
Modifications of the USP Access Condition for regulating access to Royal Mail's postal network

Proposed regulation of new D+5 Letters access services

Non-confidential version – redacted for publication [X]

CONSULTATION:

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1. Overview

Access mail is the main form of competition in the letters market in the UK and is facilitated by access to Royal Mail's postal network. This means other bulk mail providers collect mail from businesses and other organisations, sort it and then insert it into Royal Mail's network for delivery.

Access to Royal Mail's postal network is currently regulated by Ofcom via the Universal Service Provider Access condition (USPA condition). The current USPA condition requires that Royal Mail provides services that are delivered within two working days from the sender posting ("D+2 access services"), and includes a margin squeeze control as well as other ancillary access obligations. Mandated D+2 access services ensure that, once an access item enters Royal Mail's network, Royal Mail delivers that item to the recipient the next working day.

Royal Mail intends to introduce a new suite of access services ("D+5 Letters access services") from 4 January 2021. The new services will defer the mail until there is another item already being delivered to the recipient's address, subject to a maximum of four days after it enters the network.

Currently, these services fall outside the scope of the USPA condition. However, it is expected that they will be important services for access operators and could account for a material proportion of access volumes in the future. Consequently, we are of a preliminary view that D+5 Letters access services will be important in maintaining effective competition in bulk mail services, promoting efficiency within Royal Mail's delivery operations and delivering benefits to users of postal services.

What we are proposing:

We are proposing to extend the D+2 access USPA condition to also cover D+5 Letters access services. Therefore we are proposing that Royal Mail should be required to:

- provide D+5 Letter access on reasonable request;
- provide D+5 Letter access for fair and reasonable terms, conditions and charges;
- consider requests for D+5 Letter access or variations to existing D+5 Letter access Contracts;
- not unduly discriminate and restrict its use of information obtained in connection with giving access;
- have a control in place that prevents a price squeeze;
- publish and notify charges, terms and conditions; and
- ensure quality of service.

However, unlike the position for D+2 access, we are not proposing that D+5 access under the USPA condition should apply to Large Letters. Current regulation of D+2 services will remain unchanged.

Next steps

This consultation closes on 23 December 2020.

Subject to our consideration of responses, we expect to publish our final decision on our proposals as soon as possible in early 2021.

2. Background and legal framework

- 2.1 In this section, we set out the background to our proposals in this consultation, including the legal framework that applies to them and the current requirements in the existing USPA condition. This background also assists with understanding how Royal Mail's intended launch of the new D+5 Letters access services (which we discuss in section 4 of this consultation) fits with those current requirements.

Our statutory duties

- 2.2 The legal framework relating to the regulation of postal services is set out in the Postal Services Act 2011 (the **"PSA 2011"**).
- 2.3 Ofcom's principal duty under section 3 of the Communications Act 2003 (the **"CA 2003"**) is to further the interests of citizens and of consumers, where appropriate, by promoting competition. For postal services, we also have a specific duty under section 29(1) of the PSA 2011 in relation to the provision of the universal postal service, to which we must give priority if we consider that there is any conflict with our principal duty. We explain in more detail below how these duties fit together.
- 2.4 Section 29(1) of the PSA 2011 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. Section 29(2) of the PSA 2011 provides that Ofcom's power to impose access or other regulatory conditions is subject to the duty imposed by section 29(1) of the PSA 2011.
- 2.5 Section 29(3) of the PSA 2011 provides that, in performing our duty under section 29(1), we must have regard to the need for the provision of a universal postal service to be:
- financially sustainable; and
 - efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times.
- 2.6 Section 29(4) of the PSA 2011 states that 'financially sustainable' includes the need for a reasonable commercial rate of return for any universal service provider on any expenditure incurred by it for the purpose of, or in connection with, the provision by it of a universal postal service.
- 2.7 Section 29 does not, however, require that Ofcom gives more weight to one of those considerations over the other. We must take them both into account in arriving at a judgment as to how we ought to carry out our functions, including when considering imposing or modifying regulatory conditions.
- 2.8 Section 3(6A) of the CA 2003 provides that the duty in section 29(1) of the PSA 2011 takes priority over Ofcom's general duties in the CA 2003 in the case of conflict between the two where Ofcom is carrying out its functions in relation to postal services. However, if we consider that no conflict arises, Ofcom must carry out our functions in accordance with

these general duties and so must further the interests of citizens and of consumers, where appropriate by promoting competition.

- 2.9 For the reasons set out in this consultation, Ofcom does not consider that there is any conflict between its duty to secure the provision of the universal postal service and its general duties.
- 2.10 In performing its general duties, Ofcom is also required under section 3(4) of the CA 2003 to have regard to a range of other considerations, which appear to Ofcom to be relevant in the circumstances. In this context, a number of such considerations appear relevant, including:
- the desirability of promoting competition in relevant markets; and
 - the desirability of encouraging investment and innovation in relevant markets.
- 2.11 Section 3(5) of the CA 2003 provides that, in performing its duty to further the interests of consumers, Ofcom must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 2.12 Additionally, pursuant to section 3(3) of the CA 2003, in performing its general duties, Ofcom 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. In this regard, we also note Ofcom's general regulatory principles.
- 2.13 Finally, we have an on-going duty under section 6 of the CA 2003 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.

Power to impose USPA conditions

- 2.14 We have the power under section 38(2) of the PSA 2011 to impose a USPA condition on Royal Mail as the universal service provider requiring it:
- to give access to its postal network¹ to other postal operators or users of postal services;² and
 - to maintain a separation for accounting purposes between such different matters relating to access (including proposed or potential access) to its postal network as we may direct.

¹ Pursuant to section 38(3), the provider's "postal network" means the systems and all the resources used by the provider for the purpose of complying with its universal service obligations (and, accordingly, includes arrangements made with others for the provision of any service).

² Section 38(9) provides that references to giving a person access to a provider's postal network include giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the postal network.

- 2.15 We also have the power under section 38(10) to include in a USPA condition the kind of matters mentioned in Part 1 of Schedule 3 to the PSA 2011, such as provisions concerning:
- terms of access;
 - fairness and reasonableness in the way in which requests for access are made and responded to;
 - non-discrimination;
 - transparency; and
 - price controls etc.
- 2.16 Our power to impose a regulatory condition, like the USPA condition, includes³ powers to impose obligations also requiring the universal service provider to comply with directions with respect to the matters to which the condition relates, and also powers to impose obligations with respect to those matters framed by reference to, or conditional on, our consent, approval or recommendation.
- 2.17 We may, however, impose or modify USPA condition only if we are satisfied that relevant requirements set out in the PSA 2011 are met (we will also refer to these requirements as statutory tests in this consultation).
- 2.18 Firstly, section 38(4) precludes Ofcom from imposing a USPA condition, unless it appears to us that the condition is appropriate for each of the following purposes:
- promoting efficiency;
 - promoting effective competition; and
 - conferring significant benefits on the users of postal services.
- 2.19 Secondly, section 38(5) precludes Ofcom from imposing any price control in a USPA condition, unless it appears to us that the provider:
- might otherwise fix and maintain some or all of its prices at an excessively high level with adverse consequences for users of postal services; or
 - might otherwise impose a price squeeze with adverse consequences for users of postal services.
- 2.20 Thirdly, in imposing price controls in a USPA condition in connection with the giving of access to a universal service provider's postal network or to part of that network, we must have regard to such of the costs incurred in the provision of that network, or part of that network, as we consider appropriate. We may also have regard to the prices at which services are available in comparable competitive markets, and determine what we consider to represent efficiency by using cost accounting methods.
- 2.21 Fourthly, in deciding what obligations to impose in a USPA condition in a particular case, we must (in addition to taking into account anything relevant for the purpose of performing our duty under section 29) take into account, in particular, the following factors:

³ See section 53 of, and paragraph 2 of Schedule 6 to, the PSA 2011.

- the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary;
 - the feasibility of giving the proposed access;
 - the investment made by the universal service provider concerned in relation to the matters in respect of which access is proposed;
 - the need to secure effective competition in the long term; and
 - any rights to intellectual property that are relevant to the proposal.
- 2.22 Fifthly, we must be satisfied that the general test set out in paragraph 1 of Schedule 6 to the PSA 2011 is met in relation to the imposition or modification of a USPA condition. According to that test, we must be satisfied that the condition 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.
- 2.23 Finally, in imposing a USPA condition, we must also consider and act in accordance with the duty in section 29 of the PSA 2011 and the general duties in section 3 of the CA 2003, which we have discussed above.
- 2.24 The process for imposing, modifying or revoking regulatory conditions is set out in paragraph 3 of Schedule 6 to the PSA 2011. The way in which a regulatory condition is to be imposed, modified or revoked is by the publication of a notification setting out the condition, modification or revocation. Before such a publication, we must publish another notification stating that we are proposing to impose, modify or revoke the condition specified in the notification; setting out the effect of the condition, modification or revocation; giving our reasons for making the proposal, and specifying the period within which representations may be made to us about our proposal. We publish such a notification at Annex 6 for the proposals discussed in this consultation. The effect of, and our reasons for making, those proposals are set out in this consultation.

General impact assessment

- 2.25 The analysis presented in the whole of this consultation represents an impact assessment, as defined in section 7 of the CA 2003.
- 2.26 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 CA 2003, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For

further information about Ofcom's approach to impact assessments, see our guidelines, *'Better policy-making: Ofcom's approach to impact assessment'*.⁴

- 2.27 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 CA 2003) is secured or furthered by or in relation to what we propose.

Equality impact assessment

- 2.28 Section 149 of the Equality Act 2010 (the **"EA 2010"**) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The EA 2010 also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- 2.29 Section 75 of the Northern Ireland Act 1998 (the **"NI 1998"**) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the NI 1998. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the NI 1998.⁵
- 2.30 To help us comply with our duties under the EA 2010 and the NI 1998, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 2.31 We do not consider that our proposals have equality implications under the EA 2010 or the NI 1998.

Current requirements in the existing USPA condition

Evolution of the access requirements in the USPA condition

- 2.32 On 27 March 2012, we published our statement entitled *'Securing the Universal Postal Service: Decision on the new regulatory framework'* (the **"March 2012 Statement"**).⁶ This set out our decision on the new regulatory framework for the postal sector, which gave Royal Mail more commercial and operational flexibility (particularly in relation to setting its

⁴ Ofcom, 2010. [Better Policy Making – Ofcom's approach to Impact Assessment](#), 26 June 2010.

⁵ Ofcom, 2014. [Revised Northern Ireland Equality Scheme for Ofcom](#), January 2014 (updated December 2019).

⁶ Ofcom, 2012. [Securing the Universal Postal Service: Decision on the new regulatory framework](#), 27 March 2012. (the 'March 2012 Statement').

- prices). Regulatory safeguards were implemented to protect consumers and, where appropriate, promote effective competition.
- 2.33 One such safeguard was around access competition, in particular the mandating of access and the margin squeeze control, given our decision in the March 2012 Statement to remove traditional price controls. Those access requirements were set out in the USPA condition.
- 2.34 In broad terms, the USPA condition imposed the following access requirements on Royal Mail:
- a) requirement to provide D+2 Access on reasonable request (USPA 2);
 - b) requirement for fair and reasonable terms, conditions and charges (USPA 3);
 - c) requests for D+2 Access or variations to existing D+2 Access Contracts (USPA 4);
 - d) requirement not to unduly discriminate and restriction on use of information obtained in connection with giving access (USPA 5);
 - e) control to prevent price squeeze (USPA 6);
 - f) requirement to publish and notify charges, terms and conditions (USPA 7); and
 - g) quality of service (USPA 8).
- 2.35 In February 2014, following consultation we updated the margin squeeze control requirements set out in USPA 6 to ensure that they remained fit for purpose.
- 2.36 In June 2015, we announced a fundamental review of the regulation of Royal Mail to ensure that regulation remained appropriate and sufficient to secure the universal postal service. On 1 March 2017, following a consultation, we published a statement entitled '*Review of the Regulation of Royal Mail*'⁷ setting out various decisions relating to the revised regulatory framework for the postal sector. One of those decisions was to make some modifications to the USPA condition.
- 2.37 On 8 November 2018, following consultation we published a statement entitled '*Amendments to the Universal Service Provider Access Condition in relation to the margin squeeze control*'⁸ in which we set out our decision to modify the USPA condition. The statutory notification making such modifications by means of revoking that USPA condition and imposing on Royal Mail a new USPA condition was published in Annex 2 to that statement. This is the existing current version of the USPA condition. Initially, that USPA condition took effect on 8 November 2018. Following a subsequent request by Royal Mail, we decided to provide Royal Mail with a short extension to come into compliance, so that Royal Mail had until the end of March 2019 to comply with the new USPA condition.

⁷ Ofcom, 2017. [Review of the Regulation of Royal Mail](#), 1 March 2017.

⁸ Ofcom, 2018. [Amendments to the Universal Service Provider Access Condition in relation to the margin squeeze control](#), 8 November 2018.

D+5 Letter access services are currently unregulated

- 2.38 Royal Mail initially suggested to Ofcom that its new D+5 Letter access services would already be captured by the existing USPA condition. In contrast, Royal Mail requested at that stage that we should simply amend the margin squeeze control under USPA 6, so that these new services would be subject to that control. We explain below why the D+5 Letters access services are currently unregulated and that the USPA condition needs to be modified to bring them within its scope. In that regard, it is important to note that the existing USPA condition only regulates D+2 Access services.
- 2.39 The USPA condition defines 'D+2 Access' as "access to the universal service provider's postal network at the IMC for the purposes of providing D+2 and later than D+2 Letters and Large Letters services". In turn, it defines 'D+2 and later than D+2 Letters and Large Letters services' as "retail services that aim to deliver two working days (or later) after collection from the sender, also known as a day C service, or later". Those definitions have applied since the USPA condition was first imposed on Royal Mail under the March 2012 Statement.
- 2.40 In doing so, we implemented in the March 2012 Statement the key access proposals set out in our October 2011 and December 2011 consultations⁹, to maintain access competition given the benefits it can bring such as lower prices to consumers. In setting out those proposals, we also took into account the responses to two earlier consultations that Postcomm had carried out.¹⁰ We focused our proposals on, in particular, whether Royal Mail should be required to offer access to the postal network for participation in the retail D+2 and later than D+2 Letters and Large Letters markets. We referred to those markets in the March 2012 Statement as those where the suppliers of retail services aim to ensure that the mail is delivered in a minimum of two working days after collection.
- 2.41 That retail market issue was based on Postcomm's previous retail market study. In particular, having consulted on its provisional market supply-side analysis in May 2010¹¹, it concluded in November 2010¹² that there were no apparent barriers to supply-side substitution between D+2 and later than D+2 services as an operator could provide a later than D+2 service using a D+2 access service. Although Postcomm accepted the absence of

⁹ Our proposals for the future regulatory framework were set out in two key consultations: 'Securing the Universal Postal Service (Proposals for the future framework for economic regulation)' published on 20 October 2011 (see Section 7 and Annex 7) – which primarily focused on our proposed approach to regulating Royal Mail and its pricing; and 'Review of Regulatory Conditions' published on 13 December 2011 – which presented our proposals for revising all the regulatory conditions relevant to the postal sector.

¹⁰ In March 2011, Postcomm consulted on its access review ('The building blocks for a sustainable postal service, Access Review 2012 – Initial Proposals'), which set out the background to access, considered the role of access competition in the UK and provided Postcomm's initial views on how access should be regulated under a new regulatory regime from 2012. Then, in April 2011, Postcomm consulted on the need for ex ante regulation of Royal Mail beyond 2012 as part of its initial proposals on regulatory safeguards consultation ('The building blocks for a sustainable postal service, Initial proposals for regulatory safeguards'), including in particular whether regulatory safeguards were required to address the risk of Royal Mail engaging in a margin squeeze (including options for addressing such risks).

¹¹ Postcomm 2010. Laying the foundations for a sustainable postal service – Annex 2: Analysis of markets, May 2010.

¹² Postcomm, 2010. Laying the foundations for a sustainable postal service – Annex 1: Analysis of markets – Decision document, November 2010.

a later than D+2 access service product at that time, it did not consider it necessary for an operator to supply a later than D+2 retail service.

- 2.42 In March 2011, Postcomm complemented and completed its previous (supply-side) analysis by considering whether there is sufficient demand-side substitution between the different mail characteristics for them to be included in the same relevant economic market. Its demand-side analysis indicated that customers were prepared to switch between D+2 and D+2 and later services in response to changes in relative prices. It therefore concluded that D+2 and D+2 and later mail services were in the same economic market on both the demand and supply side. That conclusion led to its further proposal that an access condition should be imposed for participation in the relevant D+2 and later than D+2 markets at the IMC.
- 2.43 Against that background, Ofcom proposed in October 2011 that Royal Mail should be required to offer access to the postal network for participation in the retail D+2 and later than D+2 Letters and Large Letters markets. In terms of mandating the form of access required for such participation, we explained in that consultation that *"7.32 As noted above, the most common model of access (99% of volumes) is through injecting letters and large letters at the Inward Mail Centre (IMC access) for next day delivery by Royal Mail, allowing an access operator to participate in the D+2 and later than D+2 retail market. We consider below whether **this form of access meets the three statutory tests** set out above and then whether this is consistent with Ofcom's other duties. **We do not consider other forms of access here.** Annex 6 discusses our proposed approach for gathering evidence and taking forward the need for regulation in respect of other forms of access which exist on a more limited scale or where access operators are currently seeking access. Where relevant, we address the other requirements of the Act that relate to the imposition of USP access conditions, in section 9 below."* (emphasis added)
- 2.44 In consulting in December 2011 on the drafting of the USPA condition based on our proposals in the October 2011 consultation, we referred to the above-mentioned form of defined access as 'D+2 Access'. In the March 2012 Statement, we decided to adopt that definition. Indeed, in response to a detailed drafting issue raised by a stakeholder concerning our definition of 'D+2 and later than D+2 Letters and Large Letters services', we explained¹³ that its reference to retail services was a reference to an end-to-end service that access operators and Royal Mail both offer their customers (even though access operators contract with Royal Mail for the provision of the downstream element of this service).
- 2.45 We explain in section 4 below Royal Mail's request to Ofcom with regard to its proposed new D+5 Letter access services. We simply observe here that this new form of access would have a much longer delivery span (i.e. 4 days), and it would therefore not allow access operators to participate in the D+2 and later than D+2 retail markets through injecting letters and large letters at the IMC for next day delivery by Royal Mail. As such,

¹³ See Annex 4 to the March 2012 Statement.

we consider that these new D+5 Letter access services currently fall outside of the USPA condition's requirements.

Structure of this document

2.46 The following sections of this consultation are structured as follows:

- Section 3 offers some context to the access mail market;
- Section 4 sets out some background to Royal Mail's D+5 Letters access service; and
- Section 5 sets out our proposals and questions for this consultation.

