



Modification to the Royal Mail
margin squeeze control
Statutory Notification of change
to USP Access Condition 6

Notification

Publication date: 26 February 2013

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Section 1

Decision

- 1.1 On 27 March 2012 we published our Statement ‘*Securing the Universal Postal Service: Decision on the new regulatory framework*’ (‘the March 2012 Statement’).¹ This set out our decision on the new regulatory framework for the postal sector, which gave Royal Mail Limited (‘Royal Mail’) more commercial and operational flexibility (particularly in relation to setting the majority of its prices). Regulatory safeguards were implemented to protect consumers and, where appropriate, promote effective competition.
- 1.2 Together with the March 2012 Statement, we imposed a set of controls and accounting conditions. Included in these was a regulatory condition made pursuant to powers under section 38 and Schedule 3 of the Postal Services Act 2011 (the “Act”) (and in made in accordance with section 53 and paragraph 3 of Schedule 6 of the Act) to impose on Royal Mail, the universal service provider, an access condition. The access condition was made and notified on 27 March 2012 and is available at Annex 9 of the March 2012 Statement the (“USP Access Condition”).
- 1.3 The USP Access Condition gives access to Royal Mail’s postal network to other postal operators and users. The USP Access Condition includes a price control condition on Royal Mail.
- 1.4 On 28 November 2013, we consulted a proposed modification to paragraph 6.4 in the USP Access Condition to explicitly remove unrecoverable VAT from the downstream cost calculation².
- 1.5 After a review of the responses received, set out in Section 2, we have now decided in accordance with section 53 and paragraph 3 of Schedule 6 to the Postal Services Act 2011 and pursuant to powers in section 38 (and schedule 3) of the Act, to modify the USP Access Condition to implement this change.
- 1.6 A marked-up version of the USP Access Condition which shows these modifications to paragraph 6.4 is set out in Schedule 1 and a clean copy is set out in Schedule 2.
- 1.7 This revised version replaces the previous published version notified on 27th March 2012 and take effect when this notification is published.
- 1.8 Ofcom is satisfied that this modification satisfies the general test in paragraph 1 of Schedule 6 to the Act and the requirements of section 38.
- 1.9 A discussion of the responses to the consultation is set out in the accompanying statement.
- 1.10 Copies of this Notice and the accompanying statement will be notified to the Secretary of State and to the European Commission in accordance with paragraph 5of Schedule 6 to the Act.

¹ <http://stakeholders.ofcom.org.uk/binaries/Consultations/review-of-regulatory-conditions/Statement/Statement.pdf>

² Notification of the Modification of the Control to Prevent Royal Mail margin squeeze’ http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-margin-squeeze/summary/Notice_for_change_to_USPA_6.pdf, 28 November 2013

Signed by

A handwritten signature in black ink, appearing to read "Chris Newb", with a long horizontal line extending from the end of the signature.

Competition Policy Director

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

26 January 2014

Schedule 1

USP Access Condition with highlighted change to USPA 6.4

USP ACCESS CONDITION

I. USP access condition for D+2 Access

1. Application, definitions and interpretation

USPA 1.1	This USP access condition (" USPA Condition ") shall apply to <u>Royal Mail</u> as the <u>universal service provider</u> designated by <u>OFCOM</u> .
USPA 1.2	This <u>USPA Condition</u> shall apply to <u>access</u> to the <u>universal service provider's postal network</u> at the <u>Inward Mail Centre ("IMC")</u> for the purposes of providing <u>D+2 and later than D+2 Letters and Large Letters services</u> (" D+2 Access ").
USPA 1.3	<p>In this <u>USPA Condition</u>—</p> <ul style="list-style-type: none"> (a) "Act" means the Postal Services Act 2011 (c.5); (b) "access" means giving a person access to a provider's <u>postal network</u>, including giving that person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the postal network; (c) "Access Terms and Conditions Change Notice" has the meaning given to it in USPA 7; (d) "Costing Manual" has the meaning given to it in USP accounting condition 1.1.2(f); (e) "D+2 Access Operator" means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+2 Access</u> to the <u>universal service provider's postal network</u>; (f) "D+2 Access" means <u>access</u> to the <u>universal service provider's postal network</u> at the <u>IMC</u> for the purposes of providing <u>D+2 and later than D+2 Letters and Large Letters services</u>; (g) "D+2 Access Contract" means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a user of <u>postal services</u> for the provision by the <u>universal service provider</u> of <u>D+2 Access</u>; (h) "D+2 and later than D+2 Letters and Large Letters

