



# The Postal Services (Universal Postal Service) Order 2012

Regulatory Impact Assessment

Publication date: 26 March 2012



## Introduction

- 1.1 In accordance with Government practice, where a statutory regulation is made, a Regulatory Impact Assessment (RIA) must be undertaken. The analysis presented in this document represents an impact assessment, as defined in section 7 of the Communications Act 2003,<sup>1</sup> for The Postal Services (Universal Postal Service) Order 2012 (the 'UPSO'). Further information can be found in our consultation, Review of Regulatory Conditions – Postal Regulation dated 13 December 2011<sup>2</sup>.
- 1.2 RIAs 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 Act, which means that generally we have to carry out impact assessments where our 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 our policy decisions. In accordance with section 7 of the Communications Act, in producing this RIA, we have had regard to such general guidance as we consider appropriate including related Cabinet Office guidance. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website: [http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

## Background

- 1.3 By virtue of the Postal Services Act 2011 (the Act) Ofcom has responsibility for regulating postal services in the United Kingdom.
- 1.4 Ofcom's primary statutory duty in relation to post, set out at s.29 of the Act, is to carry out its functions in a way that it considers will secure the provision of a universal postal service.
- 1.5 Pursuant to s.30 of the Act, Ofcom is required to set out by order a description of the services that we consider should be provided in the UK as a universal postal service, and the standards with which they must comply. The UPSO implements the requirement in s.30.
- 1.6 Royal Mail is the designated universal service provider under the Act. The obligation on Royal Mail to provide the universal service is currently set out by reference to a list of Royal Mail service and product names. As the Act requires Ofcom to adopt a service-based description, we have described in the UPSO the characteristics of the services that form part of the universal service.
- 1.7 Under s.30, before making or modifying a universal service order, Ofcom must review the extent to which the market for the provision of postal services meets the reasonable needs of postal users (we refer to this work as the review of user needs). This requirement does not apply to the first UPSO, but such a review must be conducted within 18 months of vesting (so before 1 April 2013). Ofcom is consulting on the first universal service order in the review of regulatory conditions of which this impact assessment is an annex, with a view to it coming into force from 31 March

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<sup>1</sup> [www.opsi.gov.uk/acts/acts2003/pdf/ukpga\\_20030021\\_en.pdf](http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030021_en.pdf).

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/summary/main.pdf>

2012. It is therefore possible that this first order would be in place for about a year, depending on the outcome of the review of user needs.

## Proposal

- 1.8 This RIA relates to the decision to make an order setting out a description of the services that Ofcom consider should be provided in the United Kingdom as a universal postal service. This was achieved through making the UPSO.

## The citizen and/or consumer interest

- 1.9 Our principal duty under section 3 of the Communications Act 2003 is to further the interests of citizens in relation to communications matters; and of consumers in relevant markets, where appropriate by promoting competition. We take account of the impact of our decisions upon both citizen and consumer interests in the markets we regulate. As set out above, our primary duty under the Act is to carry out our functions in relation to postal services in a way that we consider will secure the provision of a universal postal service. The universal postal service is the collection and delivery of postal packets at an affordable uniform price, everywhere in the UK, six days a week (five for packets). The universal postal service ensures that everyone in the UK is able to communicate by post, by requiring a collection and delivery of post every working day. It promotes social cohesion and helps economic and commercial transactions. As stated by Richard Hooper in his 2008 report reviewing the UK postal services sector<sup>3</sup>: “*The ability to deliver items to all 28 million business and residential addresses in the UK is part of our economic and social glue.*”

## Options considered

- 1.10 There are three options, which we considered as part of our consultation in relation to the UPSO:
- **Option 1:** not to make an order. In practice this would mean that we would keep the current list of services in the conditions imposed on the Universal Service Provider.
  - **Option 2:** to make an order describing the essential features of the current universal service. This would include the characteristics as defined in the Section below.
  - **Option 3:** to make an order describing the universal service while also substantively changing the current universal service.