3. Access mail

Bulk mail

- 3.1 Bulk mail refers to a range of services provided to senders of larger volumes of mail, usually businesses and organisations such as banks and charities. These services are priced at a significant discount to standard letter and large letter stamp products, with discounts reflecting not only volumes, but also factors such as the way mail has been presented (such as fonts used), machine barcodes, and the level of sortation (i.e. unsorted, low sort and high sort).
- 3.2 Examples of bulk mail include advertising mail (also known as direct mail), publishing mail (such as magazines and newsletters), transactional mail (such as bank statements and contracts) and fulfilment mail (a segment of direct mail where printed materials are prepared and converted into mailable items).
- 3.3 From workshops Ofcom carried out with bulk mailers in 2019, we understand that bulk mailers anticipate using post less in future, but that other forms of communication are not a complete substitute and some customers still prefer to receive bills and statements by post. Many bulk mailers also told us that prices, quality of service, speed and tracking were important factors in their decisions on how much mail to send.
- 3.4 Bulk mail services are typically available to customers through a variety of options – either via Royal Mail's own end-to-end retail offerings, or by making use of access mail arrangements. We now explain access mail in more detail.

Access mail

- 3.5 Access mail is where a party other than Royal Mail collects and sorts the mail, before handing it over to Royal Mail for delivery (generally at the IMC). This could be an access operator, or the customer itself, depending on the specific agreement in place.¹⁴ Access operators make arrangements with Royal Mail for the delivery to end customers based on standardised terms. Royal Mail's own retail division, Royal Mail Retail, competes with access-based services in the provision of end-to-end bulk mail.
- 3.6 Currently, Royal Mail is required under the USPA condition discussed in section 2 above to offer access at its IMCs to other operators for letter and large letter products, with a total end to end routing time of two working days or later. Royal Mail's D+2 access services which it offers to meet this obligation are delivered the day after the mail is injected to its network. By way of context, the vast majority ([8<]%) of access mail volumes are sent using these mandated D+2 access services.¹⁵

¹⁴ We note that there can be a variety of ways access mail can be processed and handed over to Royal Mail for delivery – namely, via access operators, via agency agreements or via Customer Direct Access (CDA) arrangements.

¹⁵ Royal Mail's financial reporting (financial year 2019/20) to Ofcom.

- 3.7 Royal Mail also offers an access service for parcels and D+1 letter services, but such services are not regulated by Ofcom under the USPA condition, so they are provided on commercially agreed terms.

Access mail volumes and revenues

- 3.8 In 2018-19, access mail accounted for 65% of all letter volumes.¹⁶ Overall, however, access mail volumes, like Royal Mail's end-to-end mail volumes, have been in decline.
- 3.9 The decline in overall access volumes may be beginning to accelerate: they fell by 1% in 2017-18 and by 6% in 2018-19. However, the decline is at a lower rate to that of Royal Mail's end-to-end addressed letter volumes, which declined by 11% and 13% over the same periods.^{17 18}

Royal Mail's access services

- 3.10 Royal Mail offers several access products, primarily differentiated by the different levels of sort, automation and the barcodes on the item. Broadly Mailmark products are the newest and most widely used, whilst OCR and manual mail products are legacy products which, while still important to some customers, have been in decline in recent years.
- **Mailmark** refers to a barcode product that can be scanned by machines for automatic sortation, and carries more data about where the product is coming from and where it is going to. This product is generally cheaper than OCR or manual products.¹⁹
 - **Optical Character Recognition (OCR)** is the process of automated sorting where addresses on letter products are printed with approved fonts and formatting, to make scanning easier.
 - **Manual mail** refers to mail where there is no data or any automation done beforehand, and no barcode on the mail; typically, this includes franked mail.
- 3.11 Moreover, for mail products, Royal Mail offer two types of sortation, whereby items are sorted to different levels before the mail enters Royal Mail's network:
- **70** (also known as low sort) refers to mail that is sorted by postcode area; and
 - **1400** (also known as high sort) refers to mail that is sorted by postcode district.
- 3.12 Over 90% of access letter volumes were sent by Mailmark products (as opposed to OCR or manual mail products). In 2019/20, 94% of access letter volumes were low sort, and 6% were high sort.²⁰

¹⁶ Ofcom, 2019. [Annual monitoring update on the postal market: Financial year 2018-19](#), 19 December 2019, page 7. ('2019 AMR')

¹⁷ Ofcom 2018. [Annual monitoring update on the postal market: Financial year 2017-18](#), 27 November 2018, page 13.

¹⁸ Ofcom, 2019 AMR.

¹⁹ For instance, Royal Mail retains a price differential between Access 70 Mailmark and Access 70 OCR products, and continues to encourage take up of the Mailmark product.

²⁰ Royal Mail's financial reporting (financial year 2019/20) to Ofcom.

4. Royal Mail's proposed D+5 access services

4.1 In this section 4, we explain Royal Mail's proposed D+5 Letters access services, including how the new services will work and how they are different from the current D+2 access services. This information is based on information provided by Royal Mail to industry as well as to Ofcom including in response to our formal information requests.

Royal Mail's letter to industry – introducing the service

4.2 On 26 June 2020, Royal Mail wrote to industry (including access operators), informing them of Royal Mail's plans to launch new D+5 Letters access services, for Mailmark products, to take effect from 4 January 2021.²¹

4.3 Royal Mail's letter stated:

- a) The new D+5 Letters access services will be at a lower price than the standard D+2 Mailmark services;
- b) The new D+5 Letters access services will be for Letter formats only (i.e. not Large Letters or parcels);
- c) The new D+5 Letters access services, whilst aiming to deliver letters within a maximum four working days of handover to Royal Mail, will in practice deliver many letters more quickly, up to 45% of mail the day after it has been handed over to Royal Mail (a copy of the table Royal Mail provided in its letter is provided below in Figure 4.1); and
- d) Customers would be able to monitor the performance of their mailing items.

Figure 4.1 – how Royal Mail's D+2 and D+5 access services compare

DSA day		D	D+1	D+2	D+3	D+4	D+5
Product	Access Mailmark Economy Service	Customer hands posting over to carrier	Carrier hands posting over to Royal Mail	Royal Mail delivers mail or defers delivery	Royal Mail delivers mail or defers delivery	Royal Mail delivers mail or defers delivery	Royal Mail delivers remainder of posting to specification
	Standard Access service	Customer hands posting over to carrier	Carrier hands posting over to Royal Mail	Royal Mail delivers posting to specification			

Source: Royal Mail

4.4 In the same letter, Royal Mail outlined the changes it would be making to the Access Contract. In its annex accompanying the letter, titled 'Access User Guide Amendment Notice Number 057: Mailmark Economy Service', Royal Mail set out that the D+5 Letters access services would only apply with the following features:

- a) Sortation level – Access 70

²¹ Royal Mail Wholesale, 2020. [Access Service Development and Improvement](#), 26 June 2020.

- b) Format – Letter (including postcards)
 - c) Access services – Advertising Mail, Advertising Responsible Mail Entry, Advertising Responsible Mail Intermediate, Partially Addressed Mail, Business Mail.
- 4.5 Royal Mail's letter also set out a number of other practical requirements for customers – namely, using a new product code, sortation of the new mail into different bags and trays and container labels.

Royal Mail's request to Ofcom

- 4.6 On 21 August 2020, Royal Mail wrote to Ofcom stating its intention to launch the new D+5 access services in January 2021. A non-confidential copy of this letter is attached in Annex 5.

Royal Mail's request for mandation and VAT exemption

- 4.7 In that letter, Royal Mail formally requested that Ofcom confirm the D+5 Letters access services would be subject to the access mandation and margin squeeze controls currently in place for the existing D+2 access service. The implication of the D+5 Letters access service being mandated and price controlled would be that it would be VAT exempt (as existing D+2 access services are today). Royal Mail stated this was required to ensure all customers can benefit from the new D+5 Letters access services and to ensure the full efficiency benefits (which need sufficient mail volumes) can be realised.
- 4.8 To enable the above, Royal Mail suggested to Ofcom how the margin squeeze might work by stating the retail services the margin squeeze should apply to (as defined under the term 'relevant retail services' in the USPA condition).²² Royal Mail suggested that relevant Retail Economy Mailmark letter services equivalents are "substantially similar to the existing second class retail services", and that Ofcom should include those services for the purposes of the margin squeeze control.
- 4.9 Royal Mail also set out why it considered the new D+5 Letters access services should be mandated and the margin squeeze test should apply, including how Royal Mail felt the new service met the three legal tests required for mandation of an access service.

Further details on the new D+5 Letters access service

- 4.10 Royal Mail stated in the letter that the D+5 Letters access services would "share all the same attributes in terms of presentation, sortation and content control as the existing Standard access service which is currently regulated under the USPA condition", and that

²² Margin squeeze is a type of exclusionary conduct that can occur if a vertically-integrated firm, in this case Royal Mail, holds a dominant position in one part of the supply chain of a product, and uses this position to prevent non-vertically integrated competitors from trading profitably in the competitive part of the supply chain of that product. The control is intended to ensure that the difference between Royal Mail's bulk retail prices and the equivalent access prices is enough to enable effective access-based competition. As such the margin squeeze condition defines the "relevant retail services" for which the margin is controlled.

the main difference would be speed of delivery (as set out above). Royal Mail also confirmed the terms and conditions of the D+5 Letters access services will “be in line with existing Standard Access services”.

4.11 Royal Mail also stated in its letter that its “customers are very supportive of the new service, but the overriding feedback from them is that it needs to be VAT exempt”.

4.12 Finally, Royal Mail stated that customers would need to undertake their own IT developments and require time to adapt to the new service.

Royal Mail's further letter to industry – introducing pricing levels

4.13 On 13 October 2020, Royal Mail wrote again to industry to inform it of its prices for the new D+5 letters access services (as well as price rises for its current D+2 access services).²³

²⁴

4.14 Royal Mail confirmed that the D+5 Letters access service would launch on 4 January 2021, and that the service would launch with VAT applied “*whilst we await Ofcom's consultation and decision on the regulatory status of the service.*”

4.15 In Table 4.1 below, we illustrate the prices for some relevant services for the proposed D+5 Letters access services and the existing D+2 access services.

Table 4.1: Royal Mail's notified prices for a selection of D+2 and D+5 access services²⁵

Service	D+2 access service (pence)	D+5 access service (pence)
Mailmark Letters	29.748	28.940
Mailmark Advertising Mail Letters	18.072	17.545
Mailmark Advertising Sustainable Entry Letters	17.572	17.045
Mailmark Advertising Sustainable Intermediate Letters	17.072	16.545
Mailmark Partially Addressed	14.072	13.545

Source: Ofcom analysis, Royal Mail pricing workbook²⁶

4.16 At the launch of the D+5 access service, the price differential (excluding VAT) between the D+2 and D+5 access services will vary around 3% depending on the product variant.

²³ Royal Mail Wholesale, 2020. [Price Changes for the Access Letters Contract](#), 13 October 2020.

²⁴ Royal Mail. [Price List](#).

²⁵ Price points are based on Mailmark access services on Letter Price Plan One (national prices) and low (70) sortation, for items (letters only) weighing 0-100g, with discounts for (1) the items being delivered as per above service levels and (2) items being presented in trays.

²⁶ Royal Mail. [Price List](#).

Royal Mail's information in response to our formal information requests

First information request

- 4.17 On 20 August 2020, we issued our first information request to Royal Mail. In particular, we sought to verify information Royal Mail provided earlier informally to Ofcom about Royal Mail's plans in relation to its D+5 Letters access services. Our request covered expected take up and benefits to access operators, the impact of a D+5 service on the current D+2 access service, the impact of a D+5 access service not being VAT exempt, further understanding on cost savings for Royal Mail, pricing and product characteristics of the new service, as well as ascertaining further details on the service to inform our considerations on the need for any regulatory intervention. Royal Mail responded to our first request on 4 September and 11 September 2020, respectively.
- 4.18 As part of its response, Royal Mail provided us with some new information that was relevant to our analysis, including confirming that the operational and procedural requirements of the new service would remain unchanged from the current D+2 access service.^{27 28}

Second information request

- 4.19 Between August and October 2020, we had discussions and communications with Royal Mail to gain a better understanding of various matters in relation to Royal Mail's plans for its D+5 Letters access services, including the processes that would apply for both the current D+2 and proposed D+5 access services, future Royal Mail D+5 retail services, the rationale for Royal Mail's proposed new service and the implications for the current margin squeeze tests. In light of Royal Mail's clarifications on these matters, we issued on 23 October 2020 our second information request to Royal Mail to formally confirm these clarifications. Royal Mail responded to our second request on 29 October 2020.

Other information gathered by Ofcom

- 4.20 During August and September 2020 we also engaged with a number of access operators individually, as well as collectively at the Mail Competition Forum (MCF)²⁹, to understand

²⁷ Royal Mail response received in answer to Q3 and Q4 of 1st Ofcom s55 information request, sent on 4 September 2020. Namely, reporting data provided to access operators, the eManifest window, the handover requirements (other than identifying products as 'Economy') and how D+2 and D+5 mail is handed over to Royal Mail (in separate trays/bags) and the surcharge process would all remain unchanged.

²⁸ The current process is that access operators need to present different products e.g. advertising and business mail or 70 and 1400, in separate containers but they can continue to combine those products/separate containers into Yorks for handover at Royal Mail. With the launch of the D+5 service the same rule will apply i.e. D+5 will need to be presented in separate containers to D+2 but can be combined with other products into Yorks for handover to Royal Mail.

²⁹ The Mail Competition Forum is a non-profit making discussion forum which aims to support competition in the UK postal market. Its members include numerous access operators who use Royal Mail's network.

their views on Royal Mail's proposed D+5 Letters access services, including their level of interest and likely take up of them and the need for any formal regulation.

5. Our proposals

- 5.1 In this section 5, we set out our proposals to extend the USPA condition to the new D+5 Letter access services. We also set out the details of how the USPA condition would be applied to the new D+5 Letters access services. We particularly invite stakeholders' views on our specific questions set out in this section, and also on our proposed modifications of the USPA condition (which are specified in our statutory notification published in Annex 5).
- 5.2 In summary, we propose to require that, in addition to existing D+2 access services, Royal Mail offers its D+5 Letter access services to access operators on regulated terms, given in particular the anticipated significance of the new services and therefore their likely importance in maintaining competition in bulk mail services going forwards. We also expect that our proposals would promote efficiency within Royal Mail's delivery operations and confer benefits on users of postal services. We further propose to bring its D+5 Letter access services (and its relevant retail services) within the margin squeeze control under the USPA condition that currently applies only to D+2 access services (and its relevant retail services). Overall, we consider that our proposals would secure the statutory tests and are consistent with Ofcom's own statutory duties discussed in Section 2, including in furthering the interests of consumers in respect of choice, price, and quality of service given that access operators would be able to offer retail services based on either D+2 or D+5 regulated access.
- 5.3 Subject to our consideration of responses to this consultation, we expect to publish our final decision on our proposals in early 2021. If adopted, our modifications to the USPA condition would take effect immediately from the date of our decision.

D+2 access under the existing USPA condition

- 5.4 As context, this section describes the key aspects of current regulatory requirements in relation to D+2 access services.

The need for D+2 access regulation

- 5.5 Our March 2012 Statement established the current regulatory framework for the UK postal sector. This removed most price controls on Royal Mail, but promoted competition in the upstream bulk mail market by imposing the USPA condition and related access requirements. This obligated Royal Mail to give access to its postal network to access operators, and moved the focus of regulation from price controls to measures to prevent Royal Mail using margin squeeze to stifle competition in bulk mail.
- 5.6 The main rationale in March 2012 for imposing this USPA condition was that, prior to the launch of its access services, Royal Mail faced little or no competition in the provision of bulk mail services. We took the view that competition had incentivised Royal Mail (and

other operators) to improve the efficiency of their networks and operate more effectively in dealing with customers, and had led to lower prices for bulk mail customers.³⁰

Services in scope of D+2 access regulation

- 5.7 The March 2012 Statement imposed the USPA Condition on Royal Mail's D+2 access services. These services essentially consist of access operators handing over letters and large letters to Royal Mail at the IMC for next day delivery.
- 5.8 We have already explained in section 2 above why D+5 Letters access services are currently unregulated. In particular, we note that the USPA condition was designed for D+2 and not for other forms of access. This is because, at the time when we imposed this condition, D+2 was the most common model of access, accounting for 99% of access volumes.³¹
- 5.9 Other forms of access provided by Royal Mail at the time included a D+1 access letters service. Although we did not consider that there was a need to impose the USPA condition on other forms of access, we stated that we would reconsider extending the scope of regulation to other access service if Royal Mail were to seek to stop providing these services or if demand for these services were to increase in the future.³²

Pricing of D+2 access

- 5.10 Although we decided not to set the level of D+2 access prices, the March 2012 Statement imposed an ex-ante margin squeeze control on these prices. This had the purpose of addressing our concern that Royal Mail could engage in discriminatory practices in favour of its own retail operations over access operators. So, to protect access-based competition, we included a margin squeeze control in the USPA condition.

Royal Mail's proposed new D+5 Letters access services and summary of our proposals

- 5.11 The D+5 services will allow access customers to inject bulk mail at the IMC for delivery up to four days from the injection date. We have already explained in section 2 why we consider that these new services currently fall outside of the USPA condition.
- 5.12 As we explain further below, we expect that there will be considerable demand for these new access services. We anticipate that a material proportion of access volumes will move outside the current regulated access regime once the new services become operational. In light of these expectations, and to protect access-based competition going forwards, we are proposing to extend the USPA condition to the new D+5 Letters access services.

³⁰ See paragraphs 10.9 to 10.11 of our March 2012 Statement.

³¹ See paragraph 10.211 of our March 2012 Statement.

³² See paragraph 10.216 of our March 2012 Statement.

- 5.13 In short, we are proposing to make the following modifications of the USPA condition to require Royal Mail to provide D+5 Letters access services, alongside ancillary access obligations:
- requirement to provide D+5 Access on reasonable request (USPA 2);
 - requirement provide D+5 Access on fair and reasonable terms, conditions and charges (USPA 3);
 - requirement to adopt a reasonable, transparent and timely process for access operators to make requests for access contracts (or variations to existing access contracts) in relation to D+5 Access (USPA 4);
 - requirement not to unduly discriminate and restriction on use of information obtained in connection with giving D+5 Access (USPA 5);
 - margin squeeze control in relation to D+5 Access (USPA 6);
 - requirement to publish and notify charges, terms and conditions for D+5 Access (USPA 7); and
 - requirement to publish quality of service information for D+5 Access (USPA 8).
- 5.14 We structure below our discussion on our proposals as follows:
- First, we deal with our proposals to mandate access to D+5 Letters access services (to sit alongside existing and regulated D+2 access services), including our proposals for ancillary obligations in support of the main access obligation;
 - Second, we set out how we propose to bring the new D+5 Letters access services into the margin squeeze control (i.e. USPA 6);
 - Third, we address the relevant statutory tests we have discussed in section 2 in relation to our proposals; and
 - Fourth, we explain our currently expected next steps and timings following the end of the consultation period.

