consider this definition likely to be controversial in most circumstances. Broadly the same definition of health and safety exceptional circumstances has applied since 2006, during which time there have been five appeals to the regulator (four to Postcomm and one to Ofcom) about deliveries exceptions on health and safety grounds. The appeal to Ofcom was resolved by both parties before we undertook any assessment. For the other four appeals, Postcomm had risk assessments carried out and agreed that there was a health and safety risk.
- 4.84 We consider that, in the unlikely event that we did not agree with Royal Mail's view that health and safety exceptional circumstances had arisen, Royal Mail would be able to challenge our decision by way of judicial review and would in the meantime be able to take whatever steps it considered necessary (including "unreasonable" ones) to protect its workers while at the same time complying with its obligation to make deliveries. Only if Royal Mail did not make deliveries could Ofcom take enforcement action. If Ofcom considered it appropriate to take enforcement action

¹⁴ Section 33(2)(b).

Royal Mail would have further opportunities to present its case and Ofcom's decision could be challenged to the Competition Appeal Tribunal on judicial review principles.

- 4.85 We feel this situation would be unlikely to arise as Royal Mail must, and we may, undertake health and safety assessments carried out by competent personnel which we would have to take into consideration in order to reach an informed decision. In addition, before reaching its decision we would identify any remedial actions that could reasonably be taken by Royal Mail to mitigate any risks. In particular:
- The direction as we consulted on it and as we have made it provides that 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.
 - During any appeal, we would normally employ a health and safety consultant to provide us with expert independent advice. As stated in our consultation the consultant's advice would be used to identify what, if anything, could and would have to be done to make access sufficiently safe for daily deliveries to resume. If our consultant's advice was that the health and safety problem could be overcome, but at a cost, we would decide in light of the available evidence what steps it was reasonable to expect Royal Mail to take to overcome the problem, or whether the circumstances were genuinely exceptional.
 - Before reaching a final determination, we would take into account our consultant's advice, along with any other relevant evidence including Royal Mail's own assessments. If the consultant's view differed from Royal Mail's view of the health and safety risks of the delivery route and/or remedial actions required, then we would put these differences to Royal Mail before making a final determination.
- 4.86 In relation to who can request a review, we remain of the view for the reasons set out in our October consultation and in paragraph 4.68 above that anyone should be able to request a review. Customers who are experiencing particular difficulties may not be in a position to contact Royal Mail themselves to explain that they may be disadvantaged. Such customers would necessarily need to rely on a third party to represent them, such as family, carers or a neighbour due to their difficulties.
- 4.87 We remain of the view that this approach is proportionate in light of our assessment that the risk of vexatious review requests is low. We also consider it unlikely that anyone would request a review if they did not have an interest in the property concerned.
- 4.88 Reviews deal with whether exceptional circumstances exist, not what alternative delivery arrangements should be made. Our drafting of the requirements on alternative delivery arrangements makes it quite clear that Royal Mail does not have to make redeliveries where to do so would create a substantial risk of crime. We therefore consider that it is a matter for Royal Mail how it deals with any fraud risk in relation to alternative delivery arrangements and there is no need to make any changes to the direction.
- 4.89 In relation to making facilities available to ensure users who for reasons of age, ill health, disability or where English is not the user's first language are not for that

reason disadvantaged in the review process, we have considered Royal Mail's response. Amending the direction as Royal Mail suggests would reduce somewhat the protections for such users. The total number of exceptions is very small and therefore the potential requests for review from those who may be disadvantaged would also be small. However, we acknowledge Royal Mail's point that as drafted the direction does not limit the potential burden Royal Mail may face. There is therefore a risk of imposing a disproportionate burden on Royal Mail. Equally, in amending the direction as Royal Mail has suggested, we consider that it still provides the necessary protection for, and covers the needs of, users who may be particularly disadvantaged if subject to an exception. Therefore, on balance, we consider there is a need to amend the direction as Royal Mail suggests in order to clarify that the obligation to provide assistance is only to the extent that is reasonable and that it will prevent the appellant from experiencing any material disadvantage, and we have done so in the direction as we have made it. This should retain all necessary consumer protection, for example such customers could complain to Ofcom if they felt they were being treated unreasonably by Royal Mail, but also prevent Royal Mail from being exposed to disproportionate or unlimited costs.