## Analysis of the different options

### Option 1- Not to make an order

- 1.11 We have a clear obligation under s.30 of the Act to set out by order a description of the universal services and the standards with which they must comply. We therefore

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<sup>3</sup> Richard Hooper CBE, Dame Deirdre Hutton, Ian R Smith, *Modernise or decline – Policies to maintain the universal postal service in the United Kingdom*, December 2008, <http://www.bis.gov.uk/files/file49389.pdf>

remain of the view that not making an order describing the universal service is not a feasible option.

- 1.12 The Act does not set a time limit for the introduction of the first order. However, we consider that the intention of the Act is that Ofcom should make an order at the first opportunity, given that s.30(4) envisages that Ofcom would make the first order without having had the opportunity to carry out a review of postal user needs which itself must be carried out within 18 months of the Act coming into force. Because of the transitional arrangements in schedule 9 (paragraph 5(4)), making the first order will result in the revocation of the transitory conditions. Therefore it makes sense to implement the order at the same time as we implement the new regulatory framework.
- 1.13 We received no responses to our consultation arguing that we should not make an order.

### **Option 2 - To make an order describing the essential features of the current universal service**

- 1.14 Prior to the making of the UPSO, Royal Mail was required to provide the universal service principally through a list of services set out in regulatory condition DUSP 1, formerly licence condition 2 of Royal Mail's licence. Moving towards a description-based universal service means that Ofcom will stop requiring Royal Mail to provide named services as part of the universal service and instead require Royal Mail to provide the universal service in a way that meets the characteristics set out by Ofcom in the order.
- 1.15 However, while proposing the change to a description of services under this option, we intended to retain all the essential features of the universal service.
- 1.16 In summary we proposed that the following characteristics should be specified:
- *Definition of the service.* This is to describe what a service does, for instance, a postal service, or a service of redirecting mail.
  - *Delivery and collections six days a week for letters, five for packets.* This is a minimum requirement of the Act.
  - *Universal access.* This requires that any customer may send items or access the service from access points (post boxes and post offices for packets and registered items, post boxes for letters), to every home and premises in the UK (or worldwide)<sup>4</sup>. This is a minimum requirement of the Act.
  - *Uniform and affordable prices.* While we proposed to give Royal Mail commercial freedom in setting prices for universal service products (with the exception of a safeguard price cap for certain Second Class services), the prices for these services must be (a) the same regardless of destination within the UK (i.e. uniform) and (b) affordable. This is a minimum requirement of the Act.
  - *Single piece, where applicable* (in effect excluding services attracting presentation and volume discounts). A single piece service means a postal service whose price (on average for each postal packet) is not subject to any

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<sup>8</sup> DX, MCF, TNT and UK Mail

discounts related to number of postal packets sent in connection with the person who paid for the service, the positioning of text on the postal packet, the use of markings which facilitate the use of machines to sort postal packets or the pre-sortation into geographical areas for delivery<sup>5</sup>.

- *Speed and associated quality of service targets* –this would include, for instance, the guaranteed delivery within certain specified timescales.
- *Dimensions and weight* – these are specified by the UPU<sup>6</sup> and the Act<sup>7</sup>.
- *Tracking*.
- *Payment channels*.

1.17 This covers the characteristics of postal services we identified as most important to the delivery of the universal service. Because we sought to preserve the essential characteristics of the universal service, we identified these characteristics by considering the requirements of the Directive and the Act and the current service description and terms and conditions. We proposed in our consultation that Royal Mail's universal service services must match the characteristics we specify, but in order to provide commercial flexibility, these services need not be limited to these characteristics. Some of the access operators responding to our consultation<sup>8</sup> were concerned that this could unfairly extend the scope of the current VAT exemption for Royal Mail by allowing 'bolted-on' product features to qualify for universal service status and become VAT-free.

1.18 In our statement setting out our final decision, we stated that we still believe Royal Mail should have commercial flexibility to make changes to the products it provides to fulfil its universal service obligations, as long as the essential characteristics of the service described in the Order are maintained.

1.19 However, this does not mean that Royal Mail can change the current scope of the universal service. In particular we do not believe that Royal Mail should extend significantly the range of products provided to meet the universal service characteristics. We have therefore amended the Order to make this clear; in particular we have specified that the Priority and Standard single piece services do not include a tracking facility.

