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# Proposal to grant an exception to Royal Mail's universal service obligations

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

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

## **CONSULTATION:**

Publication date: 12 November 2021

Closing date for responses: 13 December 2021

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# 1. Overview

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

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

Having considered Royal Mail's request, including its submissions regarding the likely volumes of mail on 1 January 2022 and the impact on consumers of this exception (including that most businesses and public sector organisations will be closed on that date), Ofcom is minded to grant Royal Mail's request. Ofcom has also taken into account that a comparable direction was issued by Postcomm in 2010.

## What we are proposing – in brief

- Ofcom proposes to issue a direction providing an exception to the universal service throughout the United Kingdom for 1 January 2022, because this falls on a Saturday. This would mean that Royal Mail would not have to collect or deliver mail on that day.
- We invite comments on this proposal by midday on 13 December 2021. However, we would welcome responses earlier than this where possible.
- Subject to consultation responses, we plan to publish our statement on the above proposal as soon as possible after the consultation deadline.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document

## 2. Background and legal framework

### Background

- 2.1 As the DUSP, Royal Mail is required to collect and deliver letters every Monday to Saturday, excluding public holidays. While public holidays include the traditional holidays of Christmas Day and Good Friday, as well as bank holidays, Ofcom may also direct that specific days (which may not technically be bank holidays) become exceptions to the universal service obligations.
- 2.2 1 January is usually a public holiday in the UK.<sup>1</sup> However, if it falls on a Saturday, the public holiday ordinarily moves to the following Monday (3 January) and Saturday 1 January is treated as an ordinary Saturday. This would mean that the universal service obligations on Royal Mail to collect and deliver letters would not apply on 3 January, it being a public holiday, but that they would apply on Saturday 1 January. This specific issue will arise on 1 January 2022.<sup>2</sup>
- 2.3 On 5 November 2021, Royal Mail asked Ofcom to make a Direction exempting it from its universal service obligations on 1 January 2022 because this date falls on a Saturday. In the remainder of this Section, we set out the legal framework relevant to Royal Mail's request and summarise Royal Mail's request.

### Relevant legal framework

#### Royal Mail's duty to provide the universal service

- 2.4 Section 30(1) of the Postal Services Act 2011 ("the Act") provides that Ofcom must set out in an order a description of the services Ofcom considers should be provided in the United Kingdom as a universal postal service and the standards with which those services must comply. The universal service must include the minimum requirements set out in section 31 of the Act. These include:
- the delivery of letters every Monday to Saturday and of other postal packets every Monday to Friday to the home or premises of every individual or other person in the United Kingdom; and
  - the collection of letters every Monday to Saturday and of other postal packets every Monday to Friday from post boxes and other access points.

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<sup>1</sup> Bank holidays in England and Wales, Scotland and Northern Ireland are set under the Banking and Financial Dealings Act 1971. Additional bank holidays may be provided for in a given year by Royal Proclamation (for example the upcoming jubilee bank holiday in June 2022). When the usual date of a bank or public holiday falls on a Saturday (or Sunday), a substitute day is also given by Royal Proclamation, normally the following Monday.

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

2.5 Ofcom has met its requirements under section 30 of the Act by making the Postal Services (Universal Postal Service) Order 2012 ("the Order")<sup>3</sup>. Articles 6 and 7 of the Order set out the universal service requirements for collection and delivery, as required under section 31 of the Act. These are mirrored in the obligations imposed on Royal Mail (as the DUSP) under the DUSP conditions.

2.6 Under DUSP condition 1.4.1 Royal Mail must ensure that:

*"Except as set out in DUSP 1.3, the universal service provider shall offer to provide at least one delivery of letters originating from anywhere in the world every Monday to Saturday-*

*(a) to the home or premises of every individual or other person in the UK; and*

*(b) to delivery points approved by OFCOM for the purposes of this Condition"*

2.7 Under DUSP condition 1.5.1 Royal Mail must ensure that:

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

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

## Exceptions to the universal service obligations

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

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

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

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

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

## Test for giving a direction

2.10 Paragraph 4 of Schedule 6 of the Act sets out the procedure which Ofcom must follow to give a direction affecting a regulatory condition imposed on a postal operator, including where Ofcom wishes to give a direction under DUSP condition 1.3.2(a).