Mandating access to D+5 Letters access services

- 5.15 We have already explained in section 2 that, in mandating any access requirements under the USPA condition, Ofcom must be satisfied that it is appropriate for each of the following purposes:
- promoting effective competition;
 - promoting efficiency; and
 - conferring significant benefits on the users of postal services.
- 5.16 We discuss below why we consider that our proposal to extend the USPA condition to D+5 Letters access services would be appropriate for those purposes.

Supporting competition in the upstream bulk mail market

We expect D+5 Letters to become an important input for access operators, alongside D+2 access

- 5.17 We understand from the information we have gathered that the new D+5 Letters access services will appeal to many bulk mail customers. Such customers are likely to include

those who are less time sensitive and do not require certainty of delivery day (i.e. customers who are prepared to trade off a wider/uncertain delivery window for a lower price). Information we have gathered from Royal Mail and access operators suggests that a material proportion of access mail is not time sensitive³³, and such mail could therefore move to the new D+5 access services where they offer a lower price alternative to the D+2 access equivalent. Although the expected take-up would depend on relative prices, Royal Mail's internal modelling anticipates that c. [X]%³⁴ of existing D+2 letters access volumes could switch to D+5 access by 2023/24 in the event it is not mandated.³⁵

- 5.18 In contrast, customers whom depend on services which are time sensitive (and for which a faster and/or day-certain delivery are important) are able – and indeed are expected – to stay on the existing D+2 access service.
- 5.19 Therefore, while we expect the existing D+2 access services to remain a core input for access operators, we consider that the new D+5 access services is likely to become an important input for access operators going forwards even if not mandated. This means a material proportion of volumes would move outside of the regulatory safeguards under the USPA condition.

Extending the USPA condition to D+5 Letters would ensure that competition for bulk mail services remains effective

- 5.20 We believe that in the absence of access regulation, there is a risk that Royal Mail may refuse to provide access to its downstream D+5 Letters access service in the future, and/or offer this service under terms and/or conditions which are less favourable to access operators than to Royal Mail's own upstream operations. This is as a result of Royal Mail's position in the relevant wholesale (downstream) markets and its vertically integrated structure, which provides it with the ability to reserve for itself the large volumes of customers that prefer a lower priced but slower delivered service.
- 5.21 Given that we expect D+5 Letter access services will become an important input for access operators going forwards (alongside the existing D+2 Access services), we propose it is appropriate to mandate its provision in order to protect access competition, and thus support the ongoing effectiveness of competition in the upstream bulk mail market.

Promoting a more efficient Royal Mail network

Extending the USPA condition to D+5 Letters access would promote efficiency

- 5.22 As described above, we propose that extending the USPA condition to D+5 Letters access services is necessary to continue to support access-based competition. Competition is an

³³ Royal Mail response received in answer to 1st Ofcom s55 information request, sent on 4 September 2020.

³⁴ Royal Mail response received in answer to Q12 of 1st Ofcom s55 information request, sent on 11 September 2020. This figure is based on a scenario which assumes that the new service is VAT rated and therefore take-up for the new service is lower.

³⁵ As discussed further below, Royal Mail expects future take-up of D+5 Letters access services to be higher in the event it is mandated.

important driver for efficiency, and so in this way we consider that regulating D+5 Letters access services can continue to encourage Royal Mail and access operators to achieve further efficiencies upstream. Access competition has enabled significant efficiencies in the past, through upstream innovation and service development (including service performance reporting and mail handling capabilities).

- 5.23 In addition, the introduction of D+5 Letters access services is expected to enable the delivery of cost savings downstream in relation to its delivery operations. Currently, D+2 access volumes are delivered the day after they are received at the IMC from access operators. As explained in section 4, the new D+5 access services will allow Royal Mail to sequence and hold back the mail (up to a maximum for four days) at the IMC until multiple items are ready to be delivered to the same address or the latest day the mail can be delivered to specification (whichever comes first). This is part of Royal Mail's wider Delivery to Specification (DTS) initiative. This initiative seeks to reduce the number of visits required to an individual address each week, with a larger number of items delivered on each visit.
- 5.24 In the context of declining mail volumes (as discussed in section 3), the ability to consolidate mail, while still delivering according to the product specification, could have a positive impact on operational efficiency in the long-term by reducing the number of path walks per day.
- 5.25 Royal Mail has provided information to Ofcom that the opportunity to take advantage of the potential efficiency gains (and therefore the scale of cost savings achieved) will be dependent on the level of take-up of the new D+5 Letters access services. In general terms, the higher the take-up, the greater the scope for efficiencies.
- 5.26 We consider that take-up of the new access services, and therefore the opportunity for efficiency gains, could be increased by extending regulation to these new D+5 access services. This is because we expect that access operators will have greater willingness and confidence in using these new services, if they have the clarity and certainty of getting access to the service under conditions which are not less favourable than those offered to Royal Mail retail. Our proposals to bring them within the margin squeeze control (discussed further below) would also result in the new service being VAT exempt, which we understand would further increase scope for take-up.
- 5.27 Royal Mail estimates that mandating access to the new D+5 Letters access services, and bringing them within the margin squeeze control, will increase take-up of the service from c.10% to c.20%.³⁶ Royal Mail anticipates that this higher take-up will enable the DTS initiative to deliver additional cost savings of £10m per year by 2026/27.³⁷

³⁶ Royal Mail response received in answer to Q12 of 1st Ofcom s55 information request, sent on 11 September 2020. This figure is based on a scenario which assumes that the new service is VAT exempt and therefore take-up for the new service is higher.

³⁷ Royal Mail response received in answer to Q6 of 1st Ofcom s55 information request, sent on 4 September 2020 and Q7 and Q8 of 1st Ofcom s55 information request, sent on 11 September 2020. These cost savings are net of the costs associated with the implementation of the DTS initiative, some of which are sensitive to the level of take-up.

- 5.28 In light of the above, we consider that extending the USPA Condition to D+5 Letters access services would enable Royal Mail to achieve additional efficiency gains.

Conferring benefits to consumers

Extending the USPA condition to D+5 Letters would increase choice for consumers

- 5.29 The introduction of the new D+5 Letters access service will increase choice for bulk mail customers, giving them the option of a cheaper slower speed service.
- 5.30 As we already mentioned, the new service is likely to be an appealing option for bulk mail customers whose demands are not time sensitive. For such customers, the introduction of D+5 Letters access services will allow them to reduce costs, compared to a situation where they would have to pay the higher D+2 price. According to Royal Mail's recent price announcement (see section 4), the current price differential between D+2 and D+5 access will be around 3% (excluding VAT).³⁸ This means that customers moving from D+2 to D+5 could receive price savings in the region of 3%.
- 5.31 As described above, extending the USPA Condition to D+5 Letters access services would make it a viable alternative for more customers, due in part to the regulatory protection they would be afforded. This is also true for those customers who are unable to reclaim VAT, and therefore for whom D+5 would not otherwise be an economical option.³⁹ As such, we expect that our proposals would increase choice for more bulk mail customers, enabling more of them to take advantage of a lower cost/speed service, as well as potentially allowing more innovation from access operators in the product range they can offer.
- 5.32 Customers who continue to require a D+2 access service will still be able to use it, supported by the existing regulatory regime under the USPA condition. As such, our proposals in relation to D+5 access do not affect their choice relative to today.
- 5.33 We have, however, considered whether extending the USPA condition to the new D+5 access services could result in higher prices for bulk mail customers who are reliant on the regulated D+2 access services. This could occur because the introduction of the cheaper D+5 access service might enable Royal Mail to impose more aggressive price increases on D+2 access services (i.e. Royal Mail would be able to segment those customers who are time sensitive and remain on D+2, and hence likely to be least price sensitive). However, we note Royal Mail intends to introduce this service regardless of our proposals, and so any such segmentation (and ability to price discriminate) would be likely to occur to some degree, even if we were to decide not to mandate D+5 Letters access. We also note that

³⁸ Ofcom calculation based on Royal Mail letter to industry, 'Price Changes for the Access Letters Contract', dated 13 October 2020. Price differential varies between 2.7% and 3.7% depending on the product variant.

³⁹ This is because for these customers, the D+5 access services will be VAT-rated, making them more expensive than the D+2 access services (which are VAT exempt).

Royal Mail has confirmed that the relative pricing of D+2 and D+5 is not dependent on the VAT treatment of D+5 Letters access services.⁴⁰

- 5.34 Accordingly, we consider that extending the USPA Condition to D+5 Letters access services would also confer significant benefits on users of postal services. Indeed, in line with our general duties under section 3 of the CA 2003 (as explained in section 2 of this consultation), we consider that our proposals would help further the interests of consumers in respect of choice, price, quality of service and money.

The new D+5 Letters access services will help contribute to the financial sustainability of the universal postal service

- 5.35 Royal Mail is the provider of the universal postal service (“UPS”) and therefore is subject to universal service obligations. These obligations require Royal Mail to deliver single-piece mail and parcels throughout the UK six and five days a week, respectively, and at uniform prices.
- 5.36 As stated in section 2, our specific statutory duty in the postal sector is to carry out our functions in relation to postal services in a way that we consider will secure the provision of the UPS. In particular, in performing that duty, we must have regard to the need for the provision of a UPS to be financially sustainable and efficient.
- 5.37 Over recent years, Royal Mail's financial position has deteriorated due to the structural decline in mail volumes. Although this decline has been partly offset by growing parcel volumes, this has not stopped Royal Mail's total revenue for the Reported Business from declining, while costs continue to rise.⁴¹ This trend has been amplified in recent months due to the impact of COVID-19.⁴²
- 5.38 As set out above, extending the USPA condition to the new D+5 Letters access service would expand the scope for Royal Mail to improve efficiency through its DTS initiative. In the context of declining mail volumes, reducing the number of walks per day (and associated costs) in this way could help contribute to the long-term sustainability of the UPS. By way of illustration, we note that Royal Mail estimates the potential additional cost savings to be in the region of £[X]m per annum (subject to take up, among other factors).⁴³
- 5.39 Therefore, we consider that increasing the scope for the DTS initiative (and the additional cost savings that Royal Mail could achieve) as a result of extending access regulation to D+5 Letters access services could help contribute to the financial sustainability of the UPS. This would benefit all users of the UPS, including those who are neither recipients nor senders of bulk mail.

⁴⁰ Royal Mail response received in answer to 1st Ofcom s55 information request, sent on 4 September 2020.

⁴¹ Ofcom, 2019 AMR, paragraph 7.7.

⁴² Royal Mail, 2020. [Royal Mail plc AGM Trading Statement](#), 8 September 2020.

⁴³ We note the introduction of the new D+5 access service will also have an impact on revenue which is not reflected in this figure, but overall we would only expect Royal Mail to launch the new service if it expects a positive net impact on its profitability compared to the counterfactual.

Scope of the D+5 USPA Condition

5.40 Having described above why we are proposing to mandate D+5 Letters access services, we now discuss the proposed scope of the USPA Condition.

We propose to extend the USPA condition to D+5 Letters, but not to Large Letters

- 5.41 Royal Mail has announced the introduction of the new D+5 access services for Letters only.⁴⁴ Royal Mail has explained that it would be uneconomic for it to offer a similar service for access to Large Letters. This is because the processing machines that it currently uses for sorting large letters do not have the capability – of sequencing (and holding back) mail – needed to achieve the additional cost savings coming from the DTS initiative.⁴⁵ Therefore, in order to provide a D+5 access service for Large Letters, we understand Royal Mail would either need to invest in new processing machines, or it would need to be manually processed. This means that supplying a D+5 Large Letter access service would likely be costlier than supplying the existing D+2 Large Letter access service, while offering a slower speed of delivery.⁴⁶
- 5.42 We do not think it is appropriate to introduce a D+5 Large Letter service if, as is expected, it would be higher cost to deliver than the existing D+2 service, as it would not serve any real purpose. Accordingly, we do not propose to extend the USPA condition to include D+5 Large Letters.

We propose not to exclude different variants of D+5 Letters services from the scope of the USPA condition

- 5.43 As described in Section 4, Royal Mail offers a range of different D+2 access services, reflecting different machine readability options (i.e. Mailmark, OCR, or Manual), and levels of sorting (i.e. 70 or 1400).
- 5.44 Royal Mail announced that it will only offer D+5 Letters access services in the form of economy Mailmark 70 services.⁴⁷
- 5.45 We are not proposing though to limit the mandation to a particular variant of D+5 Letters access services, e.g. by limiting the mandation to Mailmark 70 services only. This is consistent with the current mandation of D+2 access and would allow access operators in the future to request alternative variants of the D+5 Letter services, in the same way that they can request alternative variants of D+2 services.⁴⁸ If a business case can be made for

⁴⁴ By “Letters” we mean any item up to length 240mm, width 165mm, thickness 5mm, and weighing no more than 100g. By “Large Letters” we mean any item larger than a Letter and up to length 353mm, width 250mm, thickness 25mm, and weighing no more than 750g.

⁴⁵ Royal Mail response received in answer to Q6 to Q8 of 2nd Ofcom s55 information request, sent on 28 September 2020.

⁴⁶ Royal Mail response received in answer to Q6 of 2nd Ofcom s55 information request, sent on 28 September 2020.

⁴⁷ We understand this will include Letters, Advertising Letters, Responsible Entry Letters, Responsible Intermediate Letters, and Partially Addressed versions of Mailmark 70 Letters.

⁴⁸ Recently access operators and customers requested a Scan on Delivery D+2 access service.

other forms of D+5 Letter services, access operators could make a request to Royal Mail which it would need to consider within the requirements of USPA 4 (as discussed below). However, Royal Mail will only need to provide requests if they are reasonable (as per the Statement of Process).⁴⁹ As such, we consider this approach is consistent with promoting competition, efficiency, and benefits to end users.

Proposed implementation of mandated D+5 Letters access services

- 5.46 For reasons discussed above, we consider it appropriate to extend the USPA condition to require Royal Mail to provide D+5 Letters access (additionally to existing D+2 Letters and Large Letters access) to access operators on reasonable request. We set out below our assessment of how we consider this proposal satisfies the legal tests and our duties.
- 5.47 Our proposed modifications of the USPA condition are specified in our statutory notification published in Annex 5. Our proposed modifications are also made accessible in Annex 7 for readers having difficulties with reading this consultation document in PDF format. In particular, we propose to implement the above proposal by, firstly, introducing newly defined concepts that relate to D+5 Letters access services. Those definitions are set out in our statutory notification, including our proposed key concept of “D+5 Access”, i.e. *“...access to the universal service provider’s postal network at the IMC for the purposes of providing D+5 and later than D+5 Letters services for delivery by the universal service provider on a working day that is later than the next working day after the Letters were handed over by the D+5 Access Operator at the IMC, but which day is no later than the fourth working day after such a handover”*.
- 5.48 Additionally, as shown in our said notification, we propose to insert a new USPA 2.1A to impose the above-mentioned access obligation on Royal Mail in relation to its provision of D+5 Access. We also propose to modify USPA 2.2 to make clear that D+5 Access shall occur as soon as it is reasonably practicable, in line with the corresponding obligation for D+2 Access.

Question 1: Do you agree with our proposal to extend the USPA condition to the new D+5 Letters access services?

Our proposals for ancillary access obligations under the USPA condition in support of our proposed main D+5 access obligation

- 5.49 Given that we expect D+5 Letters access service will become an important input for access operators going forwards, the effectiveness of competition in the upstream bulk mail market will be dependent on these operators having access to these services under terms and conditions which will not place them in disadvantage *vis-a-vis* Royal Mail retail services. To help facilitate this, as explained in section 2 of this consultation document, we

⁴⁹ Royal Mail, 2019. [Decision on changes to the Access Service Request Process](#), 20 June 2019.

are permitted to impose other types of ancillary access obligations under the USPA condition.

- 5.50 In our March 2012 Statement, we considered it appropriate to impose on Royal Mail such ancillary access obligations in support of the core D+2 access obligation in order to secure the effectiveness of the access regime. They related to offering terms and conditions on a fair and reasonable basis; the process for postal operators and users of postal services to request access contracts or variations to existing contracts; notification and publication requirements; prohibition against undue discrimination; and information relating to quality of service.⁵⁰ In particular, those ancillary obligations sought to strike a balance between giving Royal Mail enough commercial flexibility to make changes to the terms and conditions of access, on the one hand, and ensuring that these terms and conditions are fair, reasonable and not unduly discriminatory, on the other.
- 5.51 We do not see any reason why we should deviate from those ancillary conditions when determining the appropriate regulation for D+5 Access, particularly given the objectives are similar. We consider that these obligations form part of necessary safeguards to promote competition and extending them to D+5 Access would also minimise the risk of inadvertently undermining existing D+2 access regulation.
- 5.52 We therefore propose, in summary, to impose on Royal Mail the following ancillary access obligations⁵¹ under the USPA condition, in addition to our proposed requirement to provide D+5 Access on reasonable request (USPA 2), in relation to D+5 Letters access services:
- requirement to provide D+5 Access on fair and reasonable terms, conditions and charges (USPA 3);
 - requirement to adopt a reasonable, transparent and timely process for access operators to make requests for access contracts (or variations to existing access contracts) (USPA 4);
 - requirement not to unduly discriminate against any particular persons or against a description of persons in relation to access matters, and restriction on use of information obtained in connection with giving access (USPA 5);
 - requirement to provide sufficient notice of changes to standard terms and conditions to access operators (USPA 7); and
 - requirement to publish quality of service information for its access services (USPA 8).
- 5.53 We propose to implement those proposals by making our proposed modifications of the USPA condition as specified in our statutory notification published in Annex 5. In particular, we propose the following modifications:

⁵⁰ See Section 10 of our March 2012 Statement.

⁵¹ We discussed these ancillary access obligations in more detail in our March 2012 Statement (see, in particular, Section 10) in relation to D+2 Access, including our reasoning and the effects of these obligations, and we consider that they apply similarly with regard to our proposals in relation to D+5 Access in key respects.