	<p>services” mean retail services that aim to deliver two <u>working days</u> (or later) after collection from the sender, also known as a day C service, or later.</p> <p>(i) “Directed Adjustments” means those adjustments to the <u>Relevant Upstream Costs</u> that <u>OFCOM</u> direct the <u>universal service provider</u> to make in order to address differences between the <u>universal service provider’s</u> upstream operations and <u>D+2 Access Operators</u> with regards to accessing the <u>universal service provider’s</u> network;</p> <p>(j) “Downstream Costs” means the costs, as calculated in accordance with <u>Royal Mail’s Costing Manual</u>, of downstream activities which are the activities relating to the conveyance of mail items from the <u>IMC</u> to the final destination;</p> <p>(k) “Inward Mail Centre” or “IMC” means the part of the mail centre in which the activities related to the processes of final sorting for delivery (in that mail centre’s catchment area) of mail received from the upstream part of <u>Royal Mail’s</u> network, or from other <u>postal operators</u>, to the final addresses take place. The upstream part of <u>Royal Mail’s</u> network consists of the processes related to collection and distribution of mail;</p> <p>(l) “Letters” means any item up to length 240mm, width 165mm, thickness 5mm, and weighing no more than 100g;</p> <p>(m) “Large Letters” means any item larger than a <u>Letter</u> and up to length 353mm, width 250mm, thickness 25mm, and weighing no more than 750g;</p> <p>(n) “public holiday” includes, in relation to a particular territory, any day in relation to which <u>OFCOM</u> has by direction stated that exceptional circumstances require it to be treated as a public holiday;</p> <p>(o) “Regulatory condition” means any condition of authorisation set by <u>OFCOM</u> under the <u>Act</u>;</p> <p>(p) “Related person” means</p> <ol style="list-style-type: none"> (i) in relation to an undertaking within the meaning of section 1161 of the Companies Act 2006 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and (ii) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992;
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	<p>(q) “Relevant Access Service” means <u>access</u> services which have attributes which are all or substantially all equivalent to the inward processing and delivery attributes of the <u>Relevant Retail Services</u>;</p> <p>(r) “Relevant Contracts” means contracts for <u>Relevant Retail Services</u> which are on terms other than those both published by <u>Royal Mail</u> and generally available to all customers meeting specified criteria;</p> <p>(s) “Relevant Downstream Costs” has the meaning given to it in USPA 6 below;</p> <p>(t) “Relevant Downstream Revenue” has the meaning given to it in USPA 6 below;</p> <p>(u) “Relevant End to End Costs” has the meaning given to it in USPA 6 below;</p> <p>(v) “Relevant End to End Revenue” has the meaning given to it in USPA 6 below;</p> <p>(w) “Relevant Period” means, for the purposes of USPA 6, the financial reporting period most closely aligned with the twelve month period starting on 1 April in every year;</p> <p>(x) “Relevant Retail Services” means all Second Class Mailsort and Second Class Walksort services, and any current, new or successor retail services that are substantially similar services, offered by <u>Royal Mail</u>. <u>Royal Mail</u> shall notify <u>OFCOM</u> from time to time of any changes to the group of services that fall within the definition of <u>Relevant Retail Services</u>. <u>OFCOM</u> reserve the right to direct <u>Royal Mail</u> to include any services within that group which it reasonably considers fall within the definition of <u>Relevant Retail Services</u> and to exclude any services from that group which it reasonably considers fall outside the scope of that definition;</p> <p>(y) “Relevant Upstream Costs” has the meaning given to it in USPA 6 below;</p> <p>(z) “Relevant Upstream Revenue” has the meaning given to it in USPA 6 below;</p> <p>(aa) “Royal Mail” means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203;</p> <p>(bb) “Standard Terms and Conditions” mean such terms and conditions that are common to all <u>D+2 Access Contracts</u> or, where <u>D+2 Access Contracts</u> are individually negotiated, such standard terms and</p>
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	<p>conditions that are appended to such <u>D+2 Access Contracts</u>;</p> <p>(cc) “Statement of Notice” has the meaning given to it in USPA 7.5 below;</p> <p>(dd) “Statement of Process” has the meaning given to it in USPA 4 below;</p> <p>(ee) “USPA Condition” means a USP access condition imposed on the <u>universal service provider</u> under section 38 of the <u>Act</u>;</p> <p>(ff) “Working day” means any day which is not a Sunday or a <u>public holiday</u>.</p>
USPA 1.4	<p>For the purpose of interpreting this <u>USPA Condition</u>—</p> <p>(a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in USPA 1.3 above and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the <u>Act</u>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this Notification shall be construed accordingly; and</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if the Condition set out in this Condition were an Act of Parliament.</p>

2. Requirement to provide D+2 Access on reasonable request

USPA 2.1	Where a <u>D+2 Access Operator</u> reasonably requests in writing <u>D+2 Access</u> , the <u>universal service provider</u> shall provide that <u>D+2 Access</u> . The <u>universal service provider</u> shall also provide such <u>D+2 Access</u> as <u>OFCOM</u> may from time to time direct.
USPA 2.2	The provision of <u>D+2 Access</u> in accordance with USPA 2.1 above shall occur as soon as it is reasonably practicable.
USPA 2.3	The <u>universal service provider</u> must comply with any direction given by <u>OFCOM</u> from time to time under this Condition.

3. Requirement for fair and reasonable terms, conditions and charges

USPA 3.1	The provision of <u>D+2 Access</u> in accordance with USPA 2.1 above and pursuant to any existing <u>D+2 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such
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	terms, conditions and charges as <u>OFCOM</u> may from time to time direct.
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4. Requests for D+2 Access or variations to existing D+2 Access Contracts

USPA 4.1	<p>The <u>universal service provider</u> shall, for the purposes of transparency, publish a reasonable statement of the processes that will apply to requests for <u>D+2 Access</u> and variations to existing <u>D+2 Access Contracts</u> made to it (a "Statement of Process"). Such <u>Statement of Process</u> shall include:</p> <ul style="list-style-type: none"> (a) the form in which such a request should be made; (b) the information that the <u>universal service provider</u> reasonably requires in order to consider a request for new <u>D+2 Access</u> or a variation to existing <u>D+2 Access</u>; and (c) the reasonable time-scales in which such requests will be handled by the <u>universal service provider</u>.
USPA 4.2	<p>The <u>universal service provider</u> shall publish the <u>Statement of Process</u> described at USPA 4.1 above within three months of the date that this <u>USPA Condition</u> enters into force following a consultation with <u>OFCOM</u> and with <u>D+2 Access Operators</u>. The <u>universal service provider</u> shall keep the <u>Statement of Process</u> under review and consult with <u>OFCOM</u> and <u>D+2 Access Operators</u> before making any amendments to the <u>Statement of Process</u>. The provisions set out in the <u>Statement of Process</u> (as amended from time to time) will apply to all requests for <u>D+2 Access</u> or variations to existing <u>D+2 Access Contracts</u> subject to any direction by <u>OFCOM</u> as to the terms of those provisions or the manner in which they are to apply.</p>
USPA 4.3	<p>The <u>universal service provider</u> shall, upon reasonable request from a <u>D+2 Access Operator</u> considering making a request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>, provide that <u>D+2 Access Operator</u> with such information as is reasonably necessary to enable that <u>D+2 Access Operator</u> to make a request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>. Such information is to be provided within a reasonable period.</p>
USPA 4.4	<p>On receipt of a written request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>, the <u>universal service provider</u> shall deal with the request in accordance with the <u>Statement of Process</u> described at USPA 4.1 above. A modification of a request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u> which has previously been submitted to the <u>universal service provider</u>, and rejected by the <u>universal service provider</u>, shall be considered as a new request.</p>