1.20 The characteristics which we proposed not to specify were:

- **Price**, with the exception where the Act requires certain services to be provided free (for instance, services to the blind) or the existing universal service as set out in condition DUSP 1 provides for items to be free (for example, certificate of posting). We do specify that universal services must have a uniform and affordable price.
- **Format of the items**, i.e. letter, large letter and parcels, or weight steps.

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- Royal Mail sets prices according to these formats. Therefore, to define format would be to intervene on pricing, whereas in the October consultation we are proposing that Royal Mail should have commercial freedom to set prices (with the exception of the price for Second class stamps for standard letters). This does not relate to maximum weight or dimensions (e.g. length), which we will specify in line with the requirements of the Act and the UPU.
- **Requirements imposed on customers:** this is what Royal Mail asks of its customers when it performs the services, such as requiring a return address on Airmail envelopes, or specifying that the guarantee of Special Delivery Next Day does not apply if no-one is at the address. These relate to operational and practical issues which do not in our view require regulation. There are some rare exceptions where we need to specify some of those requirements as part of the regulatory instruments, e.g. in relation to petitions, where unless we specify the presentation requirements the obligation may be drawn more widely than it is intended to.

1.21 In addition, we proposed not to include the following features in the universal service characteristics, because they were required in other regulatory conditions:

- **Compensation.** We believe the availability of compensation is important but we have already required the provision of reasonable compensation, where this is currently provided by Royal Mail for universal service products, as part of Consumer Protection conditions<sup>9</sup>.
- **Times of collection and delivery.**
  - Times of collection and delivery have not previously been regulated directly as part of the universal service. DUSP 5.3 requires Royal Mail to notify us of the specified delivery and collection times from post boxes, any changes it intends to make to those times, and any reclassification which results in an earlier collection time. We proposed to keep this notification requirement, as evidence suggests that times of delivery and collection, and in particular consistency of delivery times, are important to customers<sup>10</sup>.

1.22 The arguments in favour of option 2 are:

- **Act requirement.** Ofcom needs to comply with the requirement of the Postal Services Act 2011 by order to provide a description of the universal services, and the standards with which they must comply.
- **No substantive change to the essential features of the universal service.** With this option we would maintain the existing essential features of the universal service. This provides certainty for all stakeholders. It is also consistent with our commitment in our proposals for the future framework for economic regulation that *“the scope of the universal service will remain unchanged from the present*

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<sup>9</sup> By compensation here we mean “normal” compensation, other than the compensation required for insured and registered services. In respect of these services we propose to require a domestic and a cross-border insured and registered service(s) to be provided, in accordance with the Postal Services Directive and s.32 of the Act.

<sup>10</sup>See for instance Jigsaw Research, *Postcomm Customer Survey 2008*, February 2009, <http://stakeholders.ofcom.org.uk/binaries/post/93.pdf>. For instance, SMEs surveyed were resistant to later delivery times,

scope”, pending the review of user needs<sup>11</sup> and its implications, if any, for the universal service. The minimum requirements of the universal service cannot, in any event, be changed without approval from Parliament.

- **Customer protection.** The current list-based approach to providing more details about the composition of the universal service was sufficient to protect customers when Royal Mail needed approval to change non-beneficial terms and conditions. However, we have decided to move away from such an approval mechanism and we therefore need to be clearer about the characteristics of the services which are essential to preserve to maintain the current universal service. Customers will know the features of the universal service for which they can expect regulatory safeguards.
- **Clarity.** Currently, because the services within the universal service are defined by name, the definition of each service is not necessarily systematic or complete, and relies on the definition given by Royal Mail. This option clarifies the description of the services that must be provided as a universal postal service and does not rely on definitions controlled by Royal Mail. Such clarity is beneficial to postal users, who will be able to refer to the characteristics to know what to expect of the universal service.
- **Flexibility.** Describing the characteristics of services which are form part of the universal service provides greater flexibility than if the universal service is defined by reference to a static list of Royal Mail product names.

1.23 Stakeholders broadly supported the move to a description of the universal postal service and our identification of the core characteristics of the current universal service.

