



An exception to Royal Mail's universal service obligation

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

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Statement

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About this document

This statement sets out Ofcom's decision to issue a direction for Boxing Day to be permanently designated as an exception to the universal service when it falls on a Saturday.

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. This would mean that Royal Mail would not have to deliver or collect mail on that day until further notice. Royal Mail's application included forecasts of low volumes of mail in the period immediately after Christmas and its proposed communications with customers.

Royal Mail was previously granted an exception (by the previous regulator, Postcomm) when Boxing Day fell on Saturday in 2009. Prior to the Postal Services Act 2000, Royal Mail's policy (at least since the 1980's) was not to collect and deliver mail when Boxing Day fell on a Saturday.

Ofcom issued a consultation on 30 July 2015 to seek views from stakeholders on how they may be affected if there are no deliveries and collections when 26 December falls on a Saturday. The consultation closed on 10 September 2015 and we received eleven responses.

After analysis of these responses we have decided to agree to Royal Mail's request for an exception in relation to deliveries and collections when 26 December falls on a Saturday. The direction will apply until further notice.

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Section 1

Summary

- 1.1 As the 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 On 22 June 2015, Royal Mail 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.¹
- 1.3 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."
- 1.4 "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"².
- 1.5 On 30 July 2015, Ofcom published a consultation with a proposal 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 proposed that this exception is effective until further notice. The consultation sought views on the extent to which postal users (senders and recipients) may be affected if there are no deliveries and collections on this day³.
- 1.6 The consultation closed on 10 September. We received eleven responses. All non-confidential responses are published on our website.
- 1.7 After analysis of these responses, we have decided to agree to Royal Mail's request for an exception for 26 December when this date falls on a Saturday, beginning with 26 December 2015. The direction in Annex 1 will apply until further notice.

¹ http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-uso/annexes/Annex_A.pdf

² DUSP condition 1.1.2(aa).

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-uso/summary/boxing-day-uso.pdf>

- 1.8 We would expect Royal Mail to ensure that its customer communications, including those aimed at business customers⁴ and access operators, make clear when deliveries and collections will be made over the period in question.

⁴ Royal Mail will make arrangements to collect from business customers sending high volume Tracked and standard parcel items over the holiday weekend to achieve delivery on the first available working day (Tuesday 29 September).

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.⁵
- 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")⁶. 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 1.4.2 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 other postal packets originating from anywhere in the world every Monday to Friday—

⁵ 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>

⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/annex6.pdf> and amended in December 2013: <http://stakeholders.ofcom.org.uk/binaries/consultations/post/statement/Annex2.pdf>

- (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 paragraph.”

2.6 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
- 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

2.7 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 holiday⁷, and
- b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.

2.8 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.

2.9 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.”

2.10 “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.”

⁷ “Public holiday” is not defined in the Act.

Public and bank holidays

- 2.11 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 1971⁸. Additional bank holidays may be provided for in a given year by Royal Proclamation (for example the Jubilee bank holiday in 2012).⁹ In Scotland and Northern Ireland different public and statutory bank holidays are observed to those in England and Wales.¹⁰
- 2.12 The GOV.UK website currently lists all the expected bank and public holidays for England, Wales, Scotland and Northern Ireland in 2015-16¹¹. 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 would be a normal working day for Royal Mail for the purposes of its obligations under the DUSP conditions unless Ofcom issues a Direction to approve an exception to the universal service.

Test for giving a direction

- 2.13 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).
- 2.14 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.
- 2.15 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;

⁸ <http://www.legislation.gov.uk/ukpga/1971/80/section/1>.

⁹ 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.

¹⁰ 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 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>

¹¹ http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG_073741

- 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

- 2.16 Ofcom's duty to secure the provision of a universal postal service is set out in section 29 of the Act. In this respect, section 29(1) provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service.
- 2.17 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.
- 2.18 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.
- 2.19 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.
- 2.20 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.
- 2.21 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.
- 2.22 In this regard, we note Ofcom's general regulatory principles¹² including in particular the following in the present context:

¹² See this link for a full list of the principles, <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

- 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.
- 2.23 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.

General impact assessment

- 2.24 The analysis presented in Section 4 and 5 of this document constitutes an impact assessment, as defined in section 7 of the 2003 Act.
- 2.25 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 guidelines¹³.
- 2.26 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

- 2.27 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.
- 2.28 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

¹³ *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

people of a different religious belief, political opinion or racial group in Northern Ireland in accordance with our Northern Ireland Equality Scheme.¹⁴

- 2.29 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.
- 2.30 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 have concluded that it will not because the exception would apply to all addresses and all access points in the UK.