5. Requirement not to unduly discriminate and restriction on use of information obtained in connection with giving access

USPA 5.1	The <u>universal service provider</u> shall not unduly discriminate against particular persons or against a particular description of persons in relation to matters connected with <u>D+2 Access</u> .
USPA 5.2	In this Condition, the <u>universal service provider</u> may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the <u>universal service provider</u> .
USPA 5.3	<p>Subject to USPA 5.4, the <u>universal service provider</u> shall use all reasonable endeavours to secure that no information in the possession of the <u>universal service provider</u> as a result of giving <u>access</u> to its <u>postal network</u> under any <u>USPA Condition</u> to other persons –</p> <ul style="list-style-type: none"> (a) is disclosed for the benefit of or used for the purpose of any trading business conducted by the <u>universal service provider</u>; or (b) is disclosed for the benefit of or used for the purpose of any trading business conducted by any <u>related person</u> of the <u>universal service provider</u>.
USPA 5.4	<p>USPA 5.3 shall not apply in so far as –</p> <ul style="list-style-type: none"> (a) <u>OFCOM</u> may consent in writing, (b) every person to whom the information relates has consented in writing to its disclosure or use as mentioned in USPA 5.3, (c) the disclosure is to, or the use is by, a person who – <ul style="list-style-type: none"> (i) is acting as an agent of the <u>universal service provider</u> for the provision of <u>postal services</u> to the person to whom <u>access</u> has been given and only for that purpose; (ii) is engaged by the <u>universal service provider</u> for the purpose of the <u>universal service provider</u>'s business as a <u>postal operator</u> and has access to the information only for that purpose; and (iii) is restricted by contract with the <u>universal service provider</u> from making any further disclosure or use of the information; or (d) the information has been published or is required to be disclosed in pursuance of any other <u>regulatory condition</u> to which the <u>universal service provider</u> is subject; or

	(e) the information is in the public domain otherwise than in consequence of a contravention of any <u>regulatory condition</u> to which the <u>universal service provider</u> is subject.
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6. Control to prevent price squeeze

USPA 6.1	<p>Unless <u>OFCOM</u> direct otherwise, the <u>universal service provider</u> shall in setting prices be subject to the requirement to take all reasonable steps to ensure that it:</p> <ul style="list-style-type: none"> (a) maintains a minimum margin between the retail prices of the <u>Relevant Retail Services</u> and the access charges for the <u>Relevant Access Services</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below; and (b) maintains a minimum margin in relation to every individual contract between the retail price of the <u>Relevant Retail Service</u> and the access charge for the <u>Relevant Access Service</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below.
USPA 6.2	<p>In order to satisfy the requirements in USPA 6.1(a) and (b) to maintain a minimum margin, the <u>universal service provider</u> must have a reasonable expectation that:</p> <ul style="list-style-type: none"> (a) <u>Relevant Upstream Revenue</u> will be no less than <u>Relevant Upstream Costs</u> for the <u>Relevant Period</u>; and (b) the <u>Relevant Upstream Revenue</u> for each individual contract for any <u>Relevant Retail Service(s)</u> will be equal to or more than 50% of the <u>Relevant Upstream Cost</u> for that individual contract for the <u>Relevant Period</u>.
USPA 6.3	<p><u>Relevant Upstream Revenue</u> should be calculated by deducting <u>Relevant Downstream Revenue</u> from <u>Relevant End to End Revenue</u> where:</p> <ul style="list-style-type: none"> (a) <u>Relevant End to End Revenue</u> is the revenue that the <u>universal service provider</u> earns from the supply of <u>Relevant Retail Services</u> during the <u>Relevant Period</u>; and (b) <u>Relevant Downstream Revenue</u> is calculated by multiplying the average price per unit charged by the <u>universal service provider</u> for <u>Relevant Access Services</u> by volume during the <u>Relevant Period</u>.
USPA 6.4	<p><u>Relevant Upstream Costs</u> should be calculated by deducting <u>Relevant Downstream Costs</u> from <u>Relevant End to End Costs</u> where:</p> <ul style="list-style-type: none"> (a) <u>Relevant Downstream Costs</u> are the costs <i>(not including recoverable or unrecoverable Value Added Tax)</i>