1.24 A number of respondents to our consultation argued that some of our characteristics went beyond the minimum requirements in the Act or the Directive. However, we clarified that this is because the *current* universal service goes beyond the minimum requirements, and this is therefore reflected in the universal service that we described in the UPSO given our intention to keep the scope of the current universal service unchanged.

### **Option 3 - To make an order describing, but also substantively changing, the universal service**

1.25 As described above this option would have required Royal Mail to provide products which meet the characteristics defined by Ofcom in the order. However, under this option, we would not have sought to preserve the essential features of the current universal service. We could have, for instance, described the universal service with less attributes, such as retaining only the minimum requirements of the Act, allowing the maximum commercial flexibility to Royal Mail. Alternatively, we could have described the service in such a way that it would require changes to the list of services currently provided as part of the universal service, or changes to these services.

1.26 In our consultation, we set out our view that we should carry out the review of user needs first, as a review of user needs will enable us to gather evidence as to whether

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<sup>11</sup>Our work on reviewing the needs of postal users must be completed by April 2013 and we consider it appropriate to retain essentially the same service until then.



the reasonable needs of users are met, and to make informed decisions. The Act clearly envisages that, ordinarily, Ofcom would conduct a review of user needs before making or modifying a UPSO. This does not apply to the first order, but Ofcom must carry out such a review within 18 months (we refer to it as the review of user needs). Therefore, it is more appropriate to carry out the review of user needs before substantial changes, if any, to the universal service.

- 1.27 Some stakeholders have argued that the current universal service needs to be reviewed. Some respondents to our consultation raised issues in relation to the content of the Order, in effect opening a debate in relation to our policy of retaining the essential features of the universal service until our review of user needs.
- 1.28 While we note the points these stakeholders made, we do not consider that we received compelling evidence about the needs of users which indicated that we should make changes prior to completing our ongoing review of user needs.
- 1.29 We do not consider that we have yet collected sufficient evidence on which to base a decision to change the scope of the existing universal service in a material way. We are in the process of collecting evidence on the reasonable needs of users as part of our user needs review. Adopting Option 3 would in our view risk taking decisions to change the scope of the universal service without the evidence necessary to justify such changes.

## **Assessment**

1.30 **Option 1** would have the following impact:

- There would be no change from the status quo;
- Ofcom would not fulfil the clear intention of the statute to make an order before the user needs review had been completed;
- The universal service would be likely to comprise all the terms and conditions of the listed products, as of 1 October 2011, and would therefore be restrictive of Royal Mail.

1.31 **Option 2** would have the following impact:

- The universal service would remain essentially the same;
- Royal Mail would benefit from additional flexibility to change some service terms without prior approval. It would retain the obligation to provide the essential characteristics of the current universal service;
- Customers would benefit from the possibility of beneficial minor changes to the services provided for until the review of user needs; and
- The impact on competitors would be likely to be neutral.

1.32 **Option 3** would have the following impact:

- The scope of the universal service would be likely to change;

- A review of user needs has not yet been undertaken so there would be a risk that changes we made to the universal service might not meet the reasonable needs of users;
- As a result, it would be difficult to assess the impact on customers. There would be a risk of detriment to users; and
- The impact on Royal Mail and competitors would depend on the specific proposals we made.

## **The preferred option**

1.33 Ofcom's preferred option is option 2, to move towards a description-based universal service. We consider that:

- This is the only option that fulfils our statutory requirement to describe the services to be provided as part of the universal service, and the standards with which they must comply; and
- We should maintain the essential features of the universal service pending the conclusion of the review of postal user needs.
- In response to our consultation, there was overall support for making a first Order describing characteristics of the universal service.

1.34 Accordingly, we have implemented this Option by making a first Order replicating the essential features of the current universal service.

## **Duration periods for Redirections, Keepsafe and Poste Restante**

### **Ofcom's policy objective**

1.35 As part of our consultation on the Order we consulted on the duration periods for Redirections, Keepsafe and Poste Restante. We aimed to provide a description of the essential features of the universal services, here Redirections, Keepsafe and Poste Restante. Our objective was to preserve what is important about the current universal service while making sure that Royal Mail can make appropriate changes if necessary.

