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

Regulation of new D+5 Letters access services

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**STATEMENT:**

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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.

On 4 January 2021, Royal Mail introduced a new suite of access services ("**D+5 Letters access services**"). The new services defer the mail until there is another item already being delivered to the recipient's address, subject to a maximum of four working days after it enters the network. We expect that these services will become important for access operators and could account for a material proportion of access volumes in the future. Consequently, we anticipate that D+5 Letters access services will become 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. Therefore, in November 2020, we published a consultation (the "**November 2020 Consultation**") proposing to bring the new services within the scope of the USPA condition. This statement sets out our decision, following that consultation.

## What we have decided

We have decided to extend the D+2 access USPA condition to also cover D+5 Letters access services, effective from and including 5 April 2021. Therefore, Royal Mail will be required to:

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

A key concern raised by stakeholders was the need for a publicly available breakdown of D+5 delivery day performance across all volumes. We agree that such quality of service information is important and have imposed a corresponding requirement on Royal Mail in our regulation.

Current regulation of D+2 services will remain unchanged.

## 2. Background and legal framework

- 2.1 This statement concerns the regulation of access to Royal Mail's postal network.
- 2.2 In this section, we set out the background to our decisions in this statement, 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 launch of the new D+5 Letters access services (which we discuss in section 4 of this statement) fits with those current requirements.

### Our statutory duties

- 2.3 The legal framework relating to the regulation of postal services is set out in the Postal Services Act 2011 (the **"PSA 2011"**).
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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.

- 2.10 For the reasons set out in this statement, 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.
- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 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**

- 2.15 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 network<sup>1</sup> to other postal operators or users of postal services;<sup>2</sup> 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.

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<sup>1</sup> 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).

<sup>2</sup> 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.

- 2.16 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.
- 2.17 Our power to impose a regulatory condition, like the USPA condition, includes<sup>3</sup> 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.
- 2.18 We may, however, impose or modify a 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 statement).
- 2.19 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.
- 2.20 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.
- 2.21 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 we may determine what we consider to represent efficiency by using cost accounting methods.
- 2.22 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:

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<sup>3</sup> 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.
- 2.23 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.
- 2.24 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.
- 2.25 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. This notification is published at Annex 1. 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 published such a notification of our proposals at Annex 6 of the November 2020 Consultation. The effect of, and our reasons for making, those proposals were also set out in the November 2020 Consultation.

## General impact assessment

- 2.26 The analysis presented in the whole of this statement represents an impact assessment, as defined in section 7 of the CA 2003.
- 2.27 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*'.<sup>4</sup>

- 2.28 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 impose.

## Equality impact assessment

- 2.29 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.
- 2.30 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.<sup>5</sup>
- 2.31 To help us comply with our duties under the EA 2010 and the NI 1998, we assess the impact of our decisions on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 2.32 We do not consider that our decisions set out in this statement 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

- 2.33 On 27 March 2012, we published our statement entitled '*Securing the Universal Postal Service: Decision on the new regulatory framework*' (the "**March 2012 Statement**").<sup>6</sup> That statement 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

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<sup>4</sup> Ofcom, 2010. [\*Better Policy Making – Ofcom's approach to Impact Assessment\*](#).

<sup>5</sup> Ofcom, 2014. [\*Revised Northern Ireland Equality Scheme for Ofcom\*](#) (updated December 2019).

<sup>6</sup> Ofcom, 2012. [\*Securing the Universal Postal Service: Decision on the new regulatory framework\*](#) (the 'March 2012 Statement').



- to setting its prices). Regulatory safeguards were implemented to protect consumers and, where appropriate, promote effective competition.
- 2.34 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.
- 2.35 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).
- 2.36 In February 2013, following a consultation, we updated the margin squeeze control requirements set out in USPA 6 to ensure that they remained fit for purpose.<sup>7</sup>
- 2.37 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*'<sup>8</sup> 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.
- 2.38 On 8 November 2018, following a consultation, we published a statement entitled '*Amendments to the Universal Service Provider Access Condition in relation to the margin squeeze control*'<sup>9</sup> 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.