	<p>attributed to the provision of <u>Relevant Access Services</u> as calculated in accordance with <u>Royal Mail's Costing Manual</u>, subject to <u>Directed Adjustments</u> that <u>OFCOM</u> may direct from time to time; and</p> <p>(b) <u>Relevant End to End Costs</u> are the total costs <i>(not including recoverable or unrecoverable Value Added Tax)</i> of providing the <u>Relevant Retail Services</u> on an end to end basis as calculated in accordance with <u>Royal Mail's Costing Manual</u>.</p> <p>Unless <u>OFCOM</u> otherwise direct, the value of <u>Directed Adjustments</u> shall be zero.</p> <p>In calculating 6.4(a) and 6.4(b) the <u>universal service provider</u> should exclude <u>Downstream Costs</u> to the extent that those <u>Downstream Costs</u> relate to activities which are common to both <u>Relevant Access Services</u> and <u>Relevant Retail Services</u>, or are incurred in a directly comparable manner between <u>Relevant Access Services</u> and <u>Relevant Retail Services</u>.</p>
USPA 6.5	The <u>Relevant Period</u> during which the minimum margin referred to in USPA 6.1(a) and 6.1(b) above shall be maintained is twelve months.
USPA 6.6	The <u>universal service provider</u> shall set prices for the <u>Relevant Retail Services</u> and the <u>Relevant Access Services</u> at the start of each <u>Relevant Period</u> or at any point within the <u>Relevant Period</u> on the basis of a forecast of the costs and volumes for that period.
USPA 6.7	<p>The <u>universal service provider</u> shall be required to provide the following information at the start of the first <u>Relevant Period</u> and thereafter on a quarterly basis:</p> <p>(a) Details of forecast and actual <u>Relevant Upstream Costs</u> and <u>Relevant Upstream Revenues</u> for the <u>Relevant Period</u>;</p> <p>(b) With respect to each <u>Relevant Contract</u> for <u>Relevant Retail Services</u> that the <u>universal service provider</u> has entered into during the previous quarter or that has been materially amended during that quarter, the following information:</p> <ul style="list-style-type: none"> i. prices; ii. volumes; iii. date that the <u>Relevant Contract</u> was signed or most recently materially amended; iv. length of the <u>Relevant Contract</u> if applicable; and <p>(c) such other information as <u>OFCOM</u> considers necessary in order to enable it to ensure compliance with the requirements of USPA 6.</p>

7. Requirement to publish and notify charges, terms and conditions

USPA 7.1	Except in so far as <u>OFCOM</u> may otherwise consent in writing, the <u>universal service provider</u> shall publish and notify charges, terms and conditions and act in the manner set out below.
USPA 7.2	<p>The <u>universal service provider</u> shall:</p> <ul style="list-style-type: none"> (a) publish a set of the current <u>Standard Terms and Conditions</u> in such manner as will ensure reasonable publicity for them within one month of the date that this <u>USPA Condition</u> enters into force; and (b) thereafter ensure that the set of <u>Standard Terms and Conditions</u> that has been made publicly available is updated promptly following any amendments that are made to the <u>Standard Terms and Conditions</u>.
USPA 7.3	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to its charges for the provision of <u>D+2 Access</u>:</p> <ul style="list-style-type: none"> (a) The <u>universal service provider</u> shall send to every person with which it has entered into a <u>D+2 Access Contract</u> a written notice of any amendment to the charges under the <u>D+2 Access Contract</u>. The <u>universal service provider</u> shall provide a minimum of ten weeks' notice of any amendments to such charges or any other shorter period of notice agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u>; and (b) At the same time as the <u>universal service provider</u> sends the written notice of amendments to charges, it shall publish the amendments to those charges in such manner as will ensure reasonable publicity for them.
USPA 7.4	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to the <u>Standard Terms and Conditions</u> other than amendments to charges:</p> <ul style="list-style-type: none"> (a) Where amendments to the <u>Standard Terms and Conditions</u> have been made with the prior consent of the <u>D+2 Access Operators</u>, the <u>universal service provider</u> shall publish those amendments in such manner as will ensure reasonable publicity for them. Such publicity shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u>; and (b) Where amendments to the <u>Standard Terms and Conditions</u> do not require the prior consent of the <u>D+2 Access Operators</u>, the <u>universal service provider</u> shall:

	<ul style="list-style-type: none"> (i) provide every <u>D+2 Access Operator</u> with which it has entered into a <u>D+2 Access Contract</u> a written notice of the amendment to the <u>Standard Terms and Conditions</u> (an “Access Terms and Conditions Change Notice”); (ii) provide sufficient notice of the amendment to the <u>Standard Terms and Conditions</u> as set out in the <u>Access Terms and Conditions Change Notice</u> as meets the reasonable needs of access users; and (iii) publish those amendments in such manner as will ensure reasonable publicity for them. Such publication shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u>.
USPA 7.5	For the purposes of determining what a sufficient period of notice is, the <u>universal service provider</u> shall be required to publish a statement within one month of the date that this <u>USPA Condition</u> enters into force setting out the different periods of notice that will apply to the different categories of <u>Standard Terms and Conditions</u> that it is entitled to amend without the prior consent of <u>D+2 Access Operators</u> (a “Statement of Notice”). Where the <u>universal service provider</u> amends the periods of notice set out in the <u>Statement of Notice</u> , it shall take into account the reasonable needs of <u>D+2 Access Operators</u> and shall provide one month’s notice of any such amendments. <u>OFCOM</u> reserve the right to direct the <u>universal service provider</u> to amend the period of notice for any category of amendment to <u>Standard Terms and Conditions</u> .
USPA 7.6	<p>The <u>universal service provider</u> shall ensure that an <u>Access Terms and Conditions Change Notice</u> includes:</p> <ul style="list-style-type: none"> (a) a description of the <u>Standard Terms and Conditions</u> that are the subject of the amendment(s); (b) the date on which, or the period for which, the amendment(s) to the <u>Standard Terms and Conditions</u> will take effect (the “effective date”); and (c) the current and proposed new <u>Standard Terms and Conditions</u> affected by the amendment(s).
USPA 7.7	The <u>universal service provider</u> shall not apply any new Standard Term and Condition identified in an <u>Access Terms and Conditions Change Notice</u> before the effective date.
USPA 7.8	<p>The <u>universal service provider</u>’s obligations for prior notification and publication set out in this USPA 7 will not apply:</p> <ul style="list-style-type: none"> (a) where the new or amended charges or terms and