### **The citizen and/or consumer interest**

1.36 These products were included in the universal service to protect mail integrity and security.

### **Options**

1.37 We considered two options:

- Option 1: to replicate in regulation the current duration periods
- Option 2: to require "reasonable" duration periods for these products.

## Analysis of the different options

### To replicate in regulation the current duration periods

- 1.38 Redirections, Keepsafe and Poste Restante are all services which can be requested from Royal Mail for a specific period of time, rather than being a “one-shot” service. We consider that the fact that these products are available for a period of time is an essential characteristic of the products: the value of these services relies on the fact that mail can be redirected over certain duration periods.
- 1.39 The current duration periods of these products are:
- *Redirections*: for periods of one month, three months, six months and 12 months, with the ability to renew redirection services for up to a maximum of two years from the commencement of the initial redirection service
  - *Keepsafe*: for any periods up to 66 days
  - *Poste Restante*: 14 days if the item was posted in the UK (including the Channel Islands and the Isle of Man), one month if it was posted overseas, two months if it is addressed to a post office branch at a sea port if the customer is arriving by ship.
- 1.40 An argument in favour of option 1 is that it would guarantee no change to the current situation (unless the regulations are changed).
- 1.41 However the risk would be that Royal Mail would not be able to change the duration offered at all until and unless we made a change to the regulatory framework. This would set the current durations in stone for the near future and only replicates the status quo of today – when it is possible that Royal Mail may want to make minor changes which do not have any detrimental impact on customers or which are of benefit to customers.
- 1.42 We therefore consider that the impact would be negative for both Royal Mail and customers, and neutral for competitors which do not currently compete to provide these products.

### To require “reasonable” duration for these products

- 1.43 Arguments in favour of option 2 are:
- customers will continue to enjoy the service, as a reasonable period for the service must continue to be provided by Royal Mail;
  - it will allow changes to the period of time the service is currently offered, if the changes are reasonable and necessary;
  - in response to our consultation, stakeholders generally supported our proposal to require a “reasonable” duration;
- 1.44 The risk would be that Royal Mail could make non-beneficial changes to the duration period of these products. However, as outlined above, this risk is mitigated by our decision to require that the non-price terms and conditions for universal service products are fair and reasonable, and our decision to require one-month notification

of non-price changes to universal service products, and to require Royal Mail to publish a list of universal services, to be updated if there is a change.

- 1.45 We therefore consider that the impact would be positive for both Royal Mail and customers, and neutral for competitors which do not currently compete to provide these products.

## **The preferred option**

- 1.46 Ofcom's preferred option is option 2, to require "reasonable" duration periods for these products. We consider this option would best balance our objectives of preserving what is important about the current universal service without preventing Royal Mail from making appropriate changes if necessary. This approach is supported by the feedback from our consultation. Accordingly we have implemented this option by requiring "reasonable" duration in the Order for these products.

## **Redelivery, caller's service and return to sender**

### **Ofcom's policy objective**

- 1.47 As part of our consultation on the Order we consulted on whether to include redelivery, caller's service and return to sender in regulations. We aimed to provide a description of the essential features of the universal services. Our objective was to preserve what is important about the current universal service while making sure that Royal Mail can make appropriate changes if necessary.

### **The citizen and/or consumer interest**

- 1.48 The universal postal service ensures that everyone in the UK is able to communicate by post, by requiring a collection and delivery of post every working day at an affordable, uniform price. Sometimes, however, the recipient is not at home to receive a packet which cannot be posted through the letter box or needs to be signed for. In these cases, we consider that it is important for the integrity of mail and for customers' protection that there is a reasonable attempt to reach the sender or recipient.