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<sup>3</sup> This was [amended in December 2013](#).

<sup>4</sup> DUSP condition 1.1.2(aa).

- 2.11 Under paragraph 4(2) of Schedule 6, Ofcom may only give a direction, approval or consent if satisfied that to do so:
- is objectively justifiable;
  - does not discriminate unduly against particular persons or a particular description of persons;
  - is proportionate to what it is intended to achieve; and
  - is transparent in relation to what it is intended to achieve.
- 2.12 In accordance with paragraph 4(3) of Schedule 6, before the direction is given, Ofcom must publish a notification stating that there is a proposal to give the direction and which:
- sets out the direction to which the proposal relates and its effect;
  - gives reasons for the making of the proposal; and
  - specifies the period within which representations may be made about the proposal, which must be at least one month beginning with the day after the notification is published, unless there are exceptional circumstances justifying a shorter period.

## General duties

- 2.13 Ofcom's duty to secure the provision of a universal postal service is set out in section 29 of the Act. In this respect, section 29(1) provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service.
- 2.14 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be Ofcom's principal duty, in carrying out its functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.15 This principal duty applies also to functions carried out by us in relation to postal services. Section 3(6A) of the 2003 Act provides that where we are carrying out any of our functions in relation to postal services, the duty under section 29 of the Act takes priority over our general duties in the 2003 Act in the case of conflict between the two.
- 2.16 In performing our general duties, we are also required under section 3(4) of the 2003 Act to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations appear potentially relevant, including:
- the opinions of consumers in relevant markets and of members of the public generally; and
  - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 2.17 Section 3(5) of the 2003 Act provides that in performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

- 2.18 Pursuant to section 3(3) of the 2003 Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.
- 2.19 Finally, we have an ongoing duty under section 6 of the 2003 Act to keep the carrying out of our functions under review with a view to ensuring that regulation by Ofcom does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.

## Royal Mail's request

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

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

<sup>6</sup> Royal Mail, *Letter to Ofcom of 5 November 2021*.

- 2.25 In light of these points, Royal Mail has said *"we consider the impact of our proposal on customers to be minimal versus the costs of standing up our full network and benefits to our people of getting a well-deserved rest after Christmas."*<sup>7</sup>
- 2.26 Finally, Royal Mail has also emphasised that it takes its responsibilities as a part of the UK's critical national infrastructure seriously. It says it will continue to collect Covid test kits from priority post boxes over this period and that it will engage with the Consumer Advocacy Bodies to ensure that its communications reach as many vulnerable groups as possible.

## General impact assessment

- 2.27 The analysis presented in Section 3 of this document constitutes an impact assessment, as defined in section 7 of the 2003 Act.
- 2.28 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.<sup>8</sup>
- 2.29 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by our proposals.

## Equality impact assessment

- 2.30 In carrying out our functions, we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between different groups; and
  - foster good relations between different groups,
- in relation to the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.31 Such equality impact assessments also assist us in making sure that we are meeting our principal duty under section 3 of the 2003 Act discussed above.
- 2.32 We have therefore given careful consideration as to whether granting exceptions to the universal service obligation for Saturday 1 January 2022 will have a particular impact on

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<sup>7</sup> Royal Mail, *Letter to Ofcom of 5 November 2021*

<sup>8</sup> See [Ofcom's approach to impact assessments](#).

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any particular group within society. We do not believe it will because the exception would apply to all addresses and all access points in the UK.

## 3. Ofcom's provisional view

### Summary

3.1 For the reasons set out below, Ofcom is minded to grant Royal Mail's request. In particular, Ofcom is minded to agree to Royal Mail's request and issue a direction under DUSP Condition 1.3.2(a) for 1 January 2022 to be designated as an exception to the universal service because it falls on a Saturday. This would mean that Royal Mail would not have to collect or deliver letters on that day.<sup>9</sup>

