



## An exception to Royal Mail's universal service obligation

- no requirement for deliveries and collections when  
26 December falls on a Saturday

Non-confidential version  
Redactions are indicated by [X]

Consultation

Publication date: 30 July 2015

Closing Date for Responses: 10 September 2015

## About this document

This document outlines Ofcom's proposal to issue a direction for Boxing Day to be permanently designated as an exception to the universal service when it falls on a Saturday, and invites stakeholder views on this proposal.

On 22 June 2015, Royal Mail wrote to Ofcom requesting a direction to except Royal Mail from having to carry out its universal service obligation on 26 December when this date falls on a Saturday, beginning with 26 December 2015. Royal Mail's application includes forecasts of low volumes of mail in the period immediately after Christmas and on that Saturday.

If Ofcom issues a direction to designate Saturday 26 December as an exception to the universal service obligation (USO), it will mean that Royal Mail does not have to deliver or collect mail on that day.

Ofcom is minded to agree to Royal Mail's request for an exception to the universal service on Saturday 26 December 2015 and in future years when this date falls on a Saturday. We invite stakeholder views on this proposal.

Under normal circumstances this would be a one month consultation but we are allowing an additional two weeks to take account of the summer holidays. The deadline for responses is 10 September 2015. Ofcom will aim to issue a decision in October 2015.

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## Section 1

# Summary

- 1.1 As a Designated Universal Service Provider ("DUSP"), Royal Mail must collect and deliver mail every Monday to Saturday, excluding public holidays. The 26 December is usually a public holiday but, if it falls on a Saturday, the public holiday moves to the following Monday and Saturday 26 December is treated as an ordinary Saturday (and the universal service obligations to collect and deliver mail would apply).
- 1.2 Royal Mail has requested a direction under the relevant regulatory condition - DUSP condition 1.3.2(a) - for 26 December to be permanently designated as an exception to the universal service when it falls on a Saturday.<sup>1</sup>
- 1.3 Ofcom is seeking views on the extent to which postal users (sender and recipients) may be affected if this day is designated as an exception to the universal service.
- 1.4 DUSP condition 1.3.2 states that exceptions to the universal service obligations can be allowed, meaning that Royal Mail will not have to meet its universal service obligations in relation to the delivery or collection of mail on that day, as follows:

"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 geographic conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes."
- 1.5 "Public holiday" is defined in the DUSP condition as including "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>2</sup>.
- 1.6 Ofcom proposes to issue a Direction to allow Royal Mail an exception from performing its universal service obligations when 26 December falls on a Saturday, on the basis that it should be treated as a public holiday. We propose that this exception shall be effective until further notice.
- 1.7 If Ofcom allows the exception, we would expect Royal Mail to ensure that its customer communications, including those aimed at business customers and access operators, make clear when deliveries and collections will be made over the period in question.
- 1.8 Ofcom invites comments on this proposal by 10 September 2015.

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<sup>1</sup> See Annex A.

<sup>2</sup> DUSP condition 1.1.2(aa).

## Section 2

# Relevant legal framework

## The universal service

- 2.1 Royal Mail is the designated universal service provider and subject to designated universal service provider (“DUSP”) conditions.<sup>3</sup>
- 2.2 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.
- 2.3 Ofcom has met its requirements under section 30 of the Act by making the Postal Services (Universal Postal Service) Order 2012 (“the Order”)<sup>4</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 under the DUSP conditions.
- 2.4 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”.
- 2.5 Under DUSP condition 1.5.1 Royal Mail must ensure that:
- “Except as set out in DUSP 1.3, the universal service provider shall offer to provide at least one collection-
- a) every Monday to Saturday, from public access points for letters for the services described in DUSP 1.4; and

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<sup>3</sup> In accordance with the Postal Services (Universal Postal Service) Order 2012 (as amended in December 2013 <http://stakeholders.ofcom.org.uk/binaries/consultations/post/statement/Annex2.pdf>) and pursuant to the Designated USP Conditions imposed on Royal Mail under section 36 of the Act, <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/annex7.pdf>

<sup>4</sup> Amended in December 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/post/statement/Annex2.pdf>

- b) every Monday to Friday, from public access points for other postal packets for the services described in DUSP 1.4”.

## Exceptions to the universal service

- 2.6 Section 33(2) of the Act sets out the legal basis for exceptions to the universal service obligations under section 31 of the Act:

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

- a) do not need to be met on any day which is (in part of the United Kingdom concerned) a public holiday<sup>5</sup>, and
- b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.

- 2.7 Articles 6(3) and 7(2) of the Order also provide that an exception to the universal service obligations for delivery and collection applies on a day which is (in the part of the United Kingdom concerned) a public holiday.