## **Options**

- 1.49 Royal Mail's redelivery service for parcels, Special Delivery Next Day and Recorded Signed For ensures that a packet can be delivered to a local post office for collection by the customer, redelivered to another address within the same postcode, or redelivered another day to the original address. Collection from the delivery office ("caller's service"<sup>12</sup>) is also available. Redelivery and collection from the delivery office are not currently mandatory for Royal Mail to provide. While redelivery and caller's service are two distinct activities, for the purposes of this Section, we include caller's service in redelivery.
- 1.50 The return to sender service is the service whereby the customer receives a letter with the correct address but the wrong name, writes "return to sender" or "not known

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<sup>12</sup>See Royal Mail's website for more information:

<http://www.royalmail.com/sites/default/files/docs/pdf/Callers%20Service%20Web%20December%2010.pdf>

at this address" and puts it back in a pillar box or post office. Royal Mail then, where it is able to identify the sender, delivers it back to the sender<sup>13</sup>. Return to sender is currently required to be provided free of charge as part of a regulated product in transitory condition, T 4.

1.51 Neither redelivery nor return to sender will be required to be provided in the new regime if we do not actively decide that they are part of the terms of a universal service and therefore should be provided.

1.52 We considered two options:

- **Option 1:** not to require in the order that redelivery and return to sender should be provided
- **Option 2:** to require in the order that redelivery and return to sender should be provided.

## Analysis of the different options

### Option 1 - Not to require in the order that redelivery and return to sender should be provided

1.53 Arguments in favour of option 1:

- It could be argued that the postal service is provided at the first attempt at delivery to the address, and everything else is additional – in which case redelivery or return to sender are not components of the current universal service products.
- Such terms and conditions related to Royal Mail's products should not be regulated, to preserve Royal Mail's commercial flexibility.
- In response to our consultation, Royal Mail argued that it should not be required to provide redelivery and return to sender.
- In addition two respondents, DMA and another user group, believed that redelivery does not need to be a characteristic of the universal service because most of the time Royal Mail is operating in a competitive environment, and needs to provide a competitive service.

### Option 2 - To require in the order that redelivery and return to sender should be provided

1.54 Arguments in favour of option 2:

- It could be argued that delivery implies that the item has been transferred to the intended address, and that this is not achieved if there has not been some

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<sup>13</sup> For more information on how Royal Mail deals with items which need to be returned see <http://www2.royalmail.com/customer-service/safe-and-sound>, <http://www2.royalmail.com/customer-service/getting-other-peoples-mail> and <http://www2.royalmail.com/customer-service/personal-customers/missed-deliveries/what-happens-dont-pick-item>

reasonable effort to ensure that the item reaches the addressee<sup>14</sup>. By “reasonable effort”, we mean one attempt at redelivery or collection by the customer. Royal Mail’s current practice, and that of other parcel operators, points in that direction.

- We consider that redelivery is an important aspect of the service for customers in that it enables those not available at the time of delivery to obtain their item.
- It is reasonable to expect Royal Mail to return the item to the original sender, who paid for the service, if the item is returned in the post. This does not impose an obligation on Royal Mail to return the item to the sender if Royal Mail introduces a choice for some products and the sender chooses not to have the item returned.
- Respondents to the consultation agreed in general with our proposal to specify redelivery and return to sender as characteristics of the universal service.
  - In response to the point that there is competition in relation to redelivery, competition typically concerns the sender of the postal item rather than the recipient. We consider that residential users are entitled to a way of receiving or collecting a packet, even if the sender has elected not to choose this service, because we consider that a reasonable attempt at redelivery (and collection) is part of delivery.
  - Respondents highlighted the value of return to sender to ensure the accuracy of address information and provide some assurance that the content will be returned if the mail item contains confidential or valuable information.

1.55 Royal Mail does not support the inclusion of redelivery and return to sender and we considered the risk that this constrains Royal Mail’s commercial flexibility further than is currently the case. We remain of the view that this does not impose additional regulatory requirements on Royal Mail, as Royal Mail currently needs prior approval of all non-price non-beneficial changes. In addition, Royal Mail will continue to be able to adapt to customer needs: the only thing required is one attempt at delivery and collection and one attempt at returning to sender, in the same way as Royal Mail currently provides it. Our proposal only applies to redelivery and return to sender of items sent using a universal service (such as, currently, a First class stamp).