- 4.90 We have considered Royal Mail's request that a customer should only be able to request a review if circumstances have changed and that Royal Mail should be able to require evidence of a legitimate reason to ask for a review to prevent unnecessary reviews from vexatious customers. Whilst Royal Mail's proposal would limit the scope for vexatious requests it would create a burden for the person seeking a review, who may not have the resources available to do this or understand how to do this. We consider it would be appropriate, given the small number of exceptions, to put the onus on Royal Mail to review rather than individuals to meet an evidential threshold in order to seek a review. However, we acknowledge that if we do not change the direction then a person could repeatedly request reviews even where there has been no change in circumstances. Although the total number of exceptions is very small and therefore the potential for repeated requests for reviews would also be small, there is a risk of imposing a disproportionate burden on Royal Mail since there would be nothing to stop a person from requesting reviews daily. One option to deal with this potential problem, could be to limit the number of requests that an individual could make in a year which would limit the scope for vexatious requests but would mean that if a person exceeded the cap, Royal Mail might not have to review an exception even if exceptional circumstances ceased to exist. An alternative option would be to require Royal Mail to carry out reviews on request unless Royal Mail reasonably believes the request to be vexatious. This would limit the scope for vexatious requests slightly but would be difficult for Royal Mail to rely on until it had carried out a number of pointless reviews. A final option is to require reviews to be carried out if a person makes a "reasonable" request. This would limit the scope for vexatious requests but not limit too strongly a user's ability to request a review.
- 4.91 Overall, we consider a change is required and that the most proportionate option is to require Royal Mail to carry out reviews on "reasonable" request. Although the term "reasonable" is not exact it best strikes the balance between the need to protect Royal Mail against vexatious requests and the need for exceptions to be subject to scrutiny and reviews to be easily accessible to consumers.
- 4.92 In light of the responses and our analysis above, we remain of the view that the direction should provide for a review and appeals process. Therefore, we have made the direction as we consulted on it, apart from the amendments as specified in paragraphs 4.89 and 4.91 above.

Reporting requirements

Proposal

- 4.93 In the October consultation, we considered that it remains appropriate and not unduly onerous for Royal Mail to report annually on the number of exceptions. It allows Ofcom and consumer representatives to monitor the application in practice of the provisions of a direction we may make under DUSP condition 1.3.2, and it would not be possible to monitor compliance adequately with less information. We considered that the reporting obligation should relate to all exceptions which have existed for twelve months or more. This would have meant that going forward Royal Mail would have to add details of any customer request, or 'other' difficulty of access exceptions (i.e. for reasons other than lack of road access and private roads) to its annual reporting. We did not consider that this would create any disproportionate burden on Royal Mail, as local delivery office managers routinely capture details on all exceptions in any event. We also proposed to require the report to include the date when the relevant exception arose. We continued to consider it important that the general public be able to access information on the volume of delivery exceptions, both for the purposes of exercising their rights and to ensure Royal Mail and Ofcom's conduct is sufficiently transparent. However, we considered it inappropriate to publish or require the publication of the specific addresses, as to do so could adversely impact affected individuals. Therefore, we proposed to require that the annual report should be published, for transparency's sake, but only include data at overall and postcode level and not include specific addresses.

Responses

- 4.94 Royal Mail supported the annual reporting requirements, the level of detail and the requirement to publish exception numbers. However, in its response, Royal Mail did not agree with our proposal for Royal Mail to report on the number of exceptions relating to customer requests. It considers that providing these exceptions would significantly increase the reporting burden (significant cost and considerable man hours to capture all the requested data) on Royal Mail without any material benefit to customers (the exceptions are a direct result of customer choice and do not reflect Royal Mail's ability to meet its universal service obligations).