- inserting a new USPA 3.1 to deal with D+5 Access, which would reflect the existing corresponding requirement on D+2 Access to provide access on fair and reasonable terms, conditions and charges;
- making textual changes to USPA 4 to ensure that the requirement to deal with requests for (or variations to) access contracts applies to both D+2 Access and D+5 Access. In so doing, we consider that it is appropriate for Royal Mail to apply its current 'Statement of Process'⁵² to both D+2 Access and D+5 Access. In particular, we propose that Royal Mail publishes that Process as extended to D+5 within 3 months of the date that our modifications would come into force. In addition, we propose that Royal Mail should continue to be required to keep the Statement of Process under review and consult with Ofcom and Access Operators before making any amendments to it;
- inserting a reference to D+5 Access in USPA 5.1 to ensure that the prohibition against undue discrimination applies also in relation to D+5 Access;
- inserting references to D+5 Access (and D+5 Access Contracts) in USPA 7 to ensure that the requirement to publish and notify charges, terms and conditions apply also in relation to D+5 Access; and
- inserting a reference to D+5 Access in USPA 8.1 to ensure that the quality of service information obligation applies also in relation to D+5 Access.

Access pricing issues

- 5.54 We have already explained in section 2 of this consultation that we also have the power to impose price controls under the USPA condition. However, in doing so, we must first be satisfied that a price control is appropriate to prevent the universal service provider from setting excessive prices or engaging in a price squeeze with adverse consequences for users of postal services.
- 5.55 In our March 2012 Statement, we decided only to impose price control measures to address the risk of a price squeeze by Royal Mail against other operators, i.e. the margin squeeze control under USPA 6.⁵³ In particular, we imposed that control because we considered that the combination of Royal Mail's position in the relevant wholesale (downstream) markets and its vertically integrated structure provided it with both the ability and incentive to squeeze the margin of retail competitors using its downstream access product. We also considered that such a price squeeze could give rise to adverse consequences for the users of postal services.
- 5.56 Although Royal Mail does not currently offer a retail service which reflects the attributes of the D+5 access services, our understanding is that it intends to do so. Given this, and the material volume of mail which is expected to switch from D+2 to D+5 access services, we consider that a similar risk of a price squeeze by Royal Mail against access operators arises with regard to D+5 Letters access services (given its vertically integrated structure and

⁵² Royal Mail, 2019. [Decision on changes to the Access Service Request Process](#), 20 June 2019.

⁵³ We subsequently (on 8 November 2018) amended the application of the margin squeeze control under USPA 6 in some specific respects. See Ofcom, 2018. [Amendments to the Universal Service Provider Access Condition in relation to the margin squeeze control](#), 8 November 2018. (the 'November 2018 Statement').

downstream position). If this occurred, we consider that such a price squeeze could distort competition and give rise to adverse consequences for the users of postal services.

- 5.57 Therefore, we are proposing that the D+5 Letters access services should be subject to a margin squeeze control.

Proposed implementation of the margin squeeze control (USPA 6)

- 5.58 Our starting point for considering the type of margin squeeze control to be applied in relation to D+5 Letter access services is the existing margin squeeze control for D+2 access services under USPA 6.
- 5.59 We now set out how we propose to apply the margin squeeze control under USPA 6 to D+5 Letters access services.

The existing D+2 margin squeeze control

- 5.60 As already discussed, the purpose of the current margin squeeze control under USPA 6 is to prevent Royal Mail from engaging in margin squeeze practices in relation to the provision of D+2 services, such that access operators can compete effectively in the market.
- 5.61 The margin squeeze control includes two tests (i.e. the basket test and the contract test), which are required to be performed at the start of each financial year and quarterly. The tests must use forecast revenues and costs, because USPA 6 requires that Royal Mail has a reasonable expectation that it passes the tests in that financial year.⁵⁴
- 5.62 To assess compliance with the margin squeeze control, Royal Mail is required to calculate the relevant upstream revenues for the products within the scope of USPA 6 as the difference between end-to-end retail revenues and the relevant downstream revenues of the products.⁵⁵ The relevant downstream revenues are calculated by assuming the unit downstream revenues for USPA 6 products are equal to the prices of their equivalent access products (as if Royal Mail charged itself for the access products to offer retail services).
- 5.63 These upstream revenues are then compared to upstream costs as recorded by Royal Mail subject to some additional rules as set out in our November 2018 Statement.⁵⁶ The adjusted upstream costs included in these tests are specified on the basis of Royal Mail's fully allocated cost ("FAC"), adjusted so they more closely resemble the cost stack of an access operator.
- 5.64 To comply with the basket test, the total upstream revenues must be at least equal to the total adjusted upstream costs. While to comply with the contract test, the total upstream revenues of the contract must be at least equal to 50% of the adjusted upstream costs of

⁵⁴ Thereafter on a quarterly basis Royal Mail is required to submit forecast and actual financial information demonstrating compliance with the basket test. It must also provide details of any new bespoke contracts entered into demonstrating compliance with the contract test.

⁵⁵ USPA 6.3.

⁵⁶ See the November 2018 Statement.

the contract. This ratio seeks to approximate the long-run incremental cost ("LRIC") of the contract.

D+5 Letters access services should be subject to the same margin squeeze control as for D+2 access services

- 5.65 Using the existing approach for D+2 access services as a starting point, we have not identified any reason why a similar approach would not be appropriate or reasonable for D+5 Letters access services, not least given the objectives are similar. As such, we propose that the new D+5 Letters access services should be subject to the same tests as the existing D+2 access services.
- 5.66 As mentioned in section 2 of this consultation, in imposing any form of price control under the USPA condition, we must have regard to the costs incurred in providing access to the universal service provider's postal network. Our proposals should not hinder Royal Mail's ability to recover its upstream costs and investments. This is because we are not proposing to require Royal Mail to set D+5 Letters access prices at a particular level, but rather to require Royal Mail to allow a minimum margin between its retail bulk mail and equivalent access services when setting prices for these services (and this differential is based on Royal Mail's own costs).

We propose to include Royal Mail's new retail economy Mailmark Letter services in the margin squeeze control

- 5.67 Currently, the D+2 margin squeeze control captures access services (referred to in USPA 6 as a 'Relevant Access Service') which have attributes that are substantially equivalent to the inward processing and delivery attributes of Royal Mail's current (or new/successor substantially similar) Second Class Mailsort and Walksort retail services; namely, Mailmark, OCR and manual letters variants.
- 5.68 As discussed above, we are now proposing to regulate the D+5 Letters access services and bring them and the relevant retail services under the margin squeeze control in the USPA 6. Therefore, we need to specify the retail services we propose to be included in the margin condition.
- 5.69 Royal Mail has announced that it is currently only planning to introduce a D+5 Letters access service in the form of an economy Mailmark 70 service (see section 4). It is also intending to introduce retail economy Mailmark Letter services⁵⁷ which have inward processing and delivery attributes which are substantially equivalent to the proposed D+5 Letters access service.

⁵⁷ These include the following retail services: Business Mail Low Sort Mailmark Economy letter; Sustainable Advertising Mail Low Sort Intermediate Mailmark Economy letter; Sustainable Advertising Mail Low Sort Entry Mailmark Economy letter; Advertising Mail Low Sort Mailmark Economy letter; Advertising Mail Partially Addressed Low Sort Mailmark Economy.

- 5.70 Therefore, at this stage, we propose to include the proposed new retail economy Mailmark Letters services. However, we also propose, to the extent Royal Mail introduces any further new retail services which are successor or substantially similar services to these retail services, these services would also be added to the condition. Again, this is the existing approach for D+2 services.
- 5.71 We propose to implement those proposals by making our proposed modifications of the USPA 6 as specified in our statutory notification published in Annex 5. In particular, to bring Royal Mail's retail economy Mailmark Letter services (and any successor or substantially similar retail services) within the margin squeeze control, our proposed modifications to USPA 6 are straightforward as we can achieve this by simply amending the existing definition of 'Relevant Retail Services'.
- 5.72 We have, however, taken the opportunity to make some other textual (non-substantive) changes that affect D+2 retail services. Specifically, we propose to insert a new USPA 6.8 to deal with the meaning of 'Relevant Retail Services' for the purposes of both D+2 and D+5 retail services. We also propose to insert a new USPA 6.9 to deal with Royal Mail's obligation to notify Ofcom of any changes to its services that should fall within the meaning 'Relevant Retail Services'. That obligation is currently included in the existing definition of 'Relevant Retail Services', but we propose now to deal with this in the new USPA 6.9 (instead of including this notification obligation as part of a definition).

For the basket test, we propose to include the new retail economy Mailmark Letter services and their D+5 access equivalent services in the existing D+2 basket

- 5.73 We are proposing to include the retail economy Mailmark Letter services and their D+5 access equivalent services in the existing D+2 basket. Given that we are proposing to apply the same tests to the new D+5 Letters access services, we believe that including the D+2 and D+5 access services in a single basket has the benefit of not increasing the complexity of an already complex calculation.
- 5.74 In reaching this view, we have considered the risk of Royal Mail imposing a price squeeze on either the D+2 or the D+5 retail services individually, while attempting to maintain higher retail margins on the other product. However, we believe that the risk arising from placing both services in a single basket is relatively low at this stage for the following reasons:
- Within the basket test, in order to squeeze D+5 retail services, Royal Mail would need to win D+2 contracts with a larger margin in order to pass the test overall (and vice versa). Bulk mail competitors would therefore face tighter margins on some products, but higher margins on others.⁵⁸

⁵⁸ Given that access operators are not restricted from offering D+2 or later than D+2 services, we expect they would be able to match Royal Mail's retail offering over the whole portfolio of services.

- The current margin squeeze control also has a contract test, which can provide additional protection from Royal Mail pricing individual retail services (e.g. D+5 retail services) below cost in order to win new contracts.⁵⁹

Question 2: Do you agree with our proposal to include Royal Mail's new retail economy Mailmark Letter services and their access equivalent services in the margin squeeze control?

Proposals to monitor compliance with the margin squeeze condition

- 5.75 To allow us to monitor compliance with the margin squeeze control, we also propose to require Royal Mail to provide information on its retail economy Mailmark Letter services (as it does with its existing retail services). This will include the requirement to disclose to Ofcom the details of bespoke 'retail' contracts for services within the scope of the margin squeeze control.⁶⁰

Our assessment of our proposed modifications of the USPA condition against relevant statutory tests

- 5.76 We have discussed in section 2 of this consultation the various statutory tests to be satisfied in respect of any modifications we are proposing to the USPA condition. While we have already considered key tests in setting out our proposals in this section, we address below all relevant statutory tests in relation to our proposals discussed above.

The statutory purposes set out in section 38(4) of the PSA 2011

- 5.77 As explained above, we anticipate that the new D+5 Letters access services will become an important input for access operators going forwards, alongside existing D+2 access services. We therefore consider it appropriate to extend the access obligations in the USPA condition to those new services, particularly to promote access-based competition.
- 5.78 In that regard, we refer to our reasons above why we consider that our proposed modifications of the USPA condition are appropriate for each of the purposes set out in section 38(4) of the PSA 2011, namely:
- promoting efficiency;
 - promoting effective competition; and
 - conferring significant benefits on the users of postal services.

⁵⁹ Even if Royal Mail wins significant bulk retail contracts at comparatively lower margins (at the level permitted under the contract test), we note the overall headroom on the basket would reduce, and this would provide some constraint on Royal Mail's ability to further squeeze on services without offsetting increases elsewhere, as Royal Mail must comply with the basket test overall as well as the contract test.

⁶⁰ Royal Mail must provide a forecast submission prior to the start of the financial year, and quarterly updates to this forecast taking account of actual results of the previous quarter.

The price control test set out in section 38(5) of the PSA 2011

- 5.79 We have explained above that a risk of a price squeeze by Royal Mail against access operators arises with regard to D+5 Letters access services is present, and that such a price squeeze could give rise to adverse consequences for the users of postal services.
- 5.80 We therefore consider that our proposed margin squeeze control in relation to the new D+5 Letters access services satisfies the test in section 38(5) of the PSA 2011.

The statutory factors set out in section 38(8) of the PSA 2011

- 5.81 As explained in section 2 of this consultation, section 38(8) of the PSA 2011 requires that we take into account, in particular, five factors when deciding in a particular case what obligations should be imposed under the USPA condition, namely:
- the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary;
 - the feasibility of giving the proposed access;
 - the investment made by the universal service provider concerned in relation to the matters in respect of which access is proposed;
 - the need to secure effective competition in the long term; and
 - any rights to intellectual property that are relevant to the proposal.
- 5.82 We have already explained above why we consider there is a need to extend the USPA condition to D+5 Letters access services to secure effective competition in the upstream bulk mail market going forwards. Our proposed extension is therefore needed to maintain effective competition in the longer term.
- 5.83 In that regard, we also note that Royal Mail has already announced that it will start providing this form of access from January 2021 and our understanding from access operators is that there is demand to use it. As a result, we consider that our proposed access to D+5 Letters access services is feasible, as well as technically and economically viable. Further, we believe that access operators do not have a viable option other than to use Royal Mail's postal network to deliver end-to-end bulk mail services.⁶¹ Therefore, we do not believe that there are facilities alternative to those of Royal Mail that would make the proposed access unnecessary.
- 5.84 We have also taken into account those factors in relation to our proposed margin squeeze control. We consider that, in the absence of such a control, competition may not be effective due to Royal Mail's ability to margin squeeze. In that context, we propose to impose a form of control which is based on what we consider to be an appropriate measure of costs and gives Royal Mail the opportunity to charge prices to recover its costs, taking account of investment in its network.

⁶¹ Although Whistl made an attempt to roll-out its own end-to-end postal network in the past, they withdrew in 2015.

General test set out in paragraph 1 of Schedule 6 to the PSA 2011

- 5.85 In addition to above-mentioned specific statutory tests, we must also be satisfied that the general test set out in paragraph 1 of Schedule 6 to the PSA 2011 is also met in relation to our proposed modifications of the USPA condition.
- 5.86 In that regard, we consider that our proposed modifications are:
- **Objectively justifiable:** we have explained above why we consider modifying the USPA condition requiring access at the IMC for the provision of the new D+5 Letters access services provide the basis for promoting effective upstream competition, securing efficiencies and conferring significant benefits on users of postal services. In addition, we have explained the reasons why a margin squeeze control is necessary in order to protect against the risk of Royal Mail imposing a price squeeze.
 - **Not unduly discriminatory:** as with existing D+2 Access, our proposed access obligations for D+5 Letters access services reflects Royal Mail's position as the only postal operator with a downstream delivery network capable of facilitative participation by access operators in the relevant markets, and we therefore consider that they would not be unduly discriminatory.
 - **Proportionate:** we have explained above why we consider regulation of the D+5 Letters access services is necessary, particularly to promote effective upstream competition. We consider that our proposed modifications represent the minimum necessary in order to safeguard the provision of access and to ensure the benefits of upstream competition.
 - **Transparent:** we consider that the text of our proposed modifications of the USPA condition as specified in our statutory notification published in Annex 5 clearly sets out the proposed obligations so as to secure maximum transparency possible. Our reasoning in this section 5 also seeks to provide clarity on what we proposing to achieve by those modifications.

Our statutory duties

- 5.87 Our power to impose (including modify) the USPA condition is a function in relation to which our statutory duties discussed in section 2 of this consultation apply.
- 5.88 In relation to our specific duty to secure the provision of a universal postal service under section 29(1) of the PSA 2011, we consider that our proposed modifications are consistent with this duty. In particular, we consider that, as is the case for regulated D+2 Access, the costs of access competition should be relatively limited for Royal Mail. Access competition should result in avoided costs for Royal Mail's upstream network. Provided that the price paid by access operators reflects Royal Mail's retail price less an appropriate measure of incremental costs (as permitted by our proposed margin squeeze control), Royal Mail should, in theory, be indifferent to whether access is offered.
- 5.89 We also note that Royal Mail is already planning to introduce the D+5 Letters access services, and any additional costs involved with the implementation of our proposed modifications of the USPA condition in relation to D+5 Letters access services are likely to

be limited for Royal Mail, as this same condition already applies to D+2 access. Therefore, Royal Mail already has the systems and processes in place to implement our proposals.

- 5.90 Furthermore, we also consider that our proposed modifications of the USPA condition are consistent with our principal duty under section 3 of the CA 2003 to further the interests of citizens and of consumers, where appropriate, by promoting competition. In particular, we have already explained that we consider that our proposals would promote effective upstream competition and the interests of consumers would also be furthered in respect of choice, price, quality of service and money, given that access operators would be able to offer retail services based on either D+2 or D+5 regulated access.
- 5.91 Finally, we note our on-going duty under section 6 of the CA 2003 (which duty we also mention in section 2 of this consultation) to keep our regulation under review in relation to the imposition of regulatory burdens. We will consider the appropriateness of the postal access regime as part of our 2022 review of postal regulation. However, in light of Royal Mail's urgent request for Ofcom to regulate the D+5 Letters access services (as explained in section 4), we consider it appropriate to make these proposals already at this stage. Should we decide to adopt our proposed modifications to the USPA condition following this consultation, regulated D+5 Letters access services will be reviewed as part of our wider 2022 review.

Next steps

- 5.92 Once the consultation has closed, we will look to proceed to a final decision as quickly as practicably possible, with an aim to publish our final decision in early 2021.
- 5.93 Royal Mail intends to launch its new D+5 Letters access services on 4 January 2021. We are proposing that any modifications we decide to make to the USPA condition should take immediate effect from publication of our final decision.

Question 3: Do you agree that, if adopted, the proposed changes to the USPA condition should become effective from the date of Ofcom's statement? For example, do you foresee any practical issues, or otherwise, with making the changes effective on the date of Ofcom's statement?

Question 4: Do you have any other comments on our proposals as set out above or our proposed amendments to our legal instrument (USPA condition)? Please provide your reasons.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Wednesday 23 December 2020.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/modifications-of-usp-access-condition>. You can return this by email to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to postal.regulation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only and will not be valid after 5pm, Wednesday 23 December 2020.
- A1.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact Gianpiero Roscelli by email to gianpiero.roscelli@ofcom.org.uk.

Confidentiality

- A1.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that

everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A1.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.14 Following this consultation period, Ofcom plans to publish a statement in early 2021.
- A1.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

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

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

If there is no separate annex, which parts? _____

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

DECLARATION

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

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

Name

Signed (if hard copy)

A4. Consultation questions

Question 1: Do you agree with our proposal to extend the USPA condition to the new D+5 Letters access services?

Question 2: Do you agree with our proposal to include Royal Mail's new retail economy Mailmark Letter services and their access equivalent services in the margin squeeze control?

Question 3: Do you agree that, if adopted, the proposed changes to the USPA condition should become effective from the date of Ofcom's statement? For example, do you foresee any practical issues, or otherwise, with making the changes effective on the date of Ofcom's statement?

Question 4: Do you have any other comments on our proposals as set out above or our proposed amendments to our legal instrument (USPA condition)? Please provide your reasons.

A5. Royal Mail's letter to Ofcom

A5.1 This letter has been [published separately](#) on the Ofcom website.