### Provisional view

- 3.2 In 2009<sup>10</sup> and 2010<sup>11</sup>, Postcomm granted Royal Mail an exception for 1 January when this fell on a Saturday and, in those circumstances, 3 January.<sup>12</sup> In making that decision, Postcomm took into account that:
- a) There is typically a sharp decline in mail volumes after Christmas and especially on New Years' Eve. This meant the costs to Royal Mail of providing the service would be disproportionate to the volumes of mail expected.
  - b) Demand for postal services was expected to be low on the relevant dates and hence the impact on customers would be low.
  - c) Royal Mail had explained that it would set out extensive customer communications to ensure customers know which services would be available over the New Year period.
- 3.3 Ofcom considers that these factors are likely to apply to 1 January 2022. Indeed, Royal Mail has noted as part of its request that only 3.6% of business collection customers currently have a scheduled collection on Saturday. We are also mindful of Royal Mail's commitment to continue to collect Covid test kits from its priority post boxes on 1 January 2021 which will, in our view, further mitigate the risk of consumer harm from granting this exception.
- 3.4 We also note that in our Review of postal users' needs, published in 2020, we set out the findings of our quantitative market research, including that *"the majority of residential and SME participants in our qualitative research accepted that retaining a Saturday delivery of letters was not essential to meet their needs."*<sup>13</sup>

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<sup>9</sup> It would also mean that, for the purpose of 'target routing times' under DUSP 1.6, that day would become a non-working day.

<sup>10</sup> Postcomm, [Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, and local holidays in Northern Ireland and Scotland – A decision document](#), October 2009.

<sup>11</sup> Postcomm, [Exceptions to Royal Mail's Universal Service Obligation: 1, 3 and 4 January 2011 – Decision document](#), November 2010.

<sup>12</sup> In 2009 Postcomm granted an exception for 1 January when it fell on a Saturday and in 2010 it amended this decision to include an exception on Mondays following such a Saturday (i.e. a Monday 3 January). Postcomm's 2010 decision was therefore to except Monday 3 January, with Saturday 1 January already having been excepted. This differs slightly from this consultation which relates to a proposed exception for a Saturday 1 January in circumstances where Monday 3 January is already excepted.

<sup>13</sup> Ofcom, [Review of postal users' needs](#), November 2020.

3.5 We note that Royal Mail has also committed to ensuring that it provides clear communications to ensure that customers are aware of when deliveries and collections will take place over the New Year period. Royal Mail has also emphasised that it will engage with relevant bodies to ensure its communications reach as many vulnerable consumers as possible.

3.6 In light of the above, our provisional view is that it would be appropriate to agree to Royal Mail's request. We are mindful, in reaching this view, of the costs of providing the universal service on Saturday 1 January 2022 for what are expected to be low volumes of mail. We have also taken into account Royal Mail's submissions regarding the beneficial impact of this additional non-working day on its staff.

## Legal Tests

3.7 We consider that the exception would be:

- **objectively justifiable** because the impact of no collections and deliveries on Saturday 1 January 2022 is expected to be minimal. There is less demand for postal services on Saturdays generally with many businesses closed and this is particularly the case on a Saturday 1 January when most businesses and public sector organisations will be closed;
- **not unduly discriminatory** because the exception would apply to the whole of the UK and therefore there would be no deliveries to each delivery point and no collections from each access point in the UK on that day;
- **proportionate** because it does not go further than is necessary to except Royal Mail from carrying out its universal service obligation on 1 January 2022. It is also consistent with previous regulatory practice when Postcomm issued a direction for that day to be a "no service day"; and
- **transparent** because the reasons for the exception, the legal basis and Ofcom's provisional assessment of the exception are set out in this consultation document. The consultation also includes a proposed direction excepting Royal Mail from its requirements to make deliveries and collections on Saturday 1 January 2022.

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

## Consultation question

3.9 It would be helpful if respondents could answer the following question and provide supporting information/evidence where relevant:

Do you agree that there should be an exception to the universal service (i.e. no deliveries or collections) on 1 January 2022?

# A1. Statutory Notification

## Notification of proposal to issue a direction under Designated USP condition 1 in accordance with paragraph 4 of Schedule 6 to the Postal Services Act 2011

### Proposal to give a direction under Designated USP condition 1.3.2(a) designating an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery and collection of postal packets on 1 January 2022.