¹⁴ 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 2015¹⁵. 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 December¹⁶. This means that Saturday 26 December is a normal working day for Royal Mail¹⁷.
- 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 67% 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 86% below the Saturday average in the month leading up to Christmas.

¹⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-uso/annexes/Annex_A.pdf

¹⁶ <https://www.gov.uk/bank-holidays>

¹⁷ "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

Summary of consultation responses

Introduction

- 4.1 On 30 July 2015, Ofcom published a consultation setting out Royal Mail's request as detailed in section 3. The consultation closed on 10 September 2015 and we received eleven responses – seven (including Royal Mail) were wholly in favour of the exception, three were not in favour of the exception and one agreed to the exception in 2015 but not in perpetuity.
- 4.2 This section summarises responses to the consultation and our analysis of the key issues raised. All non-confidential responses are published on our website.

Responses

- 4.3 Royal Mail, the Communications Workers Union (CWU), UK Mail, the BBC Licence Fee Unit and three individual respondents supported the proposal for Boxing Day to be an exception to the universal service obligation when it falls on a Saturday. In a joint response, Citizens Advice, Citizens Advice Scotland and the Consumer Council for Northern Ireland agreed to an exception in 2015 but not in perpetuity. Three individual respondents disagreed with the proposal.
- 4.4 In line with its application, Royal Mail responded to say that it agrees to an exception to the universal service on Saturday 26 December. UK Mail also agreed to the proposal.
- 4.5 The CWU agreed with the proposal that 26 December should be permanently designated an exception to the universal service when it falls on a Saturday. It said the reduction in mail volumes in the period immediately after Christmas Day means that providing a postal service on Boxing Day is not cost effective and that the impact on postal users will be low given the reduced demand for postal services. It believes employees will benefit as they would be able to have an uninterrupted break over the Christmas holiday after the busy December mailing period which will have a positive effect on staff morale and productivity.
- 4.6 The CWU noted that a requirement to provide the universal service on Saturday 26 December would require a full national network and processing operation. This means that, despite very low volumes of letters and parcels being posted on Christmas Day, employees would still have to collect from all pillar boxes the following day and deliver to more than 29 million addresses across the country. It also noted that if Boxing Day is a designated service day, the holiday period for employees would be interrupted and many employees would have to be away from their families on Boxing Day, and on Christmas Day evening for those scheduled for the night shift.
- 4.7 The CWU considered the impact of no deliveries and collections on Saturday 26 December on citizens, consumers and businesses to be minimal. In addition to the significant drop in mail volumes, it noted that most Post Office branches will be closed and many businesses are closed on a Saturday (with Saturday business collections representing a small proportion of business collections).

- 4.8 The CWU suggested extending the proposal for an exception to the universal service to other official bank holidays which fall on a Saturday, for example, New Year's Day, 2nd January in Scotland and the Battle of the Boyne in Northern Ireland. It cited expected low mail volumes on those days as a reason for granting an exception.
- 4.9 The BBC Licence Fee Unit supported the proposed exception and provided the following reasons for its support:
- BBC Licence Fee Unit mail volumes are low in the period after Christmas, as are industry wide volumes;
 - Statistically, Boxing Day Saturdays are one of the lowest volume days;
 - Operationally it would make sense for Royal Mail, so managing their costs and quality of service, and
 - Precedent was set by Postcomm in 2009 with no impact and minimum disruption.
- 4.10 Citizens Advice, Citizens Advice Scotland and the Consumer Council for Northern Ireland (referred to as "the consumer advocacy bodies" for the purpose of this decision statement) agreed to an exception for Boxing Day in 2015 and considered it important for any communication on this to be clear, effective and wide reaching so that customers know what postal services are available over the Christmas period at least a month in advance. The consumer advocacy bodies did not agree that the exception should be applied in perpetuity¹⁸. They consider that the costs and volumes associated with providing the service may change substantially as well as consumers' needs in the future, and changes to regulatory obligations could impact on the amount of time consumers are without a postal service. Given this uncertainty, they were concerned if the exception is automatically applied in future years.
- 4.11 Three individual respondents agreed to the proposed exception to the universal service when Boxing Day falls on a Saturday – two cited low mail volumes and reduced workload as reasons for acceptance, and all supported the exception as it would allow employees to spend time with family and friends over the Christmas holiday. One respondent considered the time off work to be beneficial to Royal Mail's workforce. The same respondent also noted that although they agree to the exception to be applied in perpetuity, market conditions could change in future years with perhaps a perceived need for packet and parcel deliveries to continue during part of a Christmas holiday period. If this happened, the respondent said Royal Mail could re-negotiate with its workforce and then apply to the regulator to amend the Direction accordingly.
- 4.12 Three individual respondents disagreed with the proposed exception to the universal service. Two respondents expressed concern with no deliveries and collections on four consecutive days which they said is too long to be without a postal service. They did not agree with Royal Mail's assertion that there would be low volumes of mail in the system and from their recent experience, considered that the first delivery after suspension of services is likely to produce as much if not more items than normal. All were concerned that items posted in time for Christmas but which were not delivered would be further delayed. One respondent submitted that many people will shop online over Christmas yet sellers would have to wait four days before they can post goods. One respondent cited an increase in the small parcel and packet sized gifts