	<p>conditions are directed or determined by <u>OFCOM</u> or are required by a notification or enforcement notification issued by <u>OFCOM</u> under Schedule 7 of the <u>Act</u>; or</p> <p>(b) to any amendments to charges, terms or conditions that have been individually negotiated between the <u>universal service provider</u> and an individual <u>D+2 Access Operator</u>.</p>
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8. Quality of service

USPA 8.1	The <u>universal service provider</u> shall publish all such information as is reasonably necessary for the purposes of securing transparency as to the quality of service in relation to <u>D+2 Access</u> provided by the <u>universal service provider</u> in an appropriate manner and form, or as OFCOM may otherwise direct.
USPA 8.2	The <u>universal service provider</u> shall comply with any direction <u>OFCOM</u> may make from time to time under USPA 8.1.

Table of terms defined in the Act

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

<i>Defined term</i>	<i>Section of the Act</i>
<i>OFCOM</i>	<i>s.90</i>
<i>postal network</i>	<i>s.38(3)</i>
<i>postal operator</i>	<i>s.27(3)</i>
<i>postal services</i>	<i>s.27(1)</i>
<i>universal service provider</i>	<i>s.65(1) and Schedule 9, paragraph 3</i>

Schedule 2

Revised USP Access Condition

USP ACCESS CONDITION

I. USP access condition for D+2 Access

1. Application, definitions and interpretation

USPA 1.1	This USP access condition (" USPA Condition ") shall apply to <u>Royal Mail</u> as the <u>universal service provider</u> designated by <u>OFCOM</u> .
USPA 1.2	This <u>USPA Condition</u> shall apply to <u>access</u> to the <u>universal service provider's postal network</u> at the <u>Inward Mail Centre ("IMC")</u> for the purposes of providing <u>D+2 and later than D+2 Letters and Large Letters services</u> (" D+2 Access ").
USPA 1.3	<p>In this <u>USPA Condition</u>—</p> <ul style="list-style-type: none"> (a) "Act" means the Postal Services Act 2011 (c.5); (b) "access" means giving a person access to a provider's <u>postal network</u>, including giving that person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the postal network; (c) "Access Terms and Conditions Change Notice" has the meaning given to it in USPA 7; (d) "Costing Manual" has the meaning given to it in USP accounting condition 1.1.2(f); (e) "D+2 Access Operator" means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+2 Access</u> to the <u>universal service provider's postal network</u>; (f) "D+2 Access" means <u>access</u> to the <u>universal service provider's postal network</u> at the <u>IMC</u> for the purposes of providing <u>D+2 and later than D+2 Letters and Large Letters services</u>; (g) "D+2 Access Contract" means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a user of <u>postal services</u> for the provision by the <u>universal service provider</u> of <u>D+2 Access</u>; (h) "D+2 and later than D+2 Letters and Large Letters services" mean retail services that aim to deliver two <u>working days</u> (or later) after collection from the sender, also known as a day C service, or later.

	<p>(i) “Directed Adjustments” means those adjustments to the <u>Relevant Upstream Costs</u> that <u>OFCOM</u> direct the <u>universal service provider</u> to make in order to address differences between the <u>universal service provider’s</u> upstream operations and <u>D+2 Access Operators</u> with regards to accessing the <u>universal service provider’s</u> network;</p> <p>(j) “Downstream Costs” means the costs, as calculated in accordance with <u>Royal Mail’s Costing Manual</u>, of downstream activities which are the activities relating to the conveyance of mail items from the <u>IMC</u> to the final destination;</p> <p>(k) “Inward Mail Centre” or “IMC” means the part of the mail centre in which the activities related to the processes of final sorting for delivery (in that mail centre’s catchment area) of mail received from the upstream part of <u>Royal Mail’s</u> network, or from other <u>postal operators</u>, to the final addresses take place. The upstream part of <u>Royal Mail’s</u> network consists of the processes related to collection and distribution of mail;</p> <p>(l) “Letters” means any item up to length 240mm, width 165mm, thickness 5mm, and weighing no more than 100g;</p> <p>(m) “Large Letters” means any item larger than a <u>Letter</u> and up to length 353mm, width 250mm, thickness 25mm, and weighing no more than 750g;</p> <p>(n) “public holiday” includes, in relation to a particular territory, any day in relation to which <u>OFCOM</u> has by direction stated that exceptional circumstances require it to be treated as a public holiday;</p> <p>(o) “Regulatory condition” means any condition of authorisation set by <u>OFCOM</u> under the <u>Act</u>;</p> <p>(p) “Related person” means</p> <ul style="list-style-type: none"> (i) in relation to an undertaking within the meaning of section 1161 of the Companies Act 2006 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and (ii) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992; <p>(q) “Relevant Access Service” means <u>access</u> services which have attributes which are all or substantially all equivalent</p>
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	<p>to the inward processing and delivery attributes of the <u>Relevant Retail Services</u>;</p> <p>(r) “Relevant Contracts” means contracts for <u>Relevant Retail Services</u> which are on terms other than those both published by <u>Royal Mail</u> and generally available to all customers meeting specified criteria;</p> <p>(s) “Relevant Downstream Costs” has the meaning given to it in USPA 6 below;</p> <p>(t) “Relevant Downstream Revenue” has the meaning given to it in USPA 6 below;</p> <p>(u) “Relevant End to End Costs” has the meaning given to it in USPA 6 below;</p> <p>(v) “Relevant End to End Revenue” has the meaning given to it in USPA 6 below;</p> <p>(w) “Relevant Period” means, for the purposes of USPA 6, the financial reporting period most closely aligned with the twelve month period starting on 1 April in every year;</p> <p>(x) “Relevant Retail Services” means all Second Class Mailsort and Second Class Walksort services, and any current, new or successor retail services that are substantially similar services, offered by <u>Royal Mail</u>. <u>Royal Mail</u> shall notify <u>OFCOM</u> from time to time of any changes to the group of services that fall within the definition of <u>Relevant Retail Services</u>. <u>OFCOM</u> reserve the right to direct <u>Royal Mail</u> to include any services within that group which it reasonably considers fall within the definition of <u>Relevant Retail Services</u> and to exclude any services from that group which it reasonably considers fall outside the scope of that definition;</p> <p>(y) “Relevant Upstream Costs” has the meaning given to it in USPA 6 below;</p> <p>(z) “Relevant Upstream Revenue” has the meaning given to it in USPA 6 below;</p> <p>(aa) “Royal Mail” means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203;</p> <p>(bb) “Standard Terms and Conditions” mean such terms and conditions that are common to all <u>D+2 Access Contracts</u> or, where <u>D+2 Access Contracts</u> are individually negotiated, such standard terms and conditions that are appended to such <u>D+2 Access Contracts</u>;</p>
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	<p>(cc) “Statement of Notice” has the meaning given to it in USPA 7.5 below;</p> <p>(dd) “Statement of Process” has the meaning given to it in USPA 4 below;</p> <p>(ee) “USPA Condition” means a USP access condition imposed on the <u>universal service provider</u> under section 38 of the <u>Act</u>;</p> <p>(ff) “Working day” means any day which is not a Sunday or a <u>public holiday</u>.</p>
USPA 1.4	<p>For the purpose of interpreting this <u>USPA Condition</u>—</p> <p>(a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in USPA 1.3 above and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the <u>Act</u>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this Notification shall be construed accordingly; and</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if the Condition set out in this Condition were an Act of Parliament.</p>