Analysis and conclusions

- 4.95 We consider that it remains appropriate and not unduly onerous for Royal Mail to report annually on the number of exceptions as it allows Ofcom and consumer representatives to monitor the application in practice of the provisions of a direction we may make under DUSP condition 1.3.2.
- 4.96 However, in relation to adding details of any customer request exceptions which have existed for twelve months or more to its annual reporting, we have considered Royal Mail's response and the potential benefits to us and users of collecting and publishing this data. This data was not collected previously and therefore would be a new requirement for Royal Mail. However, this may still be proportionate if the data is essential to us or has consumer benefit. On reflection, however, such exceptions only exist because a customer has specifically requested it and not due to external circumstances which we see as requiring more regular regulatory oversight. The direction is clear about the basis for customer request exceptions and we may use our information request powers should we require customer request exceptions numbers. It is also not clear the consumer benefit which is derived from having

access to published data on the number of exceptions in place which have been requested by an individual. Therefore, on balance we agree that it is not appropriate at this stage for us to require reporting of annual data on customer request exceptions to postal users or Ofcom given the potential extra costs of doing so.

- 4.97 In light of the responses and our analysis above, we remain of the view, for the reason set out in our October consultation and above, that the direction should require annual reporting, apart from as specified in paragraph 4.96 above. In this respect we have made the direction in the form on which we consulted, apart from as specified in paragraph 4.96 above.

Changes to duration

Proposal

- 4.98 In our October consultation we proposed not to include an expiry date in our direction. We said that this should reduce the regulatory burden both on Ofcom and stakeholders in terms of producing and responding to consultations. The change would not prevent Ofcom reviewing or revoking the direction as and when appropriate and following review, either at our own initiative or if requested. It would also align with our policy decision relating to allowing an exception to the universal service obligation for the day after the Battle of the Boyne bank holiday in Northern Ireland published on 13 February 2013.¹⁵

Responses

- 4.99 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.100 In light of the responses and our analysis above, we remain of the view that it is appropriate not to include any expiry date in the direction.

Ofcom's decision

- 4.101 Following our assessment of the responses, as outlined above, have made the direction relating to delivery exceptions. We have outlined in paragraphs 4.28, 4.46, 4.61, 4.62, 4.89, 4.91 and 4.96 above the amendments have made to the direction compared to our original proposal in our October consultation.
- 4.102 The direction ensures that there are clear grounds for when exceptions to universal service delivery obligations exist and ensures users have a clear route for appealing exceptions.
- 4.103 We consider that the direction meets the required legal test as it is:
- **objectively justifiable** since the exceptional circumstances we are specifying relate to obvious difficulties in provision of the universal service, and must be evidenced in the ways we specify. The associated matters – notifications, reviews and appeals and alternative delivery points – all relate to balancing the interests of Royal Mail and postal service users in a way which will ensure decisions are

¹⁵ <http://stakeholders.ofcom.org.uk/consultations/uso-exception/>.

made at an operationally appropriate level while securing the rights of those addressees Royal Mail considers to be subject to exceptional circumstances.

- **not unduly discriminatory** as the direction sets out a framework that ensures consistency of treatment for all UK households and provides clarity regarding on what grounds an address may be excepted, while providing in certain small respects for different treatment in favour of protected groups for the reasons set out in this statement;
- **proportionate** because the exceptions provided for are (in our view) the minimum needed to ensure that Royal Mail is not required to make deliveries where it would be clearly disproportionate or impossible for it to do so, having regard to the importance of the universal service. Application of broadly the same policy since 2003 has led to a number of addresses on the excepted list that represents less than 0.01% of total addresses in the UK. We have also taken account of the regulatory burden on Ofcom and stakeholders, in particular with regard to notifications, reviews and appeals, alternative delivery arrangements and the duration of the direction.
- **transparent** because we are tightening the drafting to make clearer what circumstances Ofcom consider to be exceptional and what processes we require to be followed in determining cases. We are also building transparency into the regulatory regime, by imposing the publication obligations set out above.

4.104 Therefore we give notice of the direction (Annex 1) which will take effect on 31 December 2013 and remain in place until otherwise revoked.