A6. Statutory Notification: proposed modifications of the USPA condition

NOTIFICATION OF PROPOSALS TO MODIFY THE USP ACCESS CONDITION IN ACCORDANCE WITH SECTION 38 OF, AND IN ACCORDANCE WITH SECTION 53 AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011, BY MEANS OF REVOCATION OF THE EXISTING CONDITION AND IMPOSITION OF A NEW USP ACCESS CONDITION

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*'⁶² setting out various decisions relating to the new regulatory framework for the postal sector, including the imposition on Royal Mail (acting in its capacity as the universal service provider) of a new USP access condition to make provision for matters set out in section 38 and Schedule 3 of the Postal Services Act 2011 (the "**Act**"). The statutory notification imposing that USP access condition was published in Annex 9 to that statement, which took effect on 1 April 2012.

(B) On 26 February 2014, following a consultation, Ofcom published a statement entitled '*Modification to the control preventing Royal Mail margin squeeze Statement: Removal of unrecoverable VAT from the calculation of downstream costs in USPA6.4*'⁶³. Also on 26 February 2014, Ofcom separately published a notification entitled '*Modification to the Royal Mail margin squeeze control: Statutory Notification of change to USP Access Condition 6*'⁶⁴ in which Ofcom set out its decision to modify the USP access condition. Schedule 2 to that notification set out the revised version of the USP accounting condition, which replaced the previous USP access condition referred to in recital (A) above, which took effect on the day of the notification's publication on 26 February 2014.

(C) On 16 June 2015, Ofcom announced a fundamental review of the regulation of Royal Mail to ensure that regulation remains appropriate and sufficient to secure the universal postal service. On 17 July 2015, Ofcom published a discussion paper entitled '*Review of the regulation of Royal Mail*'⁶⁵. In that paper, Ofcom explained its reasons why it had decided to launch that fundamental review, setting out its proposed areas of focus and seeking stakeholders' views on the issues that Ofcom should consider.

(D) On 1 March 2017, following a consultation, Ofcom published a statement entitled '*Review of the Regulation of Royal Mail*'⁶⁶ setting out various decisions relating to the revised regulatory framework for the postal sector. One of those decisions was to make some modifications to the

⁶² https://www.ofcom.org.uk/_data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf

⁶³ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/82175/statement_on_modification_to_uspa6.pdf

⁶⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/83058/change_to_uspa_6_statutory_notification.pdf

⁶⁵ <https://www.ofcom.org.uk/consultations-and-statements/category-2/royal-mail-regulation-review>

⁶⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf

USP access condition referred to in recital (B) above. The statutory notification making such modifications by means of revoking that USP access condition and imposing on Royal Mail a new USP access condition was published in Annex 7 to that statement⁶⁷, which took effect on 1 April 2017.

(E) On 8 November 2018, following consultation, Ofcom published a statement entitled '*Amendments to the Universal Service Provider Access Condition in relation to the margin squeeze control*'⁶⁸ in which Ofcom set out its decision to modify the USP access condition referred to in recital (D) above. The statutory notification making such modifications by means of revoking that USP access condition and imposing on Royal Mail a new USP access condition was published in Annex 2 to that statement, which initially took effect on 8 November 2018 (the "**Existing USPA Condition**"). Following a subsequent request by Royal Mail, Ofcom decided to provide Royal Mail with a short extension to come into compliance, so that Royal Mail had until the end of March 2019 to comply with the Existing USPA Condition.

(F) On 21 August 2020, Royal Mail wrote to Ofcom requesting changes to be made to the Existing USPA Condition to ensure that its intended new Economy Access service is "*covered by both the access mandation condition (USPA1.2) and the regulatory margin squeeze condition (USPA6)*".

PROPOSALS

1. Ofcom hereby proposes, in accordance with section 38 of, and in accordance with section 53 and paragraph 3 of Schedule 6 to, the Act and pursuant to powers and duties in section 38 of the Act, to make modifications to the Existing USPA Condition by means of revoking it and imposing on Royal Mail a new USP access condition.
2. The proposed new USP access condition is specified in the Schedule to this Notification, marked up against the Existing USPA Condition to show the changes which are being proposed to its substance, as shown in red text.
3. Ofcom proposes to give effect, with or without modifications following its consideration of any representations on these proposals, to this new USP access condition on the publication of any statutory notification pursuant to paragraph 3(1) of Schedule 6 to the Act, or at such other later time as Ofcom considers appropriate.
4. The effect of, and OFCOM's reasons for making, these proposals are set out in the accompanying consultation document.

OFCOM'S DUTIES AND LEGAL TESTS

5. Ofcom is satisfied that these proposals satisfy the general test in paragraph 1 of Schedule 6 to this Act, that they are appropriate for the purposes specified in section 38(4) of the Act, and

⁶⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>

⁶⁸ <https://www.ofcom.org.uk/consultations-and-statements/category-2/post-uspac-margin-squeeze>

Ofcom has had regard to such other factors referred to in section 38 as are relevant to these proposals.

6. In making these proposals, Ofcom has also considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

MAKING REPRESENTATIONS

7. Representations may be made to Ofcom about the proposals set out in this Notification **by no later than 23 December 2020**.

8. A copy of this Notification, with the accompanying consultation document, has been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

9. 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—

- (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

10. 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 the USP access condition (as relevant).

11. In this Notification—

- (a) **“Act”** means the Postal Services Act 2011 (c.5);
- (b) **“Existing USPA Condition”** means the USP access condition referred to in recital (E) to this Notification;
- (c) **“Ofcom”** means the Office of Communications;
- (d) **“Royal Mail”** means Royal Mail Group Ltd, whose registered company number in England and Wales is 04138203, which is the current universal service provider for the purposes of section 38 of the Act.

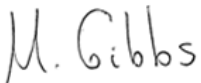
12. For the purpose of interpreting this Notification—

- (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.

13. The Schedule to this Notification shall form part of this Notification.

Signed by



M. Gibbs

Marina Gibbs

Competition Policy Director

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

11 November 2020

SCHEDULE

Proposed new USP access condition

USP ACCESS CONDITION

D+2 ACCESS and D+5 ACCESS

1. Application, definitions and interpretation

USPA 1.1	This USP access condition (" USPA Condition ") shall apply to <u>Royal Mail</u> as the <u>universal service provider</u> designated by <u>OFCOM</u> .
USPA 1.2	<p>This <u>USPA Condition</u> shall apply to <u>access</u> to the <u>universal service provider's postal network</u> at the <u>Inward Mail Centre ("IMC")</u> for the purposes of providing both:</p> <p>(a) <u>D+2 and later than D+2 Letters and Large Letters services ("D+2 Access")</u>; and</p> <p>(b) <u>D+5 and later than D+5 Letters services ("D+5 Access")</u>.</p>
USPA 1.3	<p>In this <u>USPA Condition</u>—</p> <p>(a) "Act" means the Postal Services Act 2011 (c.5);</p> <p>(b) "access" means giving a person access to a provider's <u>postal network</u>, including giving that person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the <u>postal network</u>;</p> <p>(ba) "Access Operator" means either a <u>D+2 Access Operator</u> or a <u>D+5 Access Operator</u>, or both (as may be the case);</p> <p>(c) "Access Terms and Conditions Change Notice" has the meaning given to it in USPA 7;</p> <p>(d) "Costing Manual" has the meaning given to it in USP accounting condition 1.1.2(f);</p> <p>(e) "D+2 Access Operator" means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+2 Access</u> to the <u>universal service provider's postal network</u>;</p> <p>(ea) "D+5 Access Operator" means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+5 Access</u> to the <u>universal service provider's postal network</u>;</p> <p>(f) "D+2 Access" means <u>access</u> to the <u>universal service provider's postal network</u> at the <u>IMC</u> for the purposes of providing <u>D+2 and later than D+2 Letters and Large Letters services</u>;</p> <p>(fa) "D+5 Access" means <u>access</u> to the <u>universal service provider's postal network</u> at the <u>IMC</u> for the purposes of providing <u>D+5 and later than D+5 Letters services for delivery</u></p>

	<p>by the <u>universal service provider</u> on a <u>working day</u> that is later than the next <u>working day</u> after the <u>Letters</u> were handed over by the <u>D+5 Access Operator</u> at the <u>IMC</u>, but which day is no later than the fourth <u>working day</u> after such a handover;</p> <p>(g) "D+2 Access Contract" means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a user of <u>postal services</u> for the provision by the <u>universal service provider</u> of <u>D+2 Access</u>;</p> <p>(ga) "D+5 Access Contract" means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a user of <u>postal services</u> for the provision by the <u>universal service provider</u> of <u>D+5 Access</u>;</p> <p>(h) "D+2 and later than D+2 Letters and Large Letters services" means retail services that aim to deliver <u>Letters</u> and <u>Large Letters</u> two <u>working days</u> (or later) after collection from the sender, also known as a day C service, or later;</p> <p>(ha) "D+5 and later than D+5 Letters services" means retail services that aim to deliver <u>Letters</u> within five <u>working days</u> (or later) after collection from the sender;</p> <p>(i) "Directed Adjustments" means those adjustments to the <u>Relevant Upstream Costs</u> that <u>OFCOM</u> direct the <u>universal service provider</u> to make in order to address differences between the <u>universal service provider's</u> upstream operations and <u>D+2 Access Operators</u> <u>Access Operators</u> with regards to accessing the <u>universal service provider's</u> network;</p> <p>(j) "Downstream Costs" means the costs, as calculated in accordance with <u>Royal Mail's Costing Manual</u>, of downstream activities which are the activities relating to the conveyance of mail items from the <u>IMC</u> to the final destination;</p> <p>(k) "General Overheads" has the meaning given to it in the Regulatory Accounting Guidelines;</p> <p>(l) "Inward Mail Centre" or "IMC" means the part of the mail centre in which the activities related to the processes of final sorting for delivery (in that mail centre's catchment area) of mail received from the upstream part of <u>Royal Mail's</u> network, or from other <u>postal operators</u>, to the final addresses take place. The upstream part of <u>Royal Mail's</u> network consists of the processes related to collection and distribution of mail;</p> <p>(m) "Letters" means any item up to length 240mm, width 165mm, thickness 5mm, and weighing no more than 100g;</p> <p>(n) "Large Letters" means any item larger than a <u>Letter</u> and up to length 353mm, width 250mm, thickness 25mm, and weighing no more than 750g;</p> <p>(o) "public holiday" means Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom, and, in relation to a particular territory, any day in relation to which</p>
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	<p><u>OFCOM</u> has by direction stated that exceptional circumstances require it to be treated as a public holiday;</p> <p>(p) “Regulatory Accounting Guidelines” means the Schedule to the Direction given by OFCOM on 18 December 2017 under the USP Accounting Condition set by OFCOM on 18 December 2017;</p> <p>(q) “regulatory condition” means any condition of authorisation set by <u>OFCOM</u> under the <u>Act</u>;</p> <p>(r) “related person” means</p> <p>(i) in relation to an undertaking within the meaning of section 1161 of the Companies Act 2006 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and</p> <p>(ii) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992;</p> <p>(s) “Relevant Access Service” means <u>access</u> services which have attributes which are all or substantially all equivalent to the inward processing and delivery attributes of the <u>Relevant Retail Services</u>;</p> <p>(t) “Relevant Contracts” means contracts for <u>Relevant Retail Services</u> which are on terms other than those both published by <u>Royal Mail</u> and generally available to all customers meeting specified criteria;</p> <p>(u) “Relevant Downstream Revenue” has the meaning given to it in USPA 6 below;</p> <p>(v) “Relevant End to End Revenue” has the meaning given to it in USPA 6 below;</p> <p>(w) “Relevant Period” means, for the purposes of USPA 6, the financial reporting period most closely aligned with the twelve month period starting on 1 April in every year;</p> <p>(x) “Relevant Retail Services” has the meaning given to it in USPA 6.8; means all Second Class Mailsort and Second Class Walksort services, and any current, new or successor retail services that are substantially similar services, offered by Royal Mail. Royal Mail shall notify OFCOM from time to time of any changes to the group of services that fall within the definition of Relevant Retail Services. OFCOM reserve the right to direct Royal Mail to include any services within that group which it reasonably considers fall within the definition of Relevant Retail Services and to exclude any services from that group which it reasonably considers fall outside the scope of that definition;</p> <p>(y) “Relevant Upstream Costs” has the meaning given to it in USPA 6 below;</p>
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	<p>(z) “Relevant Upstream Revenue” has the meaning given to it in USPA 6 below;</p> <p>(aa) “Royal Mail” means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203;</p> <p>(bb) “Standard Terms and Conditions” means such terms and conditions that are common to —</p> <p>(i) all <u>D+2 Access Contracts</u> or, where <u>D+2 Access Contracts</u> are individually negotiated, such standard terms and conditions that are appended to such <u>D+2 Access Contracts</u>; and</p> <p>(ii) all <u>D+5 Access Contracts</u> or, where <u>D+5 Access Contracts</u> are individually negotiated, such standard terms and conditions that are appended to such <u>D+5 Access Contracts</u>;</p> <p>(cc) “Statement of Notice” has the meaning given to it in USPA 7.5 below;</p> <p>(dd) “Statement of Process” has the meaning given to it in USPA 4.1 below;</p> <p>(ee) “Upstream Services” has the meaning given to it in the Regulatory Accounting Guidelines;</p> <p>(ff) “USPA Condition” means a USP access condition imposed on the <u>universal service provider</u> under section 38 of the <u>Act</u>; and</p> <p>(gg) “working day” means any day which is not a Sunday or a <u>public holiday</u>.</p>
USPA 1.4	<p>For the purpose of interpreting this <u>USPA Condition</u>—</p> <p>(a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in USPA 1.3 above and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the <u>Act</u>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this Notification shall be construed accordingly; and</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if the Condition set out in this Condition were an Act of Parliament.</p>

2. Requirement to provide D+2 Access and D+5 Access on reasonable request

USPA 2.1	<p>Where a <u>D+2 Access Operator</u> reasonably requests in writing <u>D+2 Access</u>, the <u>universal service provider</u> shall provide that <u>D+2 Access</u>. The <u>universal service provider</u> shall also provide such <u>D+2 Access</u> as <u>OFCOM</u> may from time to time direct.</p>
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USPA 2.1A	Where a <u>D+5 Access Operator</u> reasonably requests in writing <u>D+5 Access</u> , the <u>universal service provider</u> shall provide that <u>D+5 Access</u> . The <u>universal service provider</u> shall also provide such <u>D+5 Access</u> as <u>OFCOM</u> may from time to time direct.
USPA 2.2	The provision of — (a) <u>D+2 Access</u> in accordance with USPA 2.1 above shall occur as soon as it is reasonably practicable; and (b) <u>D+5 Access</u> in accordance with USPA 2.1A above shall occur as soon as it is reasonably practicable.
USPA 2.3	The <u>universal service provider</u> must comply with any direction given by <u>OFCOM</u> from time to time under this Condition.

3. Requirement for fair and reasonable terms, conditions and charges

USPA 3.1	The provision of <u>D+2 Access</u> in accordance with USPA 2.1 above and pursuant to any existing <u>D+2 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as <u>OFCOM</u> may from time to time direct.
USPA 3.1A	The provision of <u>D+5 Access</u> in accordance with USPA 2.1A above and pursuant to any existing <u>D+5 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as <u>OFCOM</u> may from time to time direct.

4. Requests for D+2 Access or variations to existing D+2 Access Contracts, **and for D+5 Access or variations to existing D+5 Access Contracts**

USPA 4.1	<p>The <u>universal service provider</u> shall, for the purposes of transparency, publish a reasonable statement of the processes (the "Statement of Process") that will apply to requests by Access Operators for —</p> <p>(a) <u>D+2 Access</u> and variations to existing <u>D+2 Access Contracts</u> made to it; and (a "Statement of Process").</p> <p>(b) <u>D+5 Access</u> and variations to existing <u>D+5 Access Contracts</u> made to it.</p> <p><u>Such Statement of Process shall include:</u></p> <p>(a) — the form in which such a request should be made;</p> <p>(b) — the information that the universal service provider reasonably requires in order to consider a request for new D+2 Access or a variation to existing D+2 Access; and</p> <p>(c) — the reasonable time scales in which such requests will be handled by the universal service provider.</p>
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USPA 4.1A	<p>The <u>universal service provider</u> shall ensure that the <u>Statement of Process</u> includes—</p> <p>(a) the form in which a request referred to in USPA 4.1 should be made by an <u>Access Operator</u>;</p> <p>(b) the information that the <u>universal service provider</u> reasonably requires from a <u>D+2 Access Operator</u> in order to consider a request for new <u>D+2 Access</u> or a variation to existing <u>D+2 Access</u>;</p> <p>(c) the information that the <u>universal service provider</u> reasonably requires from a <u>D+5 Access Operator</u> in order to consider a request for new <u>D+5 Access</u> or a variation to existing <u>D+5 Access</u>; and</p> <p>(d) the reasonable time-scales in which such requests will be handled by the <u>universal service provider</u>.</p>
USPA 4.2	<p>The <u>universal service provider</u> shall publish the <u>Statement of Process</u> described at USPA 4.1A above in relation to new <u>D+5 Access</u> (and variations to existing <u>D+5 Access</u>) within three months of the date that <u>USPA 4.1A</u> this USP Access Condition enters into force following a consultation with OFCOM and with Access Operators. The <u>universal service provider</u> shall keep the <u>Statement of Process</u> <u>for the purposes of both USPA 4.1(a) and (b)</u> under review and consult with <u>OFCOM</u> and <u>Access Operators</u> before making any amendments to the <u>Statement of Process</u>. The provisions set out in the <u>Statement of Process</u> (as amended from time to time) will apply to all requests <u>by Access Operators</u> for <u>D+2 Access</u> or variations to existing <u>D+2 Access Contracts</u>, as well as <u>D+5 Access</u> or variations to existing <u>D+5 Access Contracts</u>, subject to any direction by <u>OFCOM</u> as to the terms of those provisions or the manner in which they are to apply.</p>
USPA 4.3	<p>The <u>universal service provider</u> shall, upon reasonable request from <u>an Access Operator</u> considering making a request for <u>either—</u></p> <p>(a) <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>; or;</p> <p>(b) <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u>,</p> <p>provide that <u>Access Operator</u> with such information as is reasonably necessary to enable that <u>Access Operator</u> to make <u>such</u> a request for D+2 Access or a variation to an existing D+2 Access Contract. <u>The universal service provider shall provide to the Access Operator in question, S</u>such information is to be provided within a reasonable period.</p>
USPA 4.4	<p>On receipt of a written request for <u>either—</u></p> <p>(a) <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>; or;</p> <p>(b) <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u>;</p>

	the <u>universal service provider</u> shall deal with the request in accordance with the <u>Statement of Process</u> described at USPA 4.1 above. An <u>Access Operator's</u> modification of <u>such</u> a request <u>for D+2 Access or a variation to an existing D+2 Access Contract</u> which has previously been submitted to the <u>universal service provider</u> , and rejected by the <u>universal service provider</u> , shall be considered as a new request.
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5. Requirement not to unduly discriminate and restriction on use of information obtained in connection with giving access