¹⁸ They identified that Boxing Day would fall on a Saturday in 2020, 2026 and 2037.

being carried by Royal Mail from online companies as placing additional demand on postal services before Christmas and increasing the likelihood of items not being delivered in time.

Our assessment

- 4.13 We note the reasons put forward by respondents in favour and not in favour of the Boxing Day exception. The three respondents who are not in favour of the proposed exception are concerned with a four-day period without a postal service and a potential backlog of mail, including items which could not be delivered on time for Christmas.
- 4.14 In assessing the merits of Royal Mail's application for an exception on 26 December when this date falls on a Saturday and respondents' concerns with the extended four day break over Christmas, we have had regard to the following:
- Prior to the Postal Services Act 2000, Royal Mail did not, as a matter of policy, collect or deliver mail when Boxing Day fell on a Saturday (at least since the 1980's). Since 2000, Boxing Day has only fallen on Saturday in 2009 and Postcomm granted an exception to the universal service on that occasion.^{19 20}
 - Since 2000, there has been a period of four consecutive days without service over Christmas on the following occasions:
 - In 2003: Christmas Day (Thursday), Boxing Day (Friday), 27 December (Postcomm agreed to an exception to the universal service for this Saturday) and 28 December (Sunday).
 - In 2004: Christmas Day (Saturday), Boxing Day (Sunday), 27 December (Bank Holiday in lieu of Christmas Day) and 28 December (Bank Holiday in lieu of Boxing Day).
 - In 2009: Christmas Day (Friday), Boxing Day (Postcomm agreed to an exception to the universal service for this Saturday), 27 December (Sunday) and 28 December (Bank Holiday in lieu of Boxing Day).

On each occasion, the prolonged break did not result in any evidence of harm to postal users due to no deliveries and collections over the period in question.

- Royal Mail's universal service obligation does not require it to deliver parcels on Saturdays²¹. Therefore, if Royal Mail had to operate on Boxing Day Saturday, it could meet its obligation by delivering letters only.
- Every year, Royal Mail publicises its recommended final posting dates for Christmas to ensure that postal users know when to post their items by in order for them to be delivered before Christmas. We note that the dates for Christmas

¹⁹ <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>

²⁰ Postcomm also granted an exception when Royal Mail applied for an exception for Saturday 27 December 2003.

²¹ DUSP condition 1.4.2

2015 have already been published²². Therefore, postal users are given sufficient notice to be able to meet those deadlines and are made aware that items posted after the recommended last posting dates may not arrive at their destination before Christmas.

- Every year, Royal Mail recruits extra staff to work in the period leading up to Christmas to deal with the increased volume of mail during that time and also to provide additional services to ensure that items posted before the final recommended dates are delivered in time for Christmas. For example, in 2015 Royal Mail has confirmed that it will be opening ten temporary parcel sorting centres to sort a significant proportion of the parcels it expects to handle at Christmas and will also have extra parcel delivery duties in place. Customers affected by items that are delayed despite posting in time for Christmas may be eligible to claim compensation for delay²³.
- Most Post Offices will be closed on Boxing Day Saturday and Bank Holiday Monday²⁴. Therefore, many postal users would not be able to post larger items that do not fit into a post box. The majority of available items for collection would be from postboxes. Historically, low volumes of mail are expected to be posted into postboxes on Christmas Day and the days immediately after.
- Royal Mail will be collecting from some high volume Tracked and standard parcels customers who are operating over that weekend (26-27 December 2015) to ensure delivery of items on the next available working day (Tuesday 29 December 2015). Customers who shop online over Christmas should be told by the seller/retailer when they can expect their item to be delivered.