### **Allowing a charge for return to sender: non-universal services**

1.56 In line with our proposals in October to provide Royal Mail with more flexibility<sup>15</sup>, we proposed to lift the requirement to provide return to sender free of charge. This implied that Royal Mail could require payment by the sender even though they did not seek this service, although of course, if return to sender is considered part of the universal service (following our consultation) the terms and conditions should continue to be fair and reasonable, and we will continue to monitor the provision of the universal service products. Alternatively for items purchased at the post office, Royal Mail could introduce a specific, opt-in service<sup>16</sup>. In relation to the price terms

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<sup>14</sup>The Postal Services Directive replaced the term “delivery” by “distribution” in defining postal services. Distribution is defined as “the process from sorting at the distribution centre to the delivery of postal items to their addressees”.

<sup>15</sup><http://stakeholders.ofcom.org.uk/binaries/consultations/securing-the-postal-service/summary/condoc.pdf>

<sup>16</sup> Royal Mail’s current terms and conditions for undeliverable and re-posted letters can be found in the Inland Letter Post Scheme, <http://www.royalmail.com/sites/default/files/docs/pdf/ILPScheme.pdf>.

under these scenarios, as set out in our October consultation, our proposal to grant Royal Mail's commercial freedom will be subject to regulatory safeguards, in particular effective monitoring of performance. In addition, universal service prices must be affordable and cost orientated.

- 1.57 Most respondents to this question argued that return to sender should be free of charge, as they considered that return to sender should also be part of the universal service for bulk mail, and that it should remain free of charge. There were a number of arguments advanced to support the view that return to sender should be free of charge to bulk mailers, and highlighted the importance of return to sender, essentially to maintain accurate mailing lists and provide reassurance that a confidential or valuable piece of mail has been delivered (or can be returned). DMA, another large mailers' organisation, ONEPOST and some members of the Strategic Mailing Partnership also highlighted the negative environmental impact of inaccurate addressing and the potential reputational damage to direct marketing mail more generally. The concern of respondents was that introducing a charge would deter senders from purchasing this service, as a result of which they would, therefore, not receive the benefits above.
- 1.58 Nevertheless, we consider it should be Royal Mail's commercial decision to provide the RTS service for bulk service. The benefits of return to sender suggest likely demand, and, therefore, that Royal Mail has an incentive to continue to provide this service. We also consider that a charge may provide an additional incentive on senders to keep information as up to date as possible. A charge could enable the principle of cost causation to apply, i.e. the one responsible for causing the cost should be charged for it. Bulk mailers are responsible for the cost of return to sender of their items being incurred by Royal Mail and we can see no sensible reason why Royal Mail should not be able to charge them for this cost.
- 1.59 We note the comments that return to sender provides reassurance if a postal item has confidential or valuable content. However, proof of delivery may be requested as part of the standard and priority services. Our proposals do not change the current situation where the only product providing high levels of compensation and proof of delivery for valuable contents is Special Delivery.
- 1.60 As for recipients of mail, they can continue to return mail delivered to a previous occupier, and Royal Mail will be able to deal with this mail appropriately even where a return to sender service has not been purchased. There are also other means by which recipients can ensure they are removed from incorrect mailing lists or, to raise a separate but related issue, register that they do not wish receive unwanted mail. They can contact the sender of the mail or the direct marketer directly. In relation to unwanted mail, they can also register with the Mailing Preference Service<sup>17</sup>.
- 1.61 We also note that a few respondents thought that the cost of return to sender was already included in the price of the item and should continue to be so. CWU specifically considered that 'customers should not be hit twice'. In response, we think that:
- in relation to return to sender for universal services, prices should be affordable and take account of the costs of providing the service or part of a service. We discuss these requirements in our March decision document on the regulatory framework (Section 6). We intend to look further at both affordability and cost

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<sup>17</sup> [www.mpsonline.org.uk](http://www.mpsonline.org.uk)

orientation as part of our monitoring regime. If Royal Mail were to introduce a separate charge for universal service users of the return to sender service, we would expect Royal Mail to provide us with information on the costs of the return to sender service separately.

- In relation to return to sender for non-universal services, as we set out in section 6 of this document, we will monitor both non-universal service prices as a whole and access prices. This will include monitoring of prices for return to sender if Royal Mail introduces a separate charge for this service.