- 2.8 In accordance with section 33(2) of the Act and the Order, DUSP condition 1.3.2 permits the following exceptions to Royal Mail's universal service obligations:

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

- a) on any day which is (in the territory concerned) a public holiday; or
- b) in such geographic 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 DUSP as including “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.”

## Public and bank holidays

- 2.10 Public holidays in England and Wales include the traditional common law holidays of Christmas Day and Good Friday, as well as bank holidays. Bank holidays in England and Wales, Scotland and Northern Ireland are set under the Banking and Financial Dealings Act 1971<sup>6</sup>. Additional bank holidays may be provided for in a given year by Royal Proclamation (for example the Jubilee bank holiday in 2012).<sup>7</sup> In Scotland and Northern Ireland different public and statutory bank holidays are observed to those in England and Wales.<sup>8</sup>

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<sup>5</sup> “Public holiday” is not defined in the Act.

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1971/80/section/1>.

<sup>7</sup> 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>8</sup> In Scotland, there are also local holidays which can be determined by local authorities, or which are based on local traditional or cultural events and which will be observed by the majority of businesses

2.11 The GOV.UK website currently lists all the expected bank and public holidays for England, Wales, Scotland and Northern Ireland in 2015-16<sup>9</sup>. Boxing Day (26 December) would normally be designated a Bank Holiday if it falls on a weekday. However, in 2015, 26 December falls on a Saturday and therefore Monday 28 December is the substitute bank holiday. Therefore, Saturday 26 December 2015 is a normal working day for Royal Mail unless Ofcom issues a Direction to approve an exception to the universal service.

## Test for giving a direction

2.12 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).

2.13 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.

2.14 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

2.15 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.

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and people in the local area in the place of an official statutory bank holiday. Royal Mail says that it has observed these holidays in the relevant parts of Scotland for at least thirty years. See

<http://www.royalmail.com/delivery/mail-advice/public-holidays#106000843>

<sup>9</sup> [http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG\\_073741](http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG_073741)

- 2.16 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be Ofcom's principal duty, in carrying out our functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.17 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.
- 2.18 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.
- 2.19 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.
- 2.20 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.
- 2.21 In this regard, we note Ofcom's general regulatory principles<sup>10</sup> including in particular the following in the present context:
- ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
  - seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and
  - consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.
- 2.22 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.

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

## General impact assessment

- 2.23 The analysis presented in Section 4 of this document constitutes an impact assessment, as defined in section 7 of the 2003 Act.
- 2.24 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>11</sup>.
- 2.25 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, in relation to what we propose.

## Equality impact assessment

- 2.26 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 re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.27 We also have obligations to consider the likely impact of proposed policies on the promotion of equality of opportunity and the promotion of good relations between people of a different religious belief, political opinion or racial group in Northern Ireland in accordance with our Northern Ireland Equality Scheme.<sup>12</sup>
- 2.28 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.
- 2.29 We have therefore given careful consideration as to whether granting exceptions to the universal service obligation for Saturday 26 December will have a particular impact on 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.

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<sup>11</sup> *Better Policy Making – Ofcom's approach to Impact Assessment*, Ofcom, 21 July 2005 [http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better\\_Policy\\_Making.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf)

<sup>12</sup> Published in accordance with our duties under section 75 of the Northern Ireland Act 1998. <http://stakeholders.ofcom.org.uk/binaries/consultations/950336/statement/Revised-NI-Equality-Scheme.pdf>

## Section 3

# Royal Mail's request

- 3.1 On 22 June 2015, Royal Mail submitted a request for a Direction under DUSP condition 1.3.2 for an exception to its universal service on Saturday 26 December 2015. This means that Royal Mail is proposing that there will be no deliveries or collections on that date.
- 3.2 Royal Mail's application also requests that the Direction is applied in perpetuity to cover future years when 26 December falls on Saturday, to avoid the need for future applications.
- 3.3 When a bank holiday falls on a Saturday or Sunday, the Government usually designates the next following working weekday (in most cases, Monday) as the substitute bank holiday. This will be the case in 2015 as 26 December falls on a Saturday and the substitute bank holiday for Boxing Day is on Monday 28 December<sup>13</sup>. This means that Saturday 26 December is a normal working day for Royal Mail<sup>14</sup>.
- 3.4 Royal Mail wants an exception to the universal postal service for collections and deliveries on that day because of the historic sharp decline in mail volumes in the period immediately after Christmas and lower than normal traffic volumes predicted on the Saturday. The application notes that Postcomm, the previous postal regulator, granted Royal Mail an exception to the universal service the last time the 26 December fell on a Saturday (in 2009) for the same reasons.
- 3.5 Royal Mail submits that due to the fixed nature of the universal service obligation, it is not able to flex its network to meet lower demand and would incur the cost of operating a full national network over the holiday weekend for relatively low volumes of mail.