USPA 5.1	The <u>universal service provider</u> shall not unduly discriminate against particular persons or against a particular description of persons in relation to matters connected with <u>D+2 Access</u> <u>and D+5 Access</u> .
USPA 5.2	In this Condition, the <u>universal service provider</u> may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the <u>universal service provider</u> .
USPA 5.3	Subject to USPA 5.4, the <u>universal service provider</u> shall use all reasonable endeavours to secure that no information in the possession of the <u>universal service provider</u> as a result of giving <u>access</u> to its <u>postal network</u> under any <u>USPA Condition</u> to other persons: <ul style="list-style-type: none"> (a) is disclosed for the benefit of or used for the purpose of any trading business conducted by the <u>universal service provider</u>; or (b) is disclosed for the benefit of or used for the purpose of any trading business conducted by any <u>related person</u> of the <u>universal service provider</u>.
USPA 5.4	USPA 5.3 shall not apply in so far as: <ul style="list-style-type: none"> (a) <u>OFCOM</u> may consent in writing; (b) every person to whom the information relates has consented in writing to its disclosure or use as mentioned in USPA 5.3; (c) the disclosure is to, or the use is by, a person who: <ul style="list-style-type: none"> (i) is acting as an agent of the <u>universal service provider</u> for the provision of <u>postal services</u> to the person to whom <u>access</u> has been given and only for that purpose; (ii) is engaged by the <u>universal service provider</u> for the purpose of the <u>universal service provider's</u> business as a <u>postal operator</u> and has access to the information only for that purpose; and

	<p>(iii) is restricted by contract with the <u>universal service provider</u> from making any further disclosure or use of the information; or</p> <p>(d) the information has been published or is required to be disclosed in pursuance of any other <u>regulatory condition</u> to which the <u>universal service provider</u> is subject; or</p> <p>(e) the information is in the public domain otherwise than in consequence of a contravention of any <u>regulatory condition</u> to which the <u>universal service provider</u> is subject.</p>
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6. Control to prevent price squeeze

USPA 6.1	<p>Unless OFCOM direct otherwise, the <u>universal service provider</u> shall in setting prices be subject to the requirement to take all reasonable steps to ensure that it:</p> <p>(a) maintains a minimum margin between the retail prices of the <u>Relevant Retail Services</u> and the access charges for the <u>Relevant Access Services</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below; and</p> <p>(b) maintains a minimum margin in relation to every individual contract between the retail price of the <u>Relevant Retail Service</u> and the access charge for the <u>Relevant Access Service</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below.</p>
USPA 6.2	<p>In order to satisfy the requirements in USPA 6.1(a) and (b) to maintain a minimum margin, the <u>universal service provider</u> must have a reasonable expectation that at the time of setting new prices including the time of offering prices for each new individual contract:</p> <p>(a) <u>Relevant Upstream Revenue</u> will be no less than <u>Relevant Upstream Costs</u> for the <u>Relevant Period</u>; and</p> <p>(b) the <u>Relevant Upstream Revenue</u> for each individual contract for any <u>Relevant Retail Service(s)</u> will be equal to or more than 50% of the <u>Relevant Upstream Cost</u> for that individual contract for the <u>Relevant Period</u>.</p>
USPA 6.3	<p><u>Relevant Upstream Revenue</u> should be calculated by deducting <u>Relevant Downstream Revenue</u> from <u>Relevant End to End Revenue</u> where:</p> <p>(a) <u>Relevant End to End Revenue</u> is the revenue that the <u>universal service provider</u> earns from the supply of <u>Relevant Retail Services</u> including any surcharges related to the supply of those services during the <u>Relevant Period</u>; and</p> <p>(b) <u>Relevant Downstream Revenue</u> is calculated by multiplying the average price per unit charged by the <u>universal service provider</u> for <u>Relevant Access Services</u> by volume including</p>

	any relevant surcharges related to the supply of those services during the <u>Relevant Period</u> .
USPA 6.4	<p><u>Relevant Upstream Costs</u> are the costs of <u>Upstream Services</u> (not including recoverable or unrecoverable Value Added Tax) of providing the <u>Relevant Retail Services</u> as calculated in accordance with <u>Royal Mail's Costing Manual</u> excluding <u>General Overheads</u> and including an appropriate rate of return or such rate of return as may be directed by <u>OFCOM</u>.</p> <p>The costs of <u>Upstream Services</u> may be subject to <u>Directed Adjustments</u> if <u>OFCOM</u> so directs from time to time. Unless <u>OFCOM</u> otherwise direct, the value of <u>Directed Adjustments</u> shall be zero.</p>
USPA 6.5	The <u>Relevant Period</u> during which the minimum margin referred to in USPA 6.1(a) and 6.1(b) above shall be maintained is twelve months.
USPA 6.6	The <u>universal service provider</u> shall set prices for the <u>Relevant Retail Services</u> and the <u>Relevant Access Services</u> at the start of each <u>Relevant Period</u> or at any point within the <u>Relevant Period</u> on the basis of a forecast of the costs and volumes for that period.
USPA 6.7	<p>The <u>universal service provider</u> shall be required to provide the following information at the start of the first <u>Relevant Period</u> and thereafter on a quarterly basis:</p> <ul style="list-style-type: none"> (a) Forecast and actual <u>Relevant Upstream Costs</u> and <u>Relevant Upstream Revenues</u> for the <u>Relevant Period</u> demonstrating compliance with USPA 6.2(a) and 6.2(b) and including the detailed calculations; (b) With respect to each <u>Relevant Contract</u> for <u>Relevant Retail Services</u> that the <u>universal service provider</u> has entered into during the most recent quarter or that has been amended during that quarter following information: <ul style="list-style-type: none"> (i) prices; (ii) volumes; (iii) date that the <u>Relevant Contract</u> was signed or most recently amended; (iv) length of the <u>Relevant Contract</u> if applicable; and (c) such other information as <u>OFCOM</u> considers necessary in order to enable it to ensure compliance with the requirements of USPA 6.
USPA 6.8	<p>In this <u>USPA Condition</u>, "Relevant Retail Services" means all of the following retail services provided by <u>Royal Mail</u>—</p> <ul style="list-style-type: none"> (a) for the purposes of <u>D+2 and later than D+2 Letters and Large Letters services</u>: <ul style="list-style-type: none"> (1) <u>Mailmark Letters / Business Mail Large Letters</u>;

	<p>(2) Mailmark Advertising Letters / Large Letters;</p> <p>(3) Mailmark Adv Sustainable Entry Letters / Large Letters;</p> <p>(4) Mailmark Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(5) Mailmark Partially Addressed Letters / Large Letters;</p> <p>(6) OCR Letters / Business Mail Large Letters;</p> <p>(7) OCR Advertising Letters / Large Letters;</p> <p>(8) OCR Adv Sustainable Entry Letters / Large Letters;</p> <p>(9) OCR Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(10) 70 Letters / Business Mail Large Letters;</p> <p>(11) 70 Advertising Letters / Large Letters;</p> <p>(12) 70 Adv Responsible Entry Letters / 70 Adv Sustainable Entry Large Letters;</p> <p>(13) 70 Adv Responsible Intermediate Letters / 70 Adv Sustainable Intermediate Large Letters;</p> <p>(14) 1400 Letters / Business Mail Large Letters;</p> <p>(15) 1400 Advertising Letters / Large Letters;</p> <p>(16) 1400 Adv Sustainable Entry Letters / Large Letters;</p> <p>(17) 1400 Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(18) 1400 Partially Addressed Postcards;</p> <p>(19) Poll Card Letters</p> <p>(20) RM 48 Sort Plus Large Letters; and</p> <p>(b) for the purposes of <u>D+5 and later than D+5 Letters services</u>:</p> <p>(1) Business Mail Low Sort Mailmark Economy Letters;</p> <p>(2) Sustainable Advertising Mail Low Sort Intermediate Mailmark Economy Letters;</p> <p>(3) Sustainable Advertising Mail Low Sort Entry Mailmark Economy Letters;</p> <p>(4) Advertising Mail Low Sort Mailmark Economy Letters;</p> <p>(5) Advertising Mail Partially Addressed Low Sort Mailmark Economy Letters; and</p> <p>(c) any current, new or successor retail services that are substantially similar services to those under sub-paragraphs (a) and (b) above, offered by <u>Royal Mail</u>.</p>
USPA 6.9	<p><u>Royal Mail</u> shall notify <u>OFCOM</u> from time to time of any changes to the group of services that fall within the definition of <u>Relevant Retail Services</u> under USPA 6.8. <u>OFCOM</u> reserve the right to direct <u>Royal Mail</u> to include any services within that group which it reasonably considers fall within the definition of <u>Relevant Retail Services</u> and to exclude any services from that group which it reasonably considers fall outside the scope of that definition.</p>

7. Requirement to publish and notify charges, terms and conditions

USPA 7.1	Except in so far as <u>OFCOM</u> may otherwise consent in writing, the <u>universal service provider</u> shall publish and notify charges, terms and conditions and act in the manner set out below.
USPA 7.2	<p>The <u>universal service provider</u> shall:</p> <ul style="list-style-type: none"> (a) publish a set of the current <u>Standard Terms and Conditions</u> in such manner as will ensure reasonable publicity for them within one month of the date that this <u>USPA Condition</u> enters into force; and (b) thereafter ensure that the set of <u>Standard Terms and Conditions</u> that has been made publicly available is updated promptly following any amendments that are made to the <u>Standard Terms and Conditions</u>.
USPA 7.3	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to its charges for the provision of <u>D+2 Access</u> and <u>D+5 Access</u>:</p> <ul style="list-style-type: none"> (a) The <u>universal service provider</u> shall send to every person with which it has entered into a <u>D+2 Access Contract</u> and a <u>D+5 Access Contract</u> a written notice of any amendment to the charges under the <u>D+2 Access Contract</u> and the <u>D+5 Access Contract</u>. The <u>universal service provider</u> shall provide a minimum of ten weeks' notice of any amendments to such charges or any other shorter period of notice agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u> in respect of the particular amendment to the charges which is due to take effect; (b) At the same time as the <u>universal service provider</u> sends the written notice of amendments to charges, it shall publish the amendments to those charges in such manner as will ensure reasonable publicity for them; and (c) For the avoidance of doubt, any term or condition of the <u>Standard Terms and Conditions</u> which purports to provide for general agreement between the <u>universal service provider</u> and the <u>D+2 Access Operators</u> to a shorter period for prior notice of any future amendments to charges shall not be deemed to constitute an agreement to a notice period shorter than ten weeks before the amendment is due to take effect for the purposes of USPA 7.3(a).

USPA 7.4	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to the <u>Standard Terms and Conditions</u> other than amendments to charges:</p> <p>(a) Where amendments to the <u>Standard Terms and Conditions</u> have been made with the prior consent of the <u>D+2 Access Operators</u>, the <u>universal service provider</u> shall publish those amendments in such manner as will ensure reasonable publicity for them. Such publicity shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u> in respect of the particular amendment which is due to take effect;</p> <p>(b) Where amendments to the <u>Standard Terms and Conditions</u> do not require the prior consent of the <u>Access Operators</u>, the <u>universal service provider</u> shall:</p> <p>(i) provide every <u>D+2 Access Operator</u> with which it has entered into a <u>D+2 Access Contract</u> and a <u>D+5 Access Contract</u> a written notice of the amendment to the <u>Standard Terms and Conditions</u> (an "Access Terms and Conditions Change Notice");</p> <p>(ii) provide sufficient notice of the amendment to the <u>Standard Terms and Conditions</u> as set out in the <u>Access Terms and Conditions Change Notice</u> as meets the reasonable needs of access users; and</p> <p>(iii) publish those amendments in such manner as will ensure reasonable publicity for them. Such publication shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>D+2 Access Operators</u> in respect of the particular amendment which is due to take effect; and</p> <p>(c) For the avoidance of doubt, any term or condition of the <u>Standard Terms and Conditions</u> which purports to provide for general agreement between the <u>universal service provider</u> and the <u>D+2 Access Operators</u> to a shorter period for prior publication of any future amendments to those <u>Standard Terms and Conditions</u> shall not be deemed to constitute an agreement to a notice period shorter than ten weeks before the amendment is due to take effect for the purposes of USPA 7.4(a) or USPA 7.4(b)(iii).</p>
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USPA 7.5	For the purposes of determining what a sufficient period of notice is, the <u>universal service provider</u> shall be required to publish a statement within one month of the date that this <u>USPA Condition</u> enters into force setting out the different periods of notice that will apply to the different categories of <u>Standard Terms and Conditions</u> that it is entitled to amend without the prior consent of <u>D+2 Access Operators</u> (a "Statement of Notice"). Where the <u>universal service provider</u> amends the periods of notice set out in the <u>Statement of Notice</u> , it shall take into account the reasonable needs of <u>D+2 Access Operators</u> and shall provide one month's notice of any such amendments. <u>OFCOM</u> reserve the right to direct the <u>universal service provider</u> to amend the period of notice for any category of amendment to <u>Standard Terms and Conditions</u> .
USPA 7.6	The <u>universal service provider</u> shall ensure that an <u>Access Terms and Conditions Change Notice</u> includes: <ul style="list-style-type: none"> (a) a description of the <u>Standard Terms and Conditions</u> that are the subject of the amendment(s); (b) the date on which, or the period for which, the amendment(s) to the <u>Standard Terms and Conditions</u> will take effect (the "effective date"); and (c) the current and proposed new <u>Standard Terms and Conditions</u> affected by the amendment(s).
USPA 7.7	The <u>universal service provider</u> shall not apply any new <u>Standard Term and Condition</u> identified in an <u>Access Terms and Conditions Change Notice</u> before the effective date.
USPA 7.8	The <u>universal service provider's</u> obligations for prior notification and publication set out in this USPA 7 will not apply: <ul style="list-style-type: none"> (a) where the new or amended charges or terms and conditions are directed or determined by <u>OFCOM</u> or are required by a notification or enforcement notification issued by <u>OFCOM</u> under Schedule 7 of the <u>Act</u>; or (b) to any amendments to charges, terms or conditions that have been individually negotiated between the <u>universal service provider</u> and an individual <u>Access Operator</u>.

8. Quality of service

USPA 8.1	The <u>universal service provider</u> shall publish all such information as is reasonably necessary for the purposes of securing transparency as to the quality of service in relation to <u>D+2 Access</u> and <u>D+5 Access</u> provided by the <u>universal service provider</u> in an appropriate manner and form, or as <u>OFCOM</u> may otherwise direct.
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USPA 8.2	The <u>universal service provider</u> shall comply with any direction <u>OFCOM</u> may make from time to time under USPA 8.1.
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Table of terms defined in the Act

This table is provided for information and does not form a part of this condition. We make no representations as to its accuracy or completeness. Please refer to the Act.

Defined term	Section of the Act
OFCOM	s.90
postal network	s.38(3)
postal operator	s.27(3)
postal packet	s.27(2)
postal services	s.27(1)
universal service provider	s.65(1) and Schedule 9, paragraph 3

A7. Accessibility of proposed modifications of the USPA condition

A. INTRODUCTION

We have published in Annex 6 our statutory notification specifying in its Schedule our proposed modifications of the existing USPA access condition ("**Existing USPA Condition**").

In that Schedule, we have marked up the text of the Existing USPA Condition to show the changes which we are actually proposing to its substance. Specifically, that Schedule includes yellow highlighted text in red font for new proposed text, as well as yellow highlighted text in black for existing text that we propose to delete.

Documents published in PDF form (such as this consultation document) might make our marked-up text in the above-mentioned Schedule more difficult to read for some people (including those visually impaired).

We seek in this Annex 7 to make our proposed modifications of the existing USPA access condition accessible also for such readers in line with the accessibility requirements set out in the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.

Specifically, we seek to do so in two ways:

- in Part B below, we explain the substantive (textual) changes we are actually proposing to make to the Existing USPA Condition (i.e. those marked up in the above-mentioned Schedule, which mark-ups may not be accessible to all readers); and
- in Part C below, we set out a clean version of our proposed new USP access condition, which includes the substantive proposed changes explained in Part B.

For the avoidance of doubt, if anything in this Annex is in conflict with, or inconsistent with, our statutory notification published In Annex 6, the proposals as set out in that notification shall prevail.

B. OUR PROPOSED SUBSTANTIVE (TEXTUAL) CHANGES

Part of the Existing USPA Condition	Our proposed substantive change(s)
USPA Condition, Title	Insert the words "and D+5 ACCESS" after the reference to "D+2 ACCESS".
USPA 1.2	<ul style="list-style-type: none"> • Insert the word "both" after the word "providing". • Insert sub-paragraph numbering (a) and insert the word "; and" at the end of this sub-paragraph (a). • Insert a new sub-paragraph: "(b) <u>D+5 and later than D+5 Letters services</u> ("D+5 Access")."
USPA 1.3(ba)	Insert a new sub-paragraph: " (ba) "Access Operator" means either a <u>D+2 Access Operator</u> or a <u>D+5 Access Operator</u> , or both (as may be the case);".

USPA 1.3(ea)	Insert a new sub-paragraph: “ (ea) “D+5 Access Operator” means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+5 Access</u> to the <u>universal service provider’s postal network</u> ,”.
USPA 1.3(fa)	Insert a new sub-paragraph: “ (fa) “D+5 Access” means <u>access</u> to the <u>universal service provider’s postal network</u> at the <u>IMC</u> for the purposes of providing <u>D+5 and later than D+5 Letters services</u> for delivery by the <u>universal service provider</u> on a <u>working day</u> that is later than the next <u>working day</u> after the <u>Letters</u> were handed over by the <u>D+5 Access Operator</u> at the <u>IMC</u> , but which day is no later than the fourth <u>working day</u> after such a handover;”.
USPA 1.3(ga)	Insert a new sub-paragraph: “ (ga) “D+5 Access Contract” means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a user of <u>postal services</u> for the provision by the <u>universal service provider</u> of <u>D+5 Access</u> ,”.
USPA 1.3(h)	Insert the words “ <u>Letters</u> and <u>Large Letters</u> ” after the word “deliver”.
USPA 1.3(ha)	Insert a new sub-paragraph: “ (ha) “D+5 and later than D+5 Letters services” means retail services that aim to deliver <u>Letters</u> within five <u>working days</u> (or later) after collection from the sender;”.
USPA 1.3(i)	For “ <u>D+2 Access Operators</u> ” substitute “ <u>Access Operators</u> ”.
USPA 1.3(p)	For the full stop substitute a semicolon.
USPA 1.3(r)	Insert a long dash after the word “means”.
USPA 1.3(x)	For the current definition substitute ““ Relevant Retail Services ” has the meaning given to it in USPA 6.8;”.
USPA 1.3(bb)	<ul style="list-style-type: none"> • Insert a long dash after the words “common to”. • Insert sub-paragraph numbering (i) and insert the word “and” at the end of this sub-paragraph (i). • Insert a new sub-paragraph: “(ii) all <u>D+5 Access Contracts</u> or, where <u>D+5 Access Contracts</u> are individually negotiated, such standard terms and conditions that are appended to such <u>D+5 Access Contracts</u>,”.
USPA 1.3(dd)	For “USPA” substitute “USPA 4.1”.
USPA 1.3(ff)	Insert the word “and” after the semicolon.
USPA 2, Title	Insert the words “and D+5 Access” after the reference to “D+2 Access”.
USPA 2.1	For “Access Operator” substitute “ <u>D+2 Access Operator</u> ”.