### **Allowing a charge for return to sender: universal services**

- 1.62 The concerns of respondents in relation to charging focused mostly on return to sender for bulk mailers. Only two respondents, responding on this issue from the point of view of universal service users, commented on the issue of charging: Consumer Focus and the Archbishops' Council of the Church of England.
- 1.63 Consumer Focus agreed with our proposal in principle but cautioned us to consider the complex issues involved, in particular in relation to receivers' data accuracy and confidentiality, before reaching our decision. We do not believe that we need to delay our decision as, for the reasons set out above, we consider that mail recipients have other ways of dealing with mail intended to reach a previous occupant at their address should they wish to do so. It should be noted that the vast majority of return to sender volumes are not universal service items and we consider Royal Mail is best placed to consider how to introduce a charge if it ever does so. We are happy to take representations on this as part of our review of user needs.
- 1.64 In addition, we expect Royal Mail to behave responsibly in considering any potential charges for universal service users. We recognise that, should any charging mechanism be ever introduced by Royal Mail for residential customers - in line with our approach to pricing discussed in Section 6 - the way to implement it is best decided by Royal Mail having taken into account users' needs. However, non-price terms and conditions for return to sender must, as with other characteristics of the universal service, be fair and reasonable. In addition, universal services must be affordable and cost-orientated. If a charge is introduced for return to sender in relation to universal services, we will scrutinise such price notifications from Royal Mail.
- 1.65 The Archbishops' Council of the Church of England believed that:
- Return to sender should be free to the recipients. We do not see return to sender as a service that is particularly likely to be paid for by recipients – it is more likely that the original user, the sender, would be expected to pay for a return of the sent items either at the point of first dispatch or on receipt.
  - Return to sender should remain free of charge for those receiving items that are correctly addressed but which Royal Mail has not been able to deliver. In relation to items which could not be delivered by Royal Mail, we have already mandated a way for recipients to obtain their items, either via redelivery or via collection from Royal Mail.

### **The preferred option**

- 1.66 Ofcom's preferred option is option 2, to require redelivery, caller's service and return to sender to be provided as part of the universal service. We consider this option



would best balance our objectives of preserving what is important about the current universal service without preventing Royal Mail from making appropriate changes if necessary. Accordingly, we have required redelivery and return to sender for universal services in the Order and associated DUSP 1 condition.

- 1.67 In addition, we will allow Royal Mail to charge for return to sender in relation to universal service items. We will not mandate Royal Mail to provide return to sender free of charge in relation to non-universal services. We consider this option would best balance our objectives of securing the universal postal service, allowing Royal Mail commercial flexibility, and preserving the current features of the universal service.

## **Costs to business, including small businesses**

- 1.68 Our assessment of the potential costs to business, including small businesses, from each of the options is detailed in the sections above under analysis of the options. Costs to business could arise insofar as the proposals impact on business use of the universal postal service. However, the majority of business users use other services provided by Royal Mail or its competitors which fall outside the scope of the universal service. We recognise that small businesses are more likely to use universal postal services than larger businesses. However, as we have decided to retain the existing scope of the universal service, our view is that the potential impact on business including small businesses resulting from our decision to make the UPSO is low in that the UPSO materially maintains the existing scope of the universal postal service.

## **Costs to Ofcom/Public Sector**

- 1.69 There are one-off administrative costs associated with making Statutory Instruments. We consider these implementation costs to be low. Describing the universal service by reference to description and not service/product names may reduce Ofcom's ongoing costs of monitoring that the universal service is being provided by Royal Mail, and these cost reductions are likely to outweigh any administrative costs of making the UPSO. In any event, the clear legislative intent of s.30 of the Act is that Ofcom should make an order.

## **Decision**

- 1.70 The preferred option was to make an order setting out the description of services that Ofcom consider should be provided in the United Kingdom as a universal postal service. We considered that it was appropriate for Ofcom to exercise its power under section 30(1) of the Act to make the UPSO.
- 1.71 The benefits of this option were to provide clarity as to the nature of the universal postal service that Ofcom considers should be provided in the United Kingdom.

**Declaration**

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed**

**Ed Richards**

**Chief Executive, Ofcom**

**26 March 2012**

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