4.15 We note the concerns expressed by the consumer advocacy bodies on the proposal to grant an exception for Boxing Day indefinitely. However, where an exception is granted until further notice, this would not fetter our discretion to withdraw or modify the Direction where appropriate should circumstances change. We would be able to review the situation in the future should the need arise and will continue to monitor complaints and any evidence of consumer harm regarding the no universal postal service day. In the absence of evidence indicating that the exception should be reviewed Ofcom would not have to consult on this matter, thereby conserving its resources and those of stakeholders.

4.16 Ofcom agrees with the consumer advocacy bodies' comments that collections and delivery arrangements during the holiday period should be made clear and published on Royal Mail's website with sufficient notice. Ofcom does not regulate Post Office Limited (POL) but would expect Royal Mail to ensure that its Christmas arrangements are communicated to POL suitably in advance to ensure that postal users are given correct posting advice. Ofcom would expect Royal Mail to take all reasonable measures to ensure postal users, businesses and access operators are made aware of the Christmas arrangements, such as by way of posters at collection points at delivery offices, in customer briefings/notices etc.

²² <http://www.royalmail.com/sites/default/files/Latest-Recommended-Posting-Dates-2015-Consumer.pdf>

²³ <http://www.royalmail.com/personal/help-and-support/royal-mails-retail-compensation-policy-for-delay>

²⁴ The opening days/hours of Post Offices are determined by Post Office Limited which is a separate entity from Royal Mail Group.

- 4.17 Having fully considered all responses to the consultation, Ofcom's final decision is to agree to Royal Mail's request for an exception to the universal service when Boxing Day falls on a Saturday. This decision is made in light of our assessment of the responses above and our assessment that the legal tests for issuing a Direction are met (see section 5).

Other issues

- 4.18 We note the CWU's suggestion for an exception to the universal service for other official bank holidays which may fall on a Saturday e.g. New Year's Day, 2nd January in Scotland and the Battle of the Boyne holiday in Northern Ireland. Royal Mail's application was for an exception for Boxing Day only. Therefore, the CWU's comments are outside the remit of our consultation and decision.
- 4.19 We would refer the CWU to Ofcom's decision statement on an exception to the universal service for the day after the Battle of the Boyne holiday in Northern Ireland²⁵. The Direction already grants an exception to the universal service when 12 July falls on a Saturday and applies in perpetuity.

²⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/rm-noserviceday/statement/statement.pdf>

Section 5

Ofcom's decision

Introduction

- 5.1 We received eleven responses to the consultation; seven were wholly in favour of the exception on Boxing Day, three were not in favour because they were concerned with the backlog of mail including items that were not delivered in time for Christmas being further delayed and one supported the exception in 2015 but not in future years.
- 5.2 In our assessment of responses in the section above, we have had regard to a number of factors including the historical low volume of mail in the period immediately after Christmas, the lack of any evidence of consumer harm (including businesses using Royal Mail) on the previous occasions when no deliveries or collections took place on four consecutive days over the Christmas holiday and Royal Mail's efforts to deliver all items of mail posted before the last recommended posting date before Christmas. This includes the period before and after the Postal Services Act 2000.
- 5.3 Following our analysis of responses and consideration of concerns raised, we have decided to agree to Royal Mail's request and have issued a direction under 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 (see Annex 1).
- 5.4 The next time this occurs is Boxing Day 2015. Our direction means that there will be no USO deliveries or collections on Saturday 26 December 2015. There will also be no deliveries and collections on Monday 28 December as Royal Mail will observe the substitute bank holiday. Normal service will resume on Tuesday 29 December 2015.

Legal Tests

- 5.5 We consider that our decision to issue a direction is:
- **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 be no deliveries to each delivery point and no collections from each access point in the UK on that day;
 - **proportionate** because it does not go further than is necessary to except Royal Mail from carrying out its universal service obligation on 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 reflects Royal Mail's own policy before the Postal Services Act 2000; and

- **transparent** because the reasons for the exception, the legal basis and Ofcom's assessment of the exception were set out in our consultation document published on 30 July 2015. The consultation included a proposed direction excluding Royal Mail from its requirements to make deliveries and collections on Saturday 26 December²⁶.

5.6 Therefore, we consider that our decision 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.

²⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-uso/summary/boxing-day-uso.pdf>

Annex 1

Direction

DIRECTION UNDER DESIGNATED USP CONDITION 1

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:

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 1 October 2015.
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

1 October 2015