#### Background

- (A) On 27 March 2012, OFCOM published a statement entitled "Securing the Universal Postal Service: Decision on the new regulatory framework" (the "March Statement") in which, amongst other things, OFCOM imposed Designated USP ("DUSP") conditions on Royal Mail in accordance with sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act. Among those conditions was Designated Universal Service Provider ("DUSP") Condition 1 ("DUSP 1") relating to requirements on the universal service provider to provide the universal service, including requirements as to the collection and delivery of postal packets.
- (B) Amendments to DUSP 1 relating to a number of issues were made on 13 June 2013<sup>14</sup>, 10 December 2013<sup>15</sup>, 18 December 2013<sup>16</sup> and 1 April 2014<sup>17</sup>. On 1 March 2017 OFCOM further modified DUSP 1 (the "**2017 Modification**").<sup>18</sup> In the 2017 Modification, Ofcom explained that this revised version replaced the previous published version initially notified in the 2012 Statement and subsequently amended.
- (C) DUSP condition 1.3.2 sets out the circumstances in which the requirements in respect of the delivery and collection of postal packets do not need to be met. Pursuant to DUSP condition 1.3.2(a), one of the circumstances is "on any day which is (in the territory concerned) a public holiday". Pursuant to DUSP 1.1.2(aa), the definition of "public holiday" for the purposes of DUSP condition 1 includes, "in relation to a particular territory or place, any day in relation to which OFCOM has by direction provided for an exception at that place under DUSP 1.3.2".
- (D) In October 2009, the Postal Services Commission (Postcomm – having responsibility for the regulation of postal services before Ofcom) issued a decision document entitled "*Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the*

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<sup>14</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/51875/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/51875/statement.pdf)

<sup>15</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/37779/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/37779/statement.pdf)

<sup>16</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/79656/statement\\_collections\\_exceptions.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/79656/statement_collections_exceptions.pdf)

<sup>17</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/57983/dusp\\_1\\_updated.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/57983/dusp_1_updated.pdf)

<sup>18</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/97860/Annex-13-DUSP1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/97860/Annex-13-DUSP1.pdf)

*UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document*" which provided for certain exceptions to Royal Mail's universal service obligation. This decision was given effect by the accompanying direction (the "Postcomm Direction").

- (E) In November 2010, Postcomm issued a decision document entitled "*Exceptions to Royal Mail's Universal Service Obligation: 1, 3 and 4 January 2011.*" This amended the Postcomm Direction to include an exception if 1 January fell on a Saturday in addition to an exception that would apply on 3 January in those circumstances.
- (F) The Postcomm Direction expired on 31 October 2012. On 5 November 2021, Royal Mail wrote to Ofcom requesting a direction under DUSP condition 1.3.2 to except Royal Mail from certain of its universal service obligations on 1 January 2022 as this date falls on a Saturday.

### Proposal in this notification

1. OFCOM hereby proposes, in accordance with paragraph 4 of Schedule 6 to the Act, to issue a direction under DUSP condition 1.3.2(a) providing for an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery and collection of postal packets on 1 January 2022.
2. The proposed direction is set out in the Schedule hereto.
3. The proposed direction will apply on the date on which it is published.
4. The effect of, and OFCOM's reasons for, giving the proposed direction is set out in the accompanying consultation document.

### Ofcom's duties and legal tests

5. OFCOM are satisfied that giving this direction 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 transparent in relation to what it is intended to achieve, as required under paragraph 4(2) of Schedule 6 to the Act.
6. In making this proposal, OFCOM have considered and acted in accordance with their principal duty in section 29 of the Act and their general duties in section 3 of the Communications Act 2003.

### Making representations

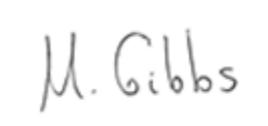
7. Representations may be made to OFCOM about the proposal set out in this Notification by no later than midday on 13 December 2021.
8. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act. By virtue of paragraph 4(8) of Schedule 6 to the Act, OFCOM may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if OFCOM has—

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

### Interpretation

- 9. In this Notification, unless the context otherwise requires, and subject to paragraph 10 below, words or expressions used in this Notification shall have the same meaning as they have been ascribed for the purposes of DUSP Condition 1.
- 10. In this Notification—
  - (a) “Act” means the Postal Services Act 2011 (c.5);
  - (b) “DUSP conditions” means the Designated USP conditions imposed on Royal Mail with effect from 1 March 2017 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
  - (c) “Royal Mail” means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203.
- 11. 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.
- 12. The Schedule to this Notification shall form part of this Notification.