2. Requirement to provide D+2 Access on reasonable request

USPA 2.1	Where a <u>D+2 Access Operator</u> reasonably requests in writing <u>D+2 Access</u> , the <u>universal service provider</u> shall provide that <u>D+2 Access</u> . The <u>universal service provider</u> shall also provide such <u>D+2 Access</u> as <u>OFCOM</u> may from time to time direct.
USPA 2.2	The provision of <u>D+2 Access</u> in accordance with USPA 2.1 above shall occur as soon as it is reasonably practicable.
USPA 2.3	The <u>universal service provider</u> must comply with any direction given by <u>OFCOM</u> from time to time under this Condition.

3. Requirement for fair and reasonable terms, conditions and charges

USPA 3.1	The provision of <u>D+2 Access</u> in accordance with USPA 2.1 above and pursuant to any existing <u>D+2 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as <u>OFCOM</u> may from time to time direct.
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4. Requests for D+2 Access or variations to existing D+2 Access Contracts

USPA 4.1	<p>The <u>universal service provider</u> shall, for the purposes of transparency, publish a reasonable statement of the processes that will apply to requests for <u>D+2 Access</u> and variations to existing <u>D+2 Access Contracts</u> made to it (a "Statement of Process"). Such <u>Statement of Process</u> shall include:</p> <ul style="list-style-type: none"> (a) the form in which such a request should be made; (b) the information that the <u>universal service provider</u> reasonably requires in order to consider a request for new <u>D+2 Access</u> or a variation to existing <u>D+2 Access</u>; and (c) the reasonable time-scales in which such requests will be handled by the <u>universal service provider</u>.
USPA 4.2	<p>The <u>universal service provider</u> shall publish the <u>Statement of Process</u> described at USPA 4.1 above within three months of the date that this <u>USPA Condition</u> enters into force following a consultation with <u>OFCOM</u> and with <u>D+2 Access Operators</u>. The <u>universal service provider</u> shall keep the <u>Statement of Process</u> under review and consult with <u>OFCOM</u> and <u>D+2 Access Operators</u> before making any amendments to the <u>Statement of Process</u>. The provisions set out in the <u>Statement of Process</u> (as amended from time to time) will apply to all requests for <u>D+2 Access</u> or variations to existing <u>D+2 Access Contracts</u> subject to any direction by <u>OFCOM</u> as to the terms of those provisions or the manner in which they are to apply.</p>
USPA 4.3	<p>The <u>universal service provider</u> shall, upon reasonable request from a <u>D+2 Access Operator</u> considering making a request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>, provide that <u>D+2 Access Operator</u> with such information as is reasonably necessary to enable that <u>D+2 Access Operator</u> to make a request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>. Such information is to be provided within a reasonable period.</p>
USPA 4.4	<p>On receipt of a written request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>, the <u>universal service provider</u> shall deal with the request in accordance with the <u>Statement of Process</u> described at USPA 4.1 above. A modification of a request for <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u> which has previously been submitted to the <u>universal service provider</u>, and rejected by the <u>universal service provider</u>, shall be considered as a new request.</p>

5. Requirement not to unduly discriminate and restriction on use of information obtained in connection with giving access

