

Annex 8

Statutory Notification: proposed modification of Designated USP conditions (DUSPs)

Notification of proposals to modify regulatory conditions in accordance with section 36 of, and paragraph 3 of Schedule 6 to, the Postal Services Act 2011

BACKGROUND

- (A) On 27 March 2012, following a consultation, OFCOM published a statement entitled “*Securing the Universal Postal Service: Decision on the new regulatory framework*”¹ (the “**2012 Statement**”) setting out various decisions, including the imposition on the universal service provider of Designated Universal Service Provider (“**DUSP**”) conditions under section 36 of the Postal Services Act 2011 (the “**Act**”). Among those conditions were DUSP Conditions 2 and 3 (“**DUSP 2**” and “**DUSP 3**”) relating to requirements on the universal service provider to comply with safeguard price cap controls.
- (B) On 28 March 2013, DUSP 3 was amended to correct an error in the calculation of the maximum price to be charged for the services specified in DUSP3.

PROPOSAL

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

Ofcom’s duties and legal tests

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

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

6. Representations may be made to OFCOM about the proposal set out in this Notification by no later than 1 June 2017.
7. 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.
8. By virtue of paragraph 3(5) 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. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of DUSP 1 (as relevant).
10. In this Notification—
 - (a) “**Act**” means the Postal Services Act 2011 (c.5);
 - (b) “**DUSP 2**” means the Designated Universal Service Provider condition referred to in recital (A) of this Notification which was imposed on Royal Mail with effect from 1 April 2012; and
 - (c) “**DUSP 3**” means the Designated Universal Service Provider condition referred to in recital (A) of this Notification which was imposed on Royal Mail with effect from 1 April 2012, as amended on 28 March 2013;
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.

Signed by

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

David Brown

Director of Financial Economics, Ofcom

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

31 March 2017