## Customer demand and impact

- 3.6 Royal Mail states that providing a universal delivery service on Saturday 26 December requires a full national network and processing operation on Christmas Day. It estimates that it would cost around [£] to deliver relatively low volumes of mail – around [£] items which represents a [£] reduction in the volumes expected on Saturdays leading up to Christmas.
- 3.7 In addition, very low volumes of mail are posted on Christmas Day but Royal Mail would still incur the cost of collecting items from all pillar boxes in the UK if it has to provide a universal collections service on 26 December.
- 3.8 Royal Mail also expects overall parcel volumes to be low, with the majority of forecast parcel volumes to come from collections from large mailers of predominantly non-USO mail. Total parcel volumes are forecast to be around [£] below the Saturday average in the month leading up to Christmas.

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<sup>13</sup> <https://www.gov.uk/bank-holidays>

<sup>14</sup> "Working day" as defined in DUSP 1.1.2(jj).

- 3.9 Royal Mail concludes that the impact of no deliveries and collections on Saturday 26 December on businesses and consumers is minimal. Many businesses are closed on a Saturday and Saturday business collections represent a very small proportion of business collections. For consumers, most Post Office branches will also be closed and Royal Mail considers that consumers do not expect mail deliveries on Boxing Day.
- 3.10 However, whilst the majority of products will have low demand, Royal Mail recognises that some high volume Tracked and standard parcel customers will be operating over the holiday weekend. For those customers, Royal Mail proposes to make collections over the weekend to achieve delivery on the next available working day on Tuesday 29 December.

## **Employee relations**

- 3.11 Royal Mail has held preliminary discussions with the Communication Workers Union (CWU) about the proposal for an exception to the universal service on Saturday 26 December. The CWU supports the proposal.

## **Customer communications**

- 3.12 Royal Mail states that if its request is approved, it will ensure customers (including business customers) are made aware of the dates the universal service will operate, including the final posting dates, well in advance of Christmas via its normal Christmas communications process.

## Section 4

# Ofcom's assessment of Royal Mail's request

## Recommendation

- 4.1 Ofcom is minded to accept Royal Mail's request for an exception to the universal service collection and delivery for:
- Saturday 26 December 2015, and
  - when 26 December falls on a Saturday in future years, e.g. in 2020, until further notice.

## Assessment

- 4.2 The last time the 26 December fell on a Saturday was in 2009. On that occasion, Postcomm granted Royal Mail an exception to the universal service having regard to the following:
- there were no objections to Royal Mail's request for an exception on that day;
  - historically, there is a sharp decline in mail volumes in the period immediately after Christmas and lower than predicted mail volumes compared to other Saturdays;
  - demand for postal services was predicted to be low and therefore the impact on customers would be low;
  - it would allow Royal Mail employees to take a four day break during the holidays after the intense period leading up to Christmas. A four day break over Christmas had occurred in 2003 and 2004;<sup>15</sup> and
  - Royal Mail was required to make clear in its Christmas communications that there would be no service between 25-28 December in that year.
- 4.3 Ofcom considers that the factors above are likely to apply for 26 December 2015 and when 26 December falls on a Saturday in future years.
- 4.4 Royal Mail's forecasts for the Christmas period in 2015 suggests that deliveries on Saturday 26 December will include only a relatively small volume of first class mail posted on Christmas Eve, along with second class mail posted on Wednesday 23 December. Total traffic for the day is forecast to be significantly lower than the average volumes expected on Saturdays in the month leading up to Christmas.

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<sup>15</sup> In 2003, Postcomm issued a Direction agreeing to Royal Mail's application for an exception to the universal service on Saturday 27 December 2003. In 2004, Christmas Day and Boxing Day fell over the weekend so the following Monday and Tuesday were designated the substitute bank holidays.

- 4.5 Ofcom notes that Boxing Day would normally be a bank holiday and Royal Mail would not be required to meet its universal service obligations as it would not be a “working day”, apart from when 26 December is a Saturday, and the bank holiday occurs on the following Monday in lieu of the Saturday. This will be the case in 2015, with 26 December falling on a Saturday and Monday 28 December designated as the substitute bank holiday for Boxing Day.
- 4.6 Royal Mail is not required to meet its universal service obligations on public holidays. This means that if Ofcom approves Royal Mail's application for an exception to the universal service for Saturday 26 December, there will also be no deliveries and collections on Monday 28 December as Royal Mail will observe the substitute bank holiday. Normal service would then resume on Tuesday 29 December.
- 4.7 If Ofcom allows the exception, we would expect Royal Mail to ensure that its customer communications, including those aimed at business customers and access operators, make clear when deliveries and collections will be made over the period in question.