Signed by

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

Marina Gibbs

Director of Post

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

12 November 2021

## SCHEDULE 1

### **[PROPOSED] DIRECTION UNDER DESIGNATED USP CONDITION 1**

**[Proposed] Direction under Designated USP condition 1.3.2(a) designating an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery and collection of postal packets on 1 January 2022.**

#### **Background**

- (A) On 5 November 2021, Royal Mail wrote to Ofcom requesting a direction under DUSP condition 1.3.2 excepting Royal Mail from its requirements imposed under DUSP condition 1 in respect of the delivery and collection of postal packets on 1 January 2022.
- (B) Prior to making a direction affecting a regulatory condition imposed on a postal operator, including under DUSP condition 1.3.2(a), in accordance with paragraph 4(3) of Schedule 6 to the Act, OFCOM must publish a notification of its proposal to give the direction and its reasons for making the proposal. In accordance with paragraph 4(8) of Schedule 6 to the Act, OFCOM may only give effect to a proposal to make a direction if it has:
  - (a) considered every representation about the proposal that is made to OFCOM within the period specified in the notification; and
  - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State.
- (C) On 12 November 2021 OFCOM published, in accordance with paragraph 4(3) of Schedule 6 to the Act, such a notification of its proposal to give a direction for the reasons set out in the consultation document accompanying that notification. In accordance with paragraph 4(4) of Schedule 6 to the Act, the notification invited representations to OFCOM by midday on 13 December 2021.
- (D) OFCOM have considered every representation about the proposed direction received and duly made to it [and had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State].
- (E) For the reasons set out in the explanatory statement accompanying this Direction, OFCOM are satisfied that giving this Direction satisfies the general test set out in paragraph 4(2) of Schedule 6 to the Act, and OFCOM have considered and acted in accordance with their principal duty in section 29 of the Act and their general duties in section 3 of the Communications Act 2003.

## Decision

Pursuant to and for the purposes of DUSP conditions 1.1.2(aa) and 1.3.2(a) OFCOM hereby direct as follows:

1. The day specified in paragraph 2 shall be treated as a public holiday for the purposes of the definition of "public holiday" in DUSP condition 1, and pursuant to DUSP condition 1.3.2(a) that day shall therefore constitute an exception to the requirements imposed on Royal Mail under DUSP condition 1 in respect of the delivery and collection of postal packets.
2. The day referred to in paragraph 1 above is the 1 January 2022.

## Commencement and interpretation

3. This Direction shall take effect on [DATE].
4. In this Direction, unless the context otherwise requires, and subject to paragraph 5 below, words or expressions used shall have the same meaning as they have been ascribed for the purposes of DUSP condition 1.
5. In this Direction—
  - (a) "Act" means the Postal Services Act 2011 (c.5);
  - (b) "DUSP Conditions" means the Designated USP conditions imposed on Royal Mail with effect from 1 March 2017 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
  - (c) "Royal Mail" means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203.
6. For the purpose of interpreting this Direction—
  - (a) headings and titles shall be disregarded;
  - (b) expressions cognate with those referred to in this Notification shall be construed accordingly;
  - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

Signed by

Marina Gibbs

Director of Post

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

[DATE]

## A2. Responding to this consultation

### How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by midday on 13 December 2021.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/2022-royal-mail-uso-exception>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [ian.strawhorne@ofcom.org.uk](mailto:ian.strawhorne@ofcom.org.uk), as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Ian Strawhorne  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.8 It would be helpful if your response could include direct answers to the question asked in the consultation document. The question is set out at Annex 5. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A2.9 If you want to discuss the issues and questions raised in this consultation, please contact Ian Strawhorne by email to [ian.strawhorne@ofcom.org.uk](mailto:ian.strawhorne@ofcom.org.uk).

## Confidentiality

- A2.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A2.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

## Next steps

- A2.14 Following this consultation period, Ofcom plans to publish a statement in December 2021.
- A2.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A2.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.17 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A3. Ofcom's consultation principles

### Ofcom has seven principles that it follows for every public written consultation:

#### Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A4. Consultation coversheet

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## A5. Consultation question

A5.1 We seek responses regarding our proposed direction.

Do you agree that there should be an exception to the universal service (i.e. no deliveries or collections) on 1 January 2022? Please explain your answer.