USPA 2.1A	Insert a new USPA 2.1A: ““Where a <u>D+5 Access Operator</u> reasonably requests in writing <u>D+5 Access</u> , the <u>universal service provider</u> shall provide that <u>D+5 Access</u> . The <u>universal service provider</u> shall also provide such <u>D+5 Access</u> as <u>OFCOM</u> may from time to time direct.”
USPA 2.2	<ul style="list-style-type: none"> • Insert a long dash after the words “provision of”. • Insert sub-paragraph numbering (a), for the full stop substitute a semicolon and insert the word “and” at the end of this sub-paragraph (a). • Insert a new sub-paragraph: “(b) <u>D+5 Access</u> in accordance with USPA 2.1A above shall occur as soon as it is reasonably practicable.”
USPA 3.1A	Insert a new USPA 3.1A: “The provision of <u>D+5 Access</u> in accordance with USPA 2.1A above and pursuant to any existing <u>D+5 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as <u>OFCOM</u> may from time to time direct.”
USPA 4, Title	Insert the words “, and for D+5 Access or variations to existing D+5 Access Contracts” after the reference to “D+2 Access Contracts”.
USPA 4.1	<p>For USPA 4.1 substitute new USPA 4.1: “The <u>universal service provider</u> shall, for the purposes of transparency, publish a reasonable statement of the processes (the “Statement of Process”) that will apply to requests by <u>Access Operators</u> for—</p> <ul style="list-style-type: none"> (a) <u>D+2 Access</u> and variations to existing <u>D+2 Access Contracts</u> made to it; and (b) <u>D+5 Access</u> and variations to existing <u>D+5 Access Contracts</u> made to it.”
USPA 4.1A	<p>Insert a new USPA 4.1A: “The <u>universal service provider</u> shall ensure that the <u>Statement of Process</u> includes—</p> <ul style="list-style-type: none"> (a) the form in which a request referred to in USPA 4.1 should be made by an <u>Access Operator</u>; (b) the information that the <u>universal service provider</u> reasonably requires from a <u>D+2 Access Operator</u> in order to consider a request for new <u>D+2 Access</u> or a variation to existing <u>D+2 Access</u>; (c) the information that the <u>universal service provider</u> reasonably requires from a <u>D+5 Access Operator</u> in order to consider a request for new <u>D+5 Access</u> or a variation to existing <u>D+5 Access</u>; and (d) the reasonable time-scales in which such requests will be handled by the <u>universal service provider</u>.”

USPA 4.2	<p>For USPA 4.2 substitute new USPA 4.2: “The <u>universal service provider</u> shall publish the <u>Statement of Process</u> described at USPA 4.1A above in relation to new <u>D+5 Access</u> (and variations to existing <u>D+5 Access</u>) within three months of the date that USPA 4.1A enters into force. The <u>universal service provider</u> shall keep the <u>Statement of Process</u> for the purposes of both USPA 4.1(a) and (b) under review and consult with <u>OFCOM</u> and <u>Access Operators</u> before making any amendments to the <u>Statement of Process</u>. The provisions set out in the <u>Statement of Process</u> (as amended from time to time) will apply to all requests by <u>Access Operators</u> for <u>D+2 Access</u> or variations to existing <u>D+2 Access Contracts</u>, as well as <u>D+5 Access</u> or variations to existing <u>D+5 Access Contracts</u>, subject to any direction by <u>OFCOM</u> as to the terms of those provisions or the manner in which they are to apply.”</p>
USPA 4.3	<p>For USPA 4.3 substitute new USPA 4.3: “The <u>universal service provider</u> shall, upon reasonable request from an <u>Access Operator</u> considering making a request for either—</p> <p>(a) <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>; or</p> <p>(b) <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u>,</p> <p>provide that <u>Access Operator</u> with such information as is reasonably necessary to enable that <u>Access Operator</u> to make such a request. The <u>universal service provider</u> shall provide to the <u>Access Operator</u> in question such information within a reasonable period.”</p>
USPA 4.4	<p>For USPA 4.4 substitute new USPA 4.4: “On receipt of a written request for either—</p> <p>(a) <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>; or</p> <p>(b) <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u>;</p> <p>the <u>universal service provider</u> shall deal with the request in accordance with the <u>Statement of Process</u> described at USPA 4.1 above. An <u>Access Operator</u>'s modification of such a request which has previously been submitted to the <u>universal service provider</u>, and rejected by the <u>universal service provider</u>, shall be considered as a new request.”</p>
USPA 5.1	<p>Insert the words “and <u>D+5 Access</u>” after “<u>D+2 Access</u>”.</p>
USPA 6.8	<p>Insert a new USPA 6.8: “In this <u>USPA Condition</u>, “Relevant Retail Services” means all of the following retail services provided by <u>Royal Mail</u>—</p> <p>(a) for the purposes of <u>D+2 and later than D+2 Letters and Large Letters services</u>:</p>

	<p>(1) Mailmark Letters / Business Mail Large Letters;</p> <p>(2) Mailmark Advertising Letters / Large Letters;</p> <p>(3) Mailmark Adv Sustainable Entry Letters / Large Letters;</p> <p>(4) Mailmark Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(5) Mailmark Partially Addressed Letters / Large Letters;</p> <p>(6) OCR Letters / Business Mail Large Letters;</p> <p>(7) OCR Advertising Letters / Large Letters;</p> <p>(8) OCR Adv Sustainable Entry Letters / Large Letters;</p> <p>(9) OCR Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(10) 70 Letters / Business Mail Large Letters;</p> <p>(11) 70 Advertising Letters / Large Letters;</p> <p>(12) 70 Adv Responsible Entry Letters / 70 Adv Sustainable Entry Large Letters;</p> <p>(13) 70 Adv Responsible Intermediate Letters / 70 Adv Sustainable Intermediate Large Letters;</p> <p>(14) 1400 Letters / Business Mail Large Letters;</p> <p>(15) 1400 Advertising Letters / Large Letters;</p> <p>(16) 1400 Adv Sustainable Entry Letters / Large Letters;</p> <p>(17) 1400 Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(18) 1400 Partially Addressed Postcards;</p> <p>(19) Poll Card Letters</p> <p>(20) RM 48 Sort Plus Large Letters; and</p> <p>(b) for the purposes of <u>D+5 and later than D+5 Letters services</u>:</p> <p>(1) Business Mail Low Sort Mailmark Economy Letters;</p> <p>(2) Sustainable Advertising Mail Low Sort Intermediate Mailmark Economy Letters;</p> <p>(3) Sustainable Advertising Mail Low Sort Entry Mailmark Economy Letters;</p> <p>(4) Advertising Mail Low Sort Mailmark Economy Letters;</p> <p>(5) Advertising Mail Partially Addressed Low Sort Mailmark Economy Letters; and</p> <p>(c) any current, new or successor retail services that are substantially similar services to those under subparagraphs (a) and (b) above, offered by <u>Royal Mail</u>."</p>
USPA 6.9	Insert a new USPA 6.9: " <u>Royal Mail</u> shall notify <u>OFCOM</u> from time to time of any changes to the group of services that fall

	within the definition of <u>Relevant Retail Services</u> under USPA 6.8. <u>OFCOM</u> reserve the right to direct <u>Royal Mail</u> to include any services within that group which it reasonably considers fall within the definition of <u>Relevant Retail Services</u> and to exclude any services from that group which it reasonably considers fall outside the scope of that definition."
USPA 7.3	<ul style="list-style-type: none"> • Insert the words "and <u>D+5 Access</u>" after "<u>D+2 Access</u>" in the initial paragraph. • Substitute sub-paragraph (a) for: "(a) The <u>universal service provider</u> shall send to every person with which it has entered into a <u>D+2 Access Contract</u> and a <u>D+5 Access Contract</u> a written notice of any amendment to the charges under the <u>D+2 Access Contract</u> and the <u>D+5 Access Contract</u>. The <u>universal service provider</u> shall provide a minimum of ten weeks' notice of any amendments to such charges or any other shorter period of notice agreed between the <u>universal service provider</u> and <u>Access Operators</u> in respect of the particular amendment to the charges which is due to take effect; • Delete the reference to "D+2" before "Access Operators" in sub-paragraph (c).
USPA 7.4	<ul style="list-style-type: none"> • Delete the references to "D+2" before "Access Operators" in sub-paragraph (a). • Delete the reference to "D+2" before "Access Operator" in sub-paragraph (b)(i) and insert the words "and a <u>D+5 Access Contract</u>" after the words "<u>D+2 Access Contract</u>" in that sub-paragraph. • Delete the reference to "D+2" before "Access Operators" in sub-paragraph (b)(iii). • Delete the reference to "D+2" before "Access Operators" in sub-paragraph (c).
USPA 7.5	<ul style="list-style-type: none"> • Delete the references to "D+2" before "Access Operators".
USPA 8.1	<ul style="list-style-type: none"> • Insert the words "and <u>D+5 Access</u>" after "<u>D+2 Access</u>".
Table of terms defined in the Act	Insert "postal packet" and "s.27(2)" in the corresponding column in a new row for the Table.

C. CLEAN VERSION OF OUR PROPOSED NEW USP ACCESS CONDITION

Proposed new USP access condition

USP ACCESS CONDITION

D+2 ACCESS and D+5 ACCESS

1. Application, definitions and interpretation

USPA 1.1	This USP access condition (" USPA Condition ") shall apply to <u>Royal Mail</u> as the <u>universal service provider</u> designated by <u>OFCOM</u> .
USPA 1.2	<p>This <u>USPA Condition</u> shall apply to <u>access to the universal service provider's postal network</u> at the <u>Inward Mail Centre ("IMC")</u> for the purposes of providing both:</p> <p>(a) <u>D+2 and later than D+2 Letters and Large Letters services ("D+2 Access")</u>; and</p> <p>(b) <u>D+5 and later than D+5 Letters services ("D+5 Access")</u>.</p>
USPA 1.3	<p>In this <u>USPA Condition</u>—</p> <p>(a) "Act" means the Postal Services Act 2011 (c.5);</p> <p>(b) "access" means giving a person access to a provider's <u>postal network</u>, including giving that person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the <u>postal network</u>;</p> <p>(ba) "Access Operator" means either a <u>D+2 Access Operator</u> or a <u>D+5 Access Operator</u>, or both (as may be the case);</p> <p>(c) "Access Terms and Conditions Change Notice" has the meaning given to it in USPA 7;</p> <p>(d) "Costing Manual" has the meaning given to it in USP accounting condition 1.1.2(f);</p> <p>(e) "D+2 Access Operator" means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+2 Access</u> to the <u>universal service provider's postal network</u>;</p> <p>(ea) "D+5 Access Operator" means a <u>postal operator</u> or a user of <u>postal services</u> which has or seeks <u>D+5 Access</u> to the <u>universal service provider's postal network</u>;</p> <p>(f) "D+2 Access" means <u>access to the universal service provider's postal network at the IMC for the purposes of providing D+2 and later than D+2 Letters and Large Letters services</u>;</p> <p>(fa) "D+5 Access" means <u>access to the universal service provider's postal network at the IMC for the purposes of providing D+5 and later than D+5 Letters services for delivery by the universal service provider on a working day that is later than the next working day after the Letters were handed over by the D+5 Access Operator at the IMC, but which day is no later than the fourth working day after such a handover</u>;</p> <p>(g) "D+2 Access Contract" means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a user of <u>postal services</u> for the provision by the <u>universal service provider of D+2 Access</u>;</p> <p>(ga) "D+5 Access Contract" means a contract entered into by the <u>universal service provider</u> and another <u>postal operator</u> or a</p>

	<p>user of <u>postal services</u> for the provision by the <u>universal service provider</u> of <u>D+5 Access</u>;</p> <p>(h) “D+2 and later than D+2 Letters and Large Letters services” means retail services that aim to deliver <u>Letters</u> and <u>Large Letters</u> two <u>working days</u> (or later) after collection from the sender, also known as a day C service, or later;</p> <p>(ha) “D+5 and later than D+5 Letters services” means retail services that aim to deliver <u>Letters</u> within five <u>working days</u> (or later) after collection from the sender;</p> <p>(i) “Directed Adjustments” means those adjustments to the <u>Relevant Upstream Costs</u> that <u>OFCOM</u> direct the <u>universal service provider</u> to make in order to address differences between the <u>universal service provider</u>'s upstream operations and <u>Access Operators</u> with regards to accessing the <u>universal service provider</u>'s network;</p> <p>(j) “Downstream Costs” means the costs, as calculated in accordance with <u>Royal Mail's Costing Manual</u>, of downstream activities which are the activities relating to the conveyance of mail items from the <u>IMC</u> to the final destination;</p> <p>(k) “General Overheads” has the meaning given to it in the Regulatory Accounting Guidelines;</p> <p>(l) “Inward Mail Centre” or “IMC” means the part of the mail centre in which the activities related to the processes of final sorting for delivery (in that mail centre's catchment area) of mail received from the upstream part of <u>Royal Mail's</u> network, or from other <u>postal operators</u>, to the final addresses take place. The upstream part of <u>Royal Mail's</u> network consists of the processes related to collection and distribution of mail;</p> <p>(m) “Letters” means any item up to length 240mm, width 165mm, thickness 5mm, and weighing no more than 100g;</p> <p>(n) “Large Letters” means any item larger than a <u>Letter</u> and up to length 353mm, width 250mm, thickness 25mm, and weighing no more than 750g;</p> <p>(o) “public holiday” means Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom, and, in relation to a particular territory, any day in relation to which <u>OFCOM</u> has by direction stated that exceptional circumstances require it to be treated as a public holiday;</p> <p>(p) “Regulatory Accounting Guidelines” means the Schedule to the Direction given by <u>OFCOM</u> on 18 December 2017 under the USP Accounting Condition set by <u>OFCOM</u> on 18 December 2017;</p> <p>(q) “regulatory condition” means any condition of authorisation set by <u>OFCOM</u> under the <u>Act</u>;</p> <p>(r) “related person” means—</p>
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	<p>(i) in relation to an undertaking within the meaning of section 1161 of the Companies Act 2006 ("the principal undertaking"), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and</p> <p>(ii) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992;</p> <p>(s) "Relevant Access Service" means <u>access</u> services which have attributes which are all or substantially all equivalent to the inward processing and delivery attributes of the <u>Relevant Retail Services</u>;</p> <p>(t) "Relevant Contracts" means contracts for <u>Relevant Retail Services</u> which are on terms other than those both published by <u>Royal Mail</u> and generally available to all customers meeting specified criteria;</p> <p>(u) "Relevant Downstream Revenue" has the meaning given to it in USPA 6 below;</p> <p>(v) "Relevant End to End Revenue" has the meaning given to it in USPA 6 below;</p> <p>(w) "Relevant Period" means, for the purposes of USPA 6, the financial reporting period most closely aligned with the twelve month period starting on 1 April in every year;</p> <p>(x) "Relevant Retail Services" has the meaning given to it in USPA 6.8;</p> <p>(y) "Relevant Upstream Costs" has the meaning given to it in USPA 6 below;</p> <p>(z) "Relevant Upstream Revenue" has the meaning given to it in USPA 6 below;</p> <p>(aa) "Royal Mail" means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203;</p> <p>(bb) "Standard Terms and Conditions" means such terms and conditions that are common to—</p> <p>(i) all <u>D+2 Access Contracts</u> or, where <u>D+2 Access Contracts</u> are individually negotiated, such standard terms and conditions that are appended to such <u>D+2 Access Contracts</u>; and</p> <p>(ii) all <u>D+5 Access Contracts</u> or, where <u>D+5 Access Contracts</u> are individually negotiated, such standard terms and conditions that are appended to such <u>D+5 Access Contracts</u>;</p> <p>(cc) "Statement of Notice" has the meaning given to it in USPA 7.5 below;</p> <p>(dd) "Statement of Process" has the meaning given to it in USPA 4.1 below;</p>
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	<p>(ee) “Upstream Services” has the meaning given to it in the Regulatory Accounting Guidelines;</p> <p>(ff) “USPA Condition” means a USP access condition imposed on the <u>universal service provider</u> under section 38 of the <u>Act</u>; and</p> <p>(gg) “working day” means any day which is not a Sunday or a <u>public holiday</u>.</p>
USPA 1.4	<p>For the purpose of interpreting this <u>USPA Condition</u>—</p> <p>(a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in USPA 1.3 above and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the <u>Act</u>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this Notification shall be construed accordingly; and</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if the Condition set out in this Condition were an Act of Parliament.</p>

2. Requirement to provide D+2 Access and D+5 Access on reasonable request

USPA 2.1	Where a <u>D+2 Access Operator</u> reasonably requests in writing <u>D+2 Access</u> , the <u>universal service provider</u> shall provide that <u>D+2 Access</u> . The <u>universal service provider</u> shall also provide such <u>D+2 Access</u> as <u>OFCOM</u> may from time to time direct.
USPA 2.1A	Where a <u>D+5 Access Operator</u> reasonably requests in writing <u>D+5 Access</u> , the <u>universal service provider</u> shall provide that <u>D+5 Access</u> . The <u>universal service provider</u> shall also provide such <u>D+5 Access</u> as <u>OFCOM</u> may from time to time direct.
USPA 2.2	<p>The provision of—</p> <p>(a) <u>D+2 Access</u> in accordance with USPA 2.1 above shall occur as soon as it is reasonably practicable; and</p> <p>(b) <u>D+5 Access</u> in accordance with USPA 2.1A above shall occur as soon as it is reasonably practicable.</p>
USPA 2.3	The <u>universal service provider</u> must comply with any direction given by <u>OFCOM</u> from time to time under this Condition.

3. Requirement for fair and reasonable terms, conditions and charges

USPA 3.1	The provision of <u>D+2 Access</u> in accordance with USPA 2.1 above and pursuant to any existing <u>D+2 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as <u>OFCOM</u> may from time to time direct.
USPA 3.1A	The provision of <u>D+5 Access</u> in accordance with USPA 2.1A above and pursuant to any existing <u>D+5 Access Contract</u> shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as <u>OFCOM</u> may from time to time direct.