Section 5

Ofcom's assessment and decision on the approval of alternative delivery points

Introduction

- 5.1 Section 5 of the October consultation set out our proposals for the approval of alternative delivery points based on our analysis of the current arrangements and relevant Ofcom market research and complaints numbers.
- 5.2 In this section we summarise the responses to the October consultation and set out our analysis and decisions for each proposal made in the October consultation.
- 5.3 We received three responses to the October consultation, of which only one made specific comment in relation to the alternative delivery points approval, which we have considered fully. All responses have been published in full on Ofcom's website.¹⁶ Responses were received from:
- Royal Mail;
 - Consumer Futures; and
 - Sam Squirrel box.
- 5.4 Respondents were broadly supportive of our proposals and agreed that the direction and approval should be made. Royal Mail agreed with our assessment that the current arrangements are proportionate and effective. Consumer Futures considered that the changes that we proposed were beneficial, in the consumer interest and will bolster the current arrangements in place. However, Sam Squirrel box did provide some specific feedback on the drafting of the approval and this is discussed below.

Proposals

- 5.5 The current alternative delivery points approval was last extended on 23 February 2012¹⁷ by Ofcom and set out the alternative delivery points to those where items are actually addressed where Royal Mail could deliver mail.
- 5.6 We considered that the policy aims underlying the approval remained broadly appropriate.
- 5.7 We considered that a number of changes were needed to the approval to:
- remove out-of-date references to the initial conditions which applied from 1 October 2011 until 1 April 2012;
 - remove duplication and other unnecessary provisions; and
 - tighten up the drafting.

¹⁶ <http://stakeholders.ofcom.org.uk/consultations/post-collection-uso/>.

¹⁷ <http://stakeholders.ofcom.org.uk/consultations/direction-extension/direction>.

- 5.8 We considered that Ofcom ought to approve any delivery point that the addressee and Royal Mail can agree.
- 5.9 We also considered that we should approve alternative delivery points provided by or on behalf of the addressee concerned, so long as these are close enough or convenient that reaching them does not place an inappropriate burden on Royal Mail. We considered that regulatory certainty and minimising the scope for dispute means the approval should be transparent on its face as to when the obligation on Royal Mail to deliver to such a point arises. We therefore drafted a more precise definition of the maximum distance that Royal Mail can be required to travel to an alternative delivery point.
- 5.10 We considered that there was a need to specify that the delivery point be safe, because although an unsafe delivery point would be subject to health and safety exceptional circumstances such that no delivery obligation would arise, absent provision in this approval it would be Royal Mail's responsibility under the direction to take reasonable steps to overcome the hazard.
- 5.11 We considered that there was a need to add explicit provision to the approval in respect of central delivery points for multi-occupancy buildings as it would be disproportionate to require Royal Mail to deliver to each individual household or separate office in a multi-occupied building, where the occupants share a concierge or central mailroom.
- 5.12 Finally, we did not consider that there was any need for an appeals process within the approval as agreements are by definition not subject to dispute. Any disputes about whether a delivery point is sufficiently secure would come under the exceptions direction and be subject to that appeals process. Any other disputes may be dealt with by Royal Mail as a complaint and ultimately by Ofcom as we would any other complaint alleging that Royal Mail has breached a regulatory condition.

Responses

- 5.13 Sam Squirrel Box requested that the ability of the client receiving mail or parcels to elect for an alternative delivery point must be an obligation on Royal Mail or the delivering party.

Analysis and conclusions

- 5.14 We consider that unless there are any exceptional circumstances as set out in our direction, Royal Mail is required to deliver to each home or premises or approved alternative delivery point in the UK. Our approval includes an approval of customer-installed boxes. If Royal Mail cannot deliver to a home or premises, and there is a customer-installed box which meets the criteria for our approval, Royal Mail must deliver to it unless an exception applies.
- 5.15 In light of the response and our analysis above, we remain of the view that we should approve alternative deliver points as set out in our October consultation, and we have given the approval as proposed.
- 5.16 We consider that the approval is:
- **objectively justifiable** since the points we propose to approve are justified for the reasons set out above and in our October consultation;

- **not unduly discriminatory** as the approval applies equally to every addressee;
- **proportionate** because the obligations imposed on Royal Mail are consistent with its normal business practice and are only what is needed to secure that addressees receive their post; and
- **transparent** in that the purpose of the approval is precisely what it says it is; and we would be tightening the drafting to make it clearer what points Ofcom approves.

