

Annex 3

Statutory Notification: modification of Designated USP conditions (DUSPs)

NOTIFICATION OF MODIFICATION OF REGULATORY CONDITIONS IN ACCORDANCE PURSUANT TO SECTION 36 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

- (A) On 27 March 2012, following a consultation, OFCOM published a statement entitled "*Securing the Universal Postal Service: Decision on the new regulatory framework*"¹ (the "**2012 Statement**") setting out various decisions, including the imposition on the universal service provider of Designated Universal Service Provider ("**DUSP**") conditions under section 36 of the Postal Services Act 2011 (the "**Act**"). Among those conditions were DUSP Conditions 2 and 3 ("**DUSP 2**" and "**DUSP 3**") relating to requirements on the universal service provider to comply with safeguard price cap controls.
- (B) On 28 March 2013, DUSP 3 was amended to correct an error in the calculation of the maximum price to be charged for the services specified in DUSP 3.
- (C) On 31 March 2017, Ofcom published a consultation document entitled "*Review of Regulatory Financial Reporting for Royal Mail*"² (the "**2017 Consultation**") setting out in its Annex 8 a notification of Ofcom's proposal to modify DUSP 2 and DUSP 3 (the "**Consultation Notification**").
- (D) A copy of the Consultation Notification was sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
- (E) Ofcom invited representations about the proposals set out in the Consultation Notification by 1 June 2017. Ofcom received responses from five stakeholders to the Consultation Notification. Ofcom has considered every such representation. In accordance with paragraph 3(5) of Schedule 6 to the Act, Ofcom has made the decision set out below to give effect to its proposals set out in the Consultation Notification in respect of DUSP 2 and DUSP 3. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of Ofcom giving effect to those proposals.

PROPOSAL

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

² <https://www.ofcom.org.uk/consultations-and-statements/category-3/review-of-regulatory-financial-reporting-for-royal-mail-consultation>

1. OFCOM hereby decides, in accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to section 36 of the Act, to amend DUSP 2 and DUSP 3 in the manner set out in paragraphs 2 and 3 of this Notification.
2. In DUSP 2.2.4, replace “no later than three months after the end of each Relevant Year” with “within one month of the coming into effect of any price increase”.
3. In DUSP 3.2.4, replace “no later than three months after the end of each Relevant Year” with “within one month of the coming into effect of any price increase”.
4. The effect of, and OFCOM’s reasons for making, this decision are set out in the accompanying statement.

OFCOM’S DUTIES AND LEGAL TESTS

5. OFCOM is satisfied that this decision satisfies the general test in paragraph 1 of Schedule 6 to this Act and the requirements of section 36 of the Act.
6. 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.

INTERPRETATION

7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of DUSP 1 (as relevant).
8. In this Notification—
 - (a) “**Act**” means the Postal Services Act 2011 (c.5);
 - (b) “**DUSP 2**” means the Designated Universal Service Provider condition referred to in recital (A) of this Notification which was imposed on Royal Mail with effect from 1 April 2012; and
 - (c) “**DUSP 3**” means the Designated Universal Service Provider condition referred to in recital (A) of this Notification which was imposed on Royal Mail with effect from 1 April 2012, as amended on 28 March 2013;
9. For the purpose of interpreting this Notification—
 - (a) headings and titles shall be disregarded;
 - (b) expressions cognate with those referred to in this Notification shall be construed accordingly;
 - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

Signed by

A handwritten signature in black ink, appearing to read 'David Brown', with a stylized, cursive script.

David Brown

Director of Financial Economics, Ofcom

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

18 December 2017