USPA 5.1	The <u>universal service provider</u> shall not unduly discriminate against particular persons or against a particular description of persons in relation to matters connected with <u>D+2 Access</u> .
USPA 5.2	In this Condition, the <u>universal service provider</u> may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the <u>universal service provider</u> .
USPA 5.3	<p>Subject to USPA 5.4, the <u>universal service provider</u> shall use all reasonable endeavours to secure that no information in the possession of the <u>universal service provider</u> as a result of giving <u>access</u> to its <u>postal network</u> under any <u>USPA Condition</u> to other persons –</p> <ul style="list-style-type: none"> (a) is disclosed for the benefit of or used for the purpose of any trading business conducted by the <u>universal service provider</u>; or (b) is disclosed for the benefit of or used for the purpose of any trading business conducted by any <u>related person</u> of the <u>universal service provider</u>.
USPA 5.4	<p>USPA 5.3 shall not apply in so far as –</p> <ul style="list-style-type: none"> (a) <u>OFCOM</u> may consent in writing, (b) every person to whom the information relates has consented in writing to its disclosure or use as mentioned in USPA 5.3, (c) the disclosure is to, or the use is by, a person who – <ul style="list-style-type: none"> (iv) is acting as an agent of the <u>universal service provider</u> for the provision of <u>postal services</u> to the person to whom <u>access</u> has been given and only for that purpose; (v) is engaged by the <u>universal service provider</u> for the purpose of the <u>universal service provider</u>'s business as a <u>postal operator</u> and has access to the information only for that purpose; and (vi) is restricted by contract with the <u>universal service provider</u> from making any further disclosure or use of the information; or (d) the information has been published or is required to be disclosed in pursuance of any other <u>regulatory condition</u> to which the <u>universal service provider</u> is subject; or

	<p>(e) the information is in the public domain otherwise than in consequence of a contravention of any <u>regulatory condition</u> to which the <u>universal service provider</u> is subject.</p>
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6. Control to prevent price squeeze

USPA 6.1	<p>Unless <u>OFCOM</u> direct otherwise, the <u>universal service provider</u> shall in setting prices be subject to the requirement to take all reasonable steps to ensure that it:</p> <ul style="list-style-type: none"> (a) maintains a minimum margin between the retail prices of the <u>Relevant Retail Services</u> and the access charges for the <u>Relevant Access Services</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below; and (b) maintains a minimum margin in relation to every individual contract between the retail price of the <u>Relevant Retail Service</u> and the access charge for the <u>Relevant Access Service</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below.
USPA 6.2	<p>In order to satisfy the requirements in USPA 6.1(a) and (b) to maintain a minimum margin, the <u>universal service provider</u> must have a reasonable expectation that:</p> <ul style="list-style-type: none"> (a) <u>Relevant Upstream Revenue</u> will be no less than <u>Relevant Upstream Costs</u> for the <u>Relevant Period</u>; and (b) the <u>Relevant Upstream Revenue</u> for each individual contract for any <u>Relevant Retail Service(s)</u> will be equal to or more than 50% of the <u>Relevant Upstream Cost</u> for that individual contract for the <u>Relevant Period</u>.
USPA 6.3	<p><u>Relevant Upstream Revenue</u> should be calculated by deducting <u>Relevant Downstream Revenue</u> from <u>Relevant End to End Revenue</u> where:</p> <ul style="list-style-type: none"> (a) <u>Relevant End to End Revenue</u> is the revenue that the <u>universal service provider</u> earns from the supply of <u>Relevant Retail Services</u> during the <u>Relevant Period</u>; and (b) <u>Relevant Downstream Revenue</u> is calculated by multiplying the average price per unit charged by the <u>universal service provider</u> for <u>Relevant Access Services</u> by volume during the <u>Relevant Period</u>.
USPA 6.4	<p><u>Relevant Upstream Costs</u> should be calculated by deducting <u>Relevant Downstream Costs</u> from <u>Relevant End to End Costs</u> where:</p> <ul style="list-style-type: none"> (a) <u>Relevant Downstream Costs</u> are the costs (not including recoverable or unrecoverable Value Added Tax) attributed

	<p>to the provision of <u>Relevant Access Services</u> as calculated in accordance with <u>Royal Mail's Costing Manual</u>, subject to <u>Directed Adjustments</u> that <u>OFCOM</u> may direct from time to time; and</p> <p>(b) <u>Relevant End to End Costs</u> are the total costs (not including recoverable or unrecoverable Value Added Tax) of providing the <u>Relevant Retail Services</u> on an end to end basis as calculated in accordance with <u>Royal Mail's Costing Manual</u>.</p> <p>Unless <u>OFCOM</u> otherwise direct, the value of <u>Directed Adjustments</u> shall be zero.</p> <p>In calculating 6.4(a) and 6.4(b) the <u>universal service provider</u> should exclude <u>Downstream Costs</u> to the extent that those <u>Downstream Costs</u> relate to activities which are common to both <u>Relevant Access Services</u> and <u>Relevant Retail Services</u>, or are incurred in a directly comparable manner between <u>Relevant Access Services</u> and <u>Relevant Retail Services</u>.</p>
USPA 6.5	The <u>Relevant Period</u> during which the minimum margin referred to in USPA 6.1(a) and 6.1(b) above shall be maintained is twelve months.
USPA 6.6	The <u>universal service provider</u> shall set prices for the <u>Relevant Retail Services</u> and the <u>Relevant Access Services</u> at the start of each <u>Relevant Period</u> or at any point within the <u>Relevant Period</u> on the basis of a forecast of the costs and volumes for that period.
USPA 6.7	<p>The <u>universal service provider</u> shall be required to provide the following information at the start of the first <u>Relevant Period</u> and thereafter on a quarterly basis:</p> <p>(a) Details of forecast and actual <u>Relevant Upstream Costs</u> and <u>Relevant Upstream Revenues</u> for the <u>Relevant Period</u>;</p> <p>(b) With respect to each <u>Relevant Contract</u> for <u>Relevant Retail Services</u> that the <u>universal service provider</u> has entered into during the previous quarter or that has been materially amended during that quarter, the following information:</p> <ul style="list-style-type: none"> i. prices; ii. volumes; iii. date that the <u>Relevant Contract</u> was signed or most recently materially amended; iv. length of the <u>Relevant Contract</u> if applicable; and <p>(c) such other information as <u>OFCOM</u> considers necessary in order to enable it to ensure compliance with the requirements of USPA 6.</p>