5.17 Therefore we give notice of the approval (Annex 2) which will take effect on 31 December 2013 and remain in place until otherwise revoked

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

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

BACKGROUND

- A. On 21 October 2013, at Annex 4 to the consultation document entitled *Proposed direction relating to exceptions to the postal deliveries Universal Service Obligation and approval of alternative delivery points*, OFCOM published a notification in accordance with section 33(2)(b) of, and paragraph 4 of Schedule 6 to, the Postal Services Act 2011 (the “**Act**”) setting out their proposals to make a direction under Designated USP (“**DUSP**”) Condition 1.3.2 and (subject to consultation) 1.3.2A, and paragraph 4 of Schedule 6 to the Act and pursuant to powers and duties in section 33(2)(b) of the Act (the “**First Notification**”).
- B. In the First Notification (and the accompanying consultation document), OFCOM invited representations about any of the proposals set out therein by 22 November 2013.
- C. A copy of the First Notification and the accompanying consultation document was sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act
- D. By virtue of section 53 of, and paragraph 4(8) of Schedule 6 to, the Act OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they—
 - (i) have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
 - (ii) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- E. OFCOM received and has considered representations made to them in respect of the proposals set out in the First Notification (and the accompanying consultation document).
- F. The Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.
- G. On 10 December 2013, Ofcom published a notification of modifications to DUSP Condition 1 to add DUSP Condition 1.3.2A.

DECISION

1. Ofcom hereby makes a direction, 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:
 - (a) specifying geographical conditions and other circumstances which Ofcom consider exceptional such that the requirements relating to the delivery of letters and other postal packets set out in s.31 of the Act, regulation 6 of the Postal Services (Universal Postal Service) Order 2012 and Designated USP Condition 1.4.1 and 1.4.2 do not need to be met; and
 - (b) setting out the things which must be done when exceptional circumstances under DUSP 1.3.2(b) may have arisen in any particular case, including but not limited to: reporting, notification, appeals, reviews and the establishment of alternative delivery or collection arrangements.
2. The direction is specified in the Schedule hereto.
3. The effect of, and Ofcom's reasons for making, this direction are set out in the accompanying explanatory statement.

OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this decision satisfies the general test in paragraph 4(2) of Schedule 6 to the Act.
5. In making this decision, 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.
6. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act and to the European Commission in accordance with paragraph 5(2)(b) of Schedule 6 of the Act.
7. The Schedule to this Notification shall form part of this Notification.

Signed by Chris Taylor



Director, Consumer Policy

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

18 December 2013

SCHEDULE

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

Ofcom hereby directs as follows

Commencement

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

Interpretation

2. In this Direction—
 - a. **“Consumer Futures”** means:
 - (i) prior to 1 April 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
 - (c) deliveries are made to the delivery point concerned at least once a week, except where the circumstances described in paragraph 5 (*Health and safety*) exist throughout each working day in the week.

Difficulty of access: private roads

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

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

Difficulty of access: other

- 10. The circumstances specified in this paragraph are that 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

24. The universal service provider shall complete a review of whether exceptional circumstances exist in the case of an excepted delivery point:
 - (a) within one month of a 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.
25. The universal service provider shall notify the person who requested the review promptly in writing of:
 - (a) the outcome of the review; and
 - (b) if the outcome is that exceptional circumstances exist in relation to the delivery point concerned, the person's right to seek a second stage review and how such a request should be made, which shall include postal, telephone and email methods of communication.
26. The universal service provider shall complete a second stage review of whether exceptional circumstances exist in the case of a delivery point within 2 months from receipt of a request made in accordance with paragraph 25(b).
27. The universal service provider shall notify the person who requested the second stage review promptly in writing of:
 - (a) the outcome of the second stage review; and

- (b) if the outcome is that exceptional circumstances exist in relation to the delivery point concerned, the person's right to appeal to OFCOM, giving such contact details as OFCOM shall provide to the universal service provider for the purposes of this paragraph from time to time.
28. Ofcom's decision as to whether exceptional circumstances have arisen shall be binding.
29. The universal service provider shall at its own 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

30. The universal service provider shall within three months from 31 March each year, provide a report to OFCOM and Consumer Futures on each delivery point in relation to which exceptional circumstances 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.
31. No later than three months from 31 March each year, the universal service provider shall publish the report on its website, excluding the address of the delivery point
32. For the purposes of paragraph 31, if a single delivery point is affected by both health and safety and difficulty of access exceptional circumstances, it shall be reported in both relevant categories and the universal service provider shall include a note identifying the delivery point concerned.