## Legal Tests

- 4.8 We consider that the exception would be:
- **objectively justifiable** because there is less demand for postal services and significantly lower postal volumes in the UK in the period immediately after Christmas Day due to the closure of most businesses and all public sector organisations on Christmas Day, with some businesses remaining closed for the weekend and/or days immediately after Christmas;
  - **not unduly discriminatory** because the exception would apply to the whole of the UK and therefore there will 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 26 December when this date falls on a Saturday, beginning with 26 December 2015. It is also consistent with the last time 26 December fell on a Saturday in 2009 when Postcomm issued a Direction for that day to be a “no service day” and is aligned with local communities' needs for collection and delivery services; and
  - **transparent** because the reasons for the exception, the legal basis and Ofcom's assessment of the exception are set out in this consultation document. The consultation also includes a proposed direction excluding Royal Mail from its requirements to make deliveries and collections on Saturday 26 December.
- 4.9 Therefore, we consider that the proposal to grant approval to Royal Mail's application for an exception to its universal service obligation on Saturday 26 December 2015 and when 26 December falls on a Saturday in future years, e.g. in 2020, satisfies the statutory criteria at paragraph 4(2) of Schedule 6 of the Act for granting an approval giving effect to a regulatory condition.

## Consultation questions

- 4.10 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 26 December when this date falls on a Saturday, beginning with 26 December 2015? Please explain your answer.*

## Annex 1

# 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 and the target routing times of services for the 26 December when this date falls on a Saturday, beginning with 26 December 2015.**

### **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.

(B) The DUSP conditions impose, amongst other things, requirements on Royal Mail to offer a minimum level of delivery and collection services for postal packets (as defined in section 27 of the Act), and target routing times (as defined in the DUSP conditions) of services, throughout the United Kingdom, in accordance with section 31 of the Act.

(C) DUSP condition 1.3.2 sets out the circumstances in which the requirements in respect of the delivery or collection of postal packets and the target routing times of services 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, any day in relation to which OFCOM has by direction stated that exceptional circumstances require it to be treated as a public holiday.

(D) In October 2009, the Postal Services Commission (Postcomm - having responsibility for the regulation of postal services) issued a decision document entitled "*Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the 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) The Postcomm Direction expired on 31 October 2012. On 22 June 2015, Royal Mail wrote to Ofcom requesting a direction under the relevant regulatory condition (Designated Universal Service Providers condition 1.3.2/"DUSP condition 1.3.2") to except Royal Mail from carrying out its universal service obligation on 26 December when this date falls on a Saturday, beginning with 26 December 2015.

### **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 and the target routing times of services on 26 December when this date falls on a Saturday.
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 10 September 2015.
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 April 2012 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and

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(c) "**Royal Mail**" means Royal Mail Group Ltd, 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 handwritten signature in black ink, appearing to read "C Taylor". The signature is written in a cursive style with a large initial "C" and a stylized "Taylor".

**Chris Taylor**

**Director, Consumer Policy – Content, Consumer and External Affairs**

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

30 July 2015

## SCHEDULE 1

### 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 and the target routing times of services for the 26 December when this date falls on a Saturday, beginning with 26 December 2015.**

#### Background

- (A) On 22 June 2015, 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 or collection of postal packets and the target routing times of services, for the 26 December when this date falls on a Saturday.
- (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 30 July 2015 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 10 September 2015.
- (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:

An exception to Royal Mail's universal service obligation

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 or collection of postal packets and the target routing times of services.
2. The day referred to in paragraph 1 above is the 26 December when this date falls on a Saturday, beginning with 26 December 2015.

### **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 April 2012 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
  - (c) "**Royal Mail**" means Royal Mail Group Ltd, 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

**Chris Taylor**

**Director, Consumer Policy – Content, Consumer and External Affairs**

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

[DATE]

## Annex 2

# Responding to this consultation

## How to respond

- A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 September 2015**.
- A2.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/royal-mail-uso/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 4), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [usoexceptions@ofcom.org.uk](mailto:usoexceptions@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Carmen To  
Floor 2  
Consumer Affairs  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A2.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A2.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 5. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Carmen To on 020 7981 3538.

## Confidentiality

- A2.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A2.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A2.11 Following the end of the consultation period, Ofcom intends to publish a statement in October 2015.
- A2.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A2.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 3.
- A2.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 3

# Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A3.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A3.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 4

# Consultation response cover sheet

- A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### 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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

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)

## Annex 5

# Consultation questions

- A5.1 If you wish to respond to the consultation, it would be helpful if you 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 26 December when this date falls on a Saturday, beginning with 26 December 2015? Please explain your answer.*