7. Requirement to publish and notify charges, terms and conditions

USPA 7.1	Except in so far as <u>OFCOM</u> may otherwise consent in writing, the <u>universal service provider</u> shall publish and notify charges, terms and conditions and act in the manner set out below.
USPA 7.2	<p>The <u>universal service provider</u> shall:</p> <ul style="list-style-type: none"> (a) publish a set of the current <u>Standard Terms and Conditions</u> in such manner as will ensure reasonable publicity for them within one month of the date that this <u>USPA Condition</u> enters into force; and (b) thereafter ensure that the set of <u>Standard Terms and Conditions</u> that has been made publicly available is updated promptly following any amendments that are made to the <u>Standard Terms and Conditions</u>.
USPA 7.3	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to its charges for the provision of <u>D+2 Access</u>:</p> <ul style="list-style-type: none"> (a) The <u>universal service provider</u> shall send to every person with which it has entered into a <u>D+2 Access Contract</u> a written notice of any amendment to the charges under the <u>D+2 Access Contract</u>. The <u>universal service provider</u> shall provide a minimum of ten weeks' notice of any amendments to such charges or any other shorter period of notice agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u>; and (b) At the same time as the <u>universal service provider</u> sends the written notice of amendments to charges, it shall publish the amendments to those charges in such manner as will ensure reasonable publicity for them.
USPA 7.4	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to the <u>Standard Terms and Conditions</u> other than amendments to charges:</p> <ul style="list-style-type: none"> (a) Where amendments to the <u>Standard Terms and Conditions</u> have been made with the prior consent of the <u>D+2 Access Operators</u>, the <u>universal service provider</u> shall publish those amendments in such manner as will ensure reasonable publicity for them. Such publicity shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u>; and (b) Where amendments to the <u>Standard Terms and Conditions</u> do not require the prior consent of the <u>D+2 Access Operators</u>, the <u>universal service provider</u> shall: <ul style="list-style-type: none"> (i) provide every D+2 Access Operator with which it has

	<p>entered into a D+2 Access Contract a written notice of the amendment to the Standard Terms and Conditions (an “Access Terms and Conditions Change Notice”);</p> <p>(ii) provide sufficient notice of the amendment to the <u>Standard Terms and Conditions</u> as set out in the <u>Access Terms and Conditions Change Notice</u> as meets the reasonable needs of access users; and</p> <p>(iii) publish those amendments in such manner as will ensure reasonable publicity for them. Such publication shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u>.</p>
USPA 7.5	<p>For the purposes of determining what a sufficient period of notice is, the <u>universal service provider</u> shall be required to publish a statement within one month of the date that this <u>USPA Condition</u> enters into force setting out the different periods of notice that will apply to the different categories of <u>Standard Terms and Conditions</u> that it is entitled to amend without the prior consent of <u>D+2 Access Operators</u> (a “Statement of Notice”). Where the <u>universal service provider</u> amends the periods of notice set out in the <u>Statement of Notice</u>, it shall take into account the reasonable needs of <u>D+2 Access Operators</u> and shall provide one month's notice of any such amendments. <u>OFCOM</u> reserve the right to direct the <u>universal service provider</u> to amend the period of notice for any category of amendment to <u>Standard Terms and Conditions</u>.</p>
USPA 7.6	<p>The <u>universal service provider</u> shall ensure that an <u>Access Terms and Conditions Change Notice</u> includes:</p> <p>(a) a description of the <u>Standard Terms and Conditions</u> that are the subject of the amendment(s);</p> <p>(b) the date on which, or the period for which, the amendment(s) to the <u>Standard Terms and Conditions</u> will take effect (the “effective date”); and</p> <p>(c) the current and proposed new <u>Standard Terms and Conditions</u> affected by the amendment(s).</p>
USPA 7.7	<p>The <u>universal service provider</u> shall not apply any new Standard Term and Condition identified in an <u>Access Terms and Conditions Change Notice</u> before the effective date.</p>
USPA 7.8	<p>The <u>universal service provider</u>'s obligations for prior notification and publication set out in this USPA 7 will not apply:</p> <p>(a) where the new or amended charges or terms and conditions are directed or determined by <u>OFCOM</u> or are required by a notification or enforcement notification issued</p>

	by <u>OFCOM</u> under Schedule 7 of the <u>Act</u> ; or
	(b) to any amendments to charges, terms or conditions that have been individually negotiated between the <u>universal service provider</u> and an individual <u>D+2 Access Operator</u> .

8. Quality of service

USPA 8.1	The <u>universal service provider</u> shall publish all such information as is reasonably necessary for the purposes of securing transparency as to the quality of service in relation to <u>D+2 Access</u> provided by the <u>universal service provider</u> in an appropriate manner and form, or as OFCOM may otherwise direct.
USPA 8.2	The <u>universal service provider</u> shall comply with any direction <u>OFCOM</u> may make from time to time under USPA 8.1.

Table of terms defined in the Act

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

<i>Defined term</i>	<i>Section of the Act</i>
<i>OFCOM</i>	<i>s.90</i>
<i>postal network</i>	<i>s.38(3)</i>
<i>postal operator</i>	<i>s.27(3)</i>
<i>postal services</i>	<i>s.27(1)</i>
<i>universal service provider</i>	<i>s.65(1) and Schedule 9, paragraph 3</i>