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

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

BACKGROUND

- A. On 21 October 2013, at Annex 5 to the consultation document entitled *Proposed direction relating to exceptions to the postal deliveries Universal Service Obligation and approval of alternative delivery points*, OFCOM published a notification in accordance with section 33(2)(b) of, and paragraph 4 of Schedule 6 to, the Postal Services Act 2011 (the “**Act**”) setting out their proposals to give an approval:
 - (a) revoking the approval given by Ofcom on 23 February 2012, *Approval of identifiable points for delivery of relevant postal packets*;¹⁸ and
 - (b) approving delivery points for the purposes of Designated USP (“**DUSP**”) Condition 1.2.2(c), 1.4.1(b) and 1.4.2(b); (the “**First Notification**”).
- B. In the First Notification (and the accompanying consultation document), OFCOM invited representations about any of the proposals set out therein by 22 November 2013.
- C. A copy of the First Notification and the accompanying consultation document was sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act
- D. By virtue of section 53 of, and paragraph 4(8) of Schedule 6 to, the Act OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they—
 - (i) have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
 - (ii) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- E. OFCOM received and has considered representations made to them in respect of the proposals set out in the First Notification (and the accompanying consultation document).

¹⁸ Annex 2, Statement accompanying *Direction designating geographical conditions and other circumstances as exceptional for the purpose of deliveries* (Ofcom), 23 February 2012, <http://stakeholders.ofcom.org.uk/binaries/consultations/posta-direction/statement/direction.pdf>.

- F. The Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.

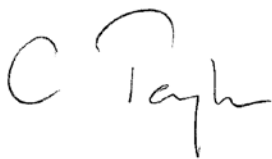
DECISION

1. Ofcom hereby gives an approval for the purposes of DUSP Condition 1.2.2(c), 1.4.1(b) and 1.4.2(b) and paragraph 4 of Schedule 6 to the Act:
(a) revoking the approval given by Ofcom on 23 February 2012, *Approval of identifiable points for delivery of relevant postal packets*¹⁹ and
(b) approving delivery points for the purposes of DUSP Condition 1.2.2(c), 1.4.1(b) and 1.4.2(b).
2. The approval is specified in the Schedule hereto.
3. The effect of, and Ofcom's reasons for giving, this approval are set out in the accompanying explanatory statement.

OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this decision satisfies the general test in paragraph 4(2) of Schedule 6 to the Act.
5. In making this decision, 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.
6. Copies of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act and to the European Commission in accordance with paragraph 5(2)(b) and (c) of Schedule 6 of the Act.
7. The Schedule to this Notification shall form part of this Notification.

Signed by Chris Taylor



Director, Consumer Policy

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

18 December 2013

¹⁹ Annex 2, Statement accompanying *Direction designating geographical conditions and other circumstances as exceptional for the purpose of deliveries* (Ofcom), 23 February 2012, <http://stakeholders.ofcom.org.uk/binaries/consultations/posta-direction/statement/direction.pdf>.

SCHEDULE

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

Commencement and revocation

1. This Approval shall come into effect on 31 December 2013.
2. This Approval replaces the approval given by OFCOM on 23 February 2012, *Approval of identifiable points for delivery of relevant postal packets*, which is hereby revoked.
3. This Approval does not affect the approval given by OFCOM on 27 September 2012, *Notification of an approval under Designated USP Condition 1.2.2 and paragraph 4(c) of The Postal Services (Universal Postal Service) Order 2012*,²⁰ which remains in force.

Interpretation

4. In this Approval—

“**multi-occupancy building**” means a building or private premises which contains more than one separate household or commercial office;

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

Approval of identifiable delivery points

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

²⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-delivery-neighbour/statement/statement.pdf>.

Agreed points

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

Multi-occupancy buildings

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

Points provided by the addressee

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