4. Requests for D+2 Access or variations to existing D+2 Access Contracts, and for D+5 Access or variations to existing D+5 Access Contracts

USPA 4.1	<p>The <u>universal service provider</u> shall, for the purposes of transparency, publish a reasonable statement of the processes (the "Statement of Process") that will apply to requests by <u>Access Operators</u> for—</p> <ul style="list-style-type: none"> (a) <u>D+2 Access</u> and variations to existing <u>D+2 Access Contracts</u> made to it; and (b) <u>D+5 Access</u> and variations to existing <u>D+5 Access Contracts</u> made to it.
USPA 4.1A	<p>The <u>universal service provider</u> shall ensure that the <u>Statement of Process</u> includes—</p> <ul style="list-style-type: none"> (a) the form in which a request referred to in USPA 4.1 should be made by an <u>Access Operator</u>; (b) the information that the <u>universal service provider</u> reasonably requires from a <u>D+2 Access Operator</u> in order to consider a request for new <u>D+2 Access</u> or a variation to existing <u>D+2 Access</u>; (c) the information that the <u>universal service provider</u> reasonably requires from a <u>D+5 Access Operator</u> in order to consider a request for new <u>D+5 Access</u> or a variation to existing <u>D+5 Access</u>; and (d) the reasonable time-scales in which such requests will be handled by the <u>universal service provider</u>.
USPA 4.2	<p>The <u>universal service provider</u> shall publish the <u>Statement of Process</u> described at USPA 4.1A above in relation to new <u>D+5 Access</u> (and variations to existing <u>D+5 Access</u>) within three months of the date that USPA 4.1A enters into force. The <u>universal service provider</u> shall keep the <u>Statement of Process</u> for the purposes of both USPA 4.1(a) and (b) under review and consult with <u>OFCOM</u> and <u>Access Operators</u> before making any amendments to the <u>Statement of Process</u>. The provisions set out in the <u>Statement of Process</u> (as amended from time to time) will apply to all requests by</p>

	<u>Access Operators</u> for <u>D+2 Access</u> or variations to existing <u>D+2 Access Contracts</u> , as well as <u>D+5 Access</u> or variations to existing <u>D+5 Access Contracts</u> , subject to any direction by <u>OFCOM</u> as to the terms of those provisions or the manner in which they are to apply.
USPA 4.3	<p>The <u>universal service provider</u> shall, upon reasonable request from an <u>Access Operator</u> considering making a request for either—</p> <p>(a) <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>; or</p> <p>(b) <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u>,</p> <p>provide that <u>Access Operator</u> with such information as is reasonably necessary to enable that <u>Access Operator</u> to make such a request. The <u>universal service provider</u> shall provide to the <u>Access Operator</u> in question such information within a reasonable period.</p>
USPA 4.4	<p>On receipt of a written request for either—</p> <p>(a) <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u>; or</p> <p>(b) <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u>;</p> <p>the <u>universal service provider</u> shall deal with the request in accordance with the <u>Statement of Process</u> described at USPA 4.1 above. An <u>Access Operator</u>'s modification of such a request which has previously been submitted to the <u>universal service provider</u>, and rejected by the <u>universal service provider</u>, shall be considered as a new request.</p>

5. Requirement not to unduly discriminate and restriction on use of information obtained in connection with giving access

USPA 5.1	The <u>universal service provider</u> shall not unduly discriminate against particular persons or against a particular description of persons in relation to matters connected with <u>D+2 Access</u> and <u>D+5 Access</u> .
USPA 5.2	In this Condition, the <u>universal service provider</u> may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the <u>universal service provider</u> .

USPA 5.3	<p>Subject to USPA 5.4, the <u>universal service provider</u> shall use all reasonable endeavours to secure that no information in the possession of the <u>universal service provider</u> as a result of giving <u>access</u> to its <u>postal network</u> under any <u>USPA Condition</u> to other persons:</p> <ul style="list-style-type: none"> (a) is disclosed for the benefit of or used for the purpose of any trading business conducted by the <u>universal service provider</u>; or (b) is disclosed for the benefit of or used for the purpose of any trading business conducted by any <u>related person</u> of the <u>universal service provider</u>.
USPA 5.4	<p>USPA 5.3 shall not apply in so far as:</p> <ul style="list-style-type: none"> (a) <u>OFCOM</u> may consent in writing; (b) every person to whom the information relates has consented in writing to its disclosure or use as mentioned in USPA 5.3; (c) the disclosure is to, or the use is by, a person who: <ul style="list-style-type: none"> (i) is acting as an agent of the <u>universal service provider</u> for the provision of <u>postal services</u> to the person to whom <u>access</u> has been given and only for that purpose; (ii) is engaged by the <u>universal service provider</u> for the purpose of the <u>universal service provider's</u> business as a <u>postal operator</u> and has access to the information only for that purpose; and (iii) is restricted by contract with the <u>universal service provider</u> from making any further disclosure or use of the information; (d) the information has been published or is required to be disclosed in pursuance of any other <u>regulatory condition</u> to which the <u>universal service provider</u> is subject; or (e) the information is in the public domain otherwise than in consequence of a contravention of any <u>regulatory condition</u> to which the <u>universal service provider</u> is subject.

6. Control to prevent price squeeze

USPA 6.1	<p>Unless <u>OFCOM</u> direct otherwise, the <u>universal service provider</u> shall in setting prices be subject to the requirement to take all reasonable steps to ensure that it:</p> <ul style="list-style-type: none"> (a) maintains a minimum margin between the retail prices of the <u>Relevant Retail Services</u> and the access charges for the <u>Relevant Access Services</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below; and (b) maintains a minimum margin in relation to every individual contract between the retail price of the <u>Relevant Retail Service</u> and the access charge for the <u>Relevant Access Service</u> during the <u>Relevant Period</u> in accordance with USPA 6.2 to USPA 6.5 below.
USPA 6.2	<p>In order to satisfy the requirements in USPA 6.1(a) and (b) to maintain a minimum margin, the <u>universal service provider</u> must have a reasonable expectation that at the time of setting new prices including the time of offering prices for each new individual contract:</p> <ul style="list-style-type: none"> (a) <u>Relevant Upstream Revenue</u> will be no less than <u>Relevant Upstream Costs</u> for the <u>Relevant Period</u>; and (b) the <u>Relevant Upstream Revenue</u> for each individual contract for any <u>Relevant Retail Service(s)</u> will be equal to or more than 50% of the <u>Relevant Upstream Cost</u> for that individual contract for the <u>Relevant Period</u>.
USPA 6.3	<p><u>Relevant Upstream Revenue</u> should be calculated by deducting <u>Relevant Downstream Revenue</u> from <u>Relevant End to End Revenue</u> where:</p> <ul style="list-style-type: none"> (a) <u>Relevant End to End Revenue</u> is the revenue that the <u>universal service provider</u> earns from the supply of <u>Relevant Retail Services</u> including any surcharges related to the supply of those services during the <u>Relevant Period</u>; and (b) <u>Relevant Downstream Revenue</u> is calculated by multiplying the average price per unit charged by the <u>universal service provider</u> for <u>Relevant Access Services</u> by volume including any relevant surcharges related to the supply of those services during the <u>Relevant Period</u>.
USPA 6.4	<p><u>Relevant Upstream Costs</u> are the costs of <u>Upstream Services</u> (not including recoverable or unrecoverable Value Added Tax) of providing the <u>Relevant Retail Services</u> as calculated in accordance with <u>Royal Mail's Costing Manual</u> excluding <u>General Overheads</u> and including an appropriate rate of return or such rate of return as may be directed by <u>OFCOM</u>.</p> <p>The costs of <u>Upstream Services</u> may be subject to <u>Directed Adjustments</u> if <u>OFCOM</u> so directs from time to time. Unless <u>OFCOM</u> otherwise direct, the value of <u>Directed Adjustments</u> shall be zero.</p>

USPA 6.5	The <u>Relevant Period</u> during which the minimum margin referred to in USPA 6.1(a) and 6.1(b) above shall be maintained is twelve months.
USPA 6.6	The <u>universal service provider</u> shall set prices for the <u>Relevant Retail Services</u> and the <u>Relevant Access Services</u> at the start of each <u>Relevant Period</u> or at any point within the <u>Relevant Period</u> on the basis of a forecast of the costs and volumes for that period.
USPA 6.7	<p>The <u>universal service provider</u> shall be required to provide the following information at the start of the first <u>Relevant Period</u> and thereafter on a quarterly basis:</p> <ul style="list-style-type: none"> (a) Forecast and actual <u>Relevant Upstream Costs</u> and <u>Relevant Upstream Revenues</u> for the <u>Relevant Period</u> demonstrating compliance with USPA 6.2(a) and 6.2(b) and including the detailed calculations; (b) With respect to each <u>Relevant Contract</u> for <u>Relevant Retail Services</u> that the <u>universal service provider</u> has entered into during the most recent quarter or that has been amended during that quarter following information: <ul style="list-style-type: none"> (i) prices; (ii) volumes; (iii) date that the <u>Relevant Contract</u> was signed or most recently amended; (iv) length of the <u>Relevant Contract</u> if applicable; and (c) such other information as <u>OFCOM</u> considers necessary in order to enable it to ensure compliance with the requirements of USPA 6.
USPA 6.8	<p>In this <u>USPA Condition</u>, “Relevant Retail Services” means all of the following retail services provided by <u>Royal Mail</u>—</p> <ul style="list-style-type: none"> (a) for the purposes of <u>D+2 and later than D+2 Letters and Large Letters services</u>: <ul style="list-style-type: none"> (1) Mailmark Letters / Business Mail Large Letters; (2) Mailmark Advertising Letters / Large Letters; (3) Mailmark Adv Sustainable Entry Letters / Large Letters; (4) Mailmark Adv Sustainable Intermediate Letters / Large Letters; (5) Mailmark Partially Addressed Letters / Large Letters; (6) OCR Letters / Business Mail Large Letters; (7) OCR Advertising Letters / Large Letters; (8) OCR Adv Sustainable Entry Letters / Large Letters; (9) OCR Adv Sustainable Intermediate Letters / Large Letters; (10) 70 Letters / Business Mail Large Letters;

	<p>(11) 70 Advertising Letters / Large Letters;</p> <p>(12) 70 Adv Responsible Entry Letters / 70 Adv Sustainable Entry Large Letters;</p> <p>(13) 70 Adv Responsible Intermediate Letters / 70 Adv Sustainable Intermediate Large Letters;</p> <p>(14) 1400 Letters / Business Mail Large Letters;</p> <p>(15) 1400 Advertising Letters / Large Letters;</p> <p>(16) 1400 Adv Sustainable Entry Letters / Large Letters;</p> <p>(17) 1400 Adv Sustainable Intermediate Letters / Large Letters;</p> <p>(18) 1400 Partially Addressed Postcards;</p> <p>(19) Poll Card Letters</p> <p>(20) RM 48 Sort Plus Large Letters; and</p> <p>(b) for the purposes of <u>D+5 and later than D+5 Letters services</u>:</p> <p>(1) Business Mail Low Sort Mailmark Economy Letters;</p> <p>(2) Sustainable Advertising Mail Low Sort Intermediate Mailmark Economy Letters;</p> <p>(3) Sustainable Advertising Mail Low Sort Entry Mailmark Economy Letters;</p> <p>(4) Advertising Mail Low Sort Mailmark Economy Letters;</p> <p>(5) Advertising Mail Partially Addressed Low Sort Mailmark Economy Letters; and</p> <p>(c) any current, new or successor retail services that are substantially similar services to those under sub-paragraphs (a) and (b) above, offered by <u>Royal Mail</u>.</p>
USPA 6.9	<p><u>Royal Mail</u> shall notify <u>OFCOM</u> from time to time of any changes to the group of services that fall within the definition of <u>Relevant Retail Services</u> under USPA 6.8. <u>OFCOM</u> reserve the right to direct <u>Royal Mail</u> to include any services within that group which it reasonably considers fall within the definition of <u>Relevant Retail Services</u> and to exclude any services from that group which it reasonably considers fall outside the scope of that definition.</p>

7. Requirement to publish and notify charges, terms and conditions

USPA 7.1	<p>Except in so far as <u>OFCOM</u> may otherwise consent in writing, the <u>universal service provider</u> shall publish and notify charges, terms and conditions and act in the manner set out below.</p>
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USPA 7.2	<p>The <u>universal service provider</u> shall:</p> <p>(a) publish a set of the current <u>Standard Terms and Conditions</u> in such manner as will ensure reasonable publicity for them within one month of the date that this <u>USPA Condition</u> enters into force; and</p> <p>(b) thereafter ensure that the set of <u>Standard Terms and Conditions</u> that has been made publicly available is updated promptly following any amendments that are made to the <u>Standard Terms and Conditions</u>.</p>
USPA 7.3	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to its charges for the provision of <u>D+2 Access</u> and <u>D+5 Access</u>:</p> <p>(a) The <u>universal service provider</u> shall send to every person with which it has entered into a <u>D+2 Access Contract</u> and a <u>D+5 Access Contract</u> a written notice of any amendment to the charges under the <u>D+2 Access Contract</u> and the <u>D+5 Access Contract</u>. The <u>universal service provider</u> shall provide a minimum of ten weeks' notice of any amendments to such charges or any other shorter period of notice agreed between the <u>universal service provider</u> and <u>Access Operators</u> in respect of the particular amendment to the charges which is due to take effect;</p> <p>(b) At the same time as the <u>universal service provider</u> sends the written notice of amendments to charges, it shall publish the amendments to those charges in such manner as will ensure reasonable publicity for them; and</p> <p>(c) For the avoidance of doubt, any term or condition of the <u>Standard Terms and Conditions</u> which purports to provide for general agreement between the <u>universal service provider</u> and the <u>Access Operators</u> to a shorter period for prior notice of any future amendments to charges shall not be deemed to constitute an agreement to a notice period shorter than ten weeks before the amendment is due to take effect for the purposes of USPA 7.3(a).</p>
USPA 7.4	<p>The <u>universal service provider</u> shall be subject to the following publication and notification requirements for any amendments to the <u>Standard Terms and Conditions</u> other than amendments to charges:</p> <p>(a) Where amendments to the <u>Standard Terms and Conditions</u> have been made with the prior consent of the <u>Access Operators</u>, the <u>universal service provider</u> shall publish those amendments in such manner as will ensure reasonable publicity for them. Such publicity shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>Access Operators</u> in respect of the particular amendment which is due to take effect;</p>

	<p>(b) Where amendments to the <u>Standard Terms and Conditions</u> do not require the prior consent of the <u>Access Operators</u>, the <u>universal service provider</u> shall:</p> <p>(i) provide every <u>Access Operator</u> with which it has entered into a <u>D+2 Access Contract</u> and a <u>D+5 Access Contract</u> a written notice of the amendment to the <u>Standard Terms and Conditions</u> (an "Access Terms and Conditions Change Notice");</p> <p>(ii) provide sufficient notice of the amendment to the <u>Standard Terms and Conditions</u> as set out in the <u>Access Terms and Conditions Change Notice</u> as meets the reasonable needs of access users; and</p> <p>(iii) publish those amendments in such manner as will ensure reasonable publicity for them. Such publication shall take place no less than ten weeks before the date on which the amendment is due to take effect or any other shorter period prior to that date agreed between the <u>universal service provider</u> and <u>Access Operators</u> in respect of the particular amendment which is due to take effect; and</p> <p>(c) For the avoidance of doubt, any term or condition of the <u>Standard Terms and Conditions</u> which purports to provide for general agreement between the <u>universal service provider</u> and the <u>Access Operators</u> to a shorter period for prior publication of any future amendments to those <u>Standard Terms and Conditions</u> shall not be deemed to constitute an agreement to a notice period shorter than ten weeks before the amendment is due to take effect for the purposes of USPA 7.4(a) or USPA 7.4(b)(iii).</p>
USPA 7.5	<p>For the purposes of determining what a sufficient period of notice is, the <u>universal service provider</u> shall be required to publish a statement within one month of the date that this <u>USPA Condition</u> enters into force setting out the different periods of notice that will apply to the different categories of <u>Standard Terms and Conditions</u> that it is entitled to amend without the prior consent of <u>Access Operators</u> (a "Statement of Notice"). Where the <u>universal service provider</u> amends the periods of notice set out in the <u>Statement of Notice</u>, it shall take into account the reasonable needs of <u>Access Operators</u> and shall provide one month's notice of any such amendments. <u>OFCOM</u> reserve the right to direct the <u>universal service provider</u> to amend the period of notice for any category of amendment to <u>Standard Terms and Conditions</u>.</p>

USPA 7.6	<p>The <u>universal service provider</u> shall ensure that an <u>Access Terms and Conditions Change Notice</u> includes:</p> <p>(a) a description of the <u>Standard Terms and Conditions</u> that are the subject of the amendment(s);</p> <p>(b) the date on which, or the period for which, the amendment(s) to the <u>Standard Terms and Conditions</u> will take effect (the "effective date"); and</p> <p>(c) the current and proposed new <u>Standard Terms and Conditions</u> affected by the amendment(s).</p>
USPA 7.7	<p>The <u>universal service provider</u> shall not apply any new <u>Standard Term and Condition</u> identified in an <u>Access Terms and Conditions Change Notice</u> before the effective date.</p>
USPA 7.8	<p>The <u>universal service provider</u>'s obligations for prior notification and publication set out in this USPA 7 will not apply:</p> <p>(a) where the new or amended charges or terms and conditions are directed or determined by <u>OFCOM</u> or are required by a notification or enforcement notification issued by <u>OFCOM</u> under Schedule 7 of the <u>Act</u>; or</p> <p>(b) to any amendments to charges, terms or conditions that have been individually negotiated between the <u>universal service provider</u> and an individual <u>Access Operator</u>.</p>

8. Quality of service

USPA 8.1	<p>The <u>universal service provider</u> shall publish all such information as is reasonably necessary for the purposes of securing transparency as to the quality of service in relation to <u>D+2 Access</u> and <u>D+5 Access</u> provided by the <u>universal service provider</u> in an appropriate manner and form, or as <u>OFCOM</u> may otherwise direct.</p>
USPA 8.2	<p>The <u>universal service provider</u> shall comply with any direction <u>OFCOM</u> may make from time to time under USPA 8.1.</p>

Table of terms defined in the Act

This table is provided for information and does not form a part of this condition. We make no representations as to its accuracy or completeness. Please refer to the Act.

<i>Defined term</i>	<i>Section of the Act</i>
<i>OFCOM</i>	<i>s.90</i>
<i>postal network</i>	<i>s.38(3)</i>
<i>postal operator</i>	<i>s.27(3)</i>
<i>postal packet</i>	<i>s.27(2)</i>
<i>postal services</i>	<i>s.27(1)</i>

<i>universal service provider</i>	<i>s.65(1) and Schedule 9, paragraph 3</i>
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