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<sup>7</sup> Ofcom, 2013. [\*Modification to the control preventing Royal Mail margin squeeze.\*](#)

<sup>8</sup> Ofcom, 2017. [\*Review of the Regulation of Royal Mail: Statement.\*](#)

<sup>9</sup> Ofcom, 2018. [\*Amendments to the Universal Service Provider Access Condition in relation to the margin squeeze control.\*](#)

## D+5 Letters access services are currently unregulated

- 2.39 Royal Mail initially suggested to Ofcom that its new D+5 Letters access services would already be captured by the existing USPA condition. In contrast, Royal Mail also 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.
- 2.40 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.
- 2.41 We implemented in the March 2012 Statement the key access proposals set out in our October 2011 and December 2011 consultations<sup>10</sup>, 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.<sup>11</sup> 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.
- 2.42 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 2010<sup>12</sup>, it concluded in November 2010<sup>13</sup> 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

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<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> Postcomm, 2010. *Laying the foundations for a sustainable postal service – Annex 2: Analysis of markets*.

<sup>13</sup> Postcomm, 2010. *Laying the foundations for a sustainable postal service – Annex 1: Analysis of markets – Decision document*.

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.

- 2.43 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.
- 2.44 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 *"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).<sup>14</sup>
- 2.45 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 explained<sup>15</sup> 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).
- 2.46 We explain in section 4 of this statement below Royal Mail's request to Ofcom with regard to its new D+5 Letters access services. We simply observe here that this new form of access has a much longer delivery span (i.e. 4 days), and it therefore does 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, we

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<sup>14</sup> Ofcom, 2011. [\*Securing the Universal Postal Service: Proposals for the future framework for economic regulation\*](#).

<sup>15</sup> See Annex 4 to the March 2012 Statement.

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

## **Structure of this document**

2.47 The following sections of this statement 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 services; and
- Section 5 sets out our November 2020 consultation proposals, stakeholder responses to those proposals, our assessment, and our final decisions.

## 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. Similar trends were confirmed in interviews Ofcom carried out between April and August 2020, with bulk mailers saying that prices and speed were important factors in their decisions on how much mail to send.<sup>16</sup>
- 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.<sup>17</sup> 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 Royal Mail is already 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

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<sup>16</sup> Ofcom, 2020. [Review of postal users' needs: 2020 report](#), paragraphs 4.24 to 4.27.

<sup>17</sup> 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.

network. By way of context, the vast majority ([8<]%) of access mail volumes are sent using these mandated D+2 access services.<sup>18</sup>

- 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 2019-20, access mail accounted for 64% of all addressed letter volumes.<sup>19</sup> 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 fell by 6% in 2018-19, and by 3.5% in 2019-20. However, the decline is at a lower rate than that of Royal Mail's end-to-end addressed letter volumes, which declined by 13% and 4.8% over the same periods.<sup>20 21 22</sup>

## 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.<sup>23</sup>
  - **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 offers 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.

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<sup>18</sup> Royal Mail's financial reporting (financial year 2019/20) to Ofcom.

<sup>19</sup> Ofcom, 2020. [Annual Monitoring Update on Postal Services: Financial year 2019-20](#), page 20. ('2020 AMR').

<sup>20</sup> Ofcom, 2018. [Annual monitoring update on the postal market: Financial year 2017-18](#), page 13. ('2018 AMR')

<sup>21</sup> Ofcom, 2019. [Annual monitoring update on the postal market: Financial year 2018-19](#), page 9. ('2019 AMR')

<sup>22</sup> [2020 AMR](#), page 20.

<sup>23</sup> 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.

- 3.12 Over 90% of access letter volumes are 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.<sup>24</sup>

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<sup>24</sup> Royal Mail's financial reporting (financial year 2019/20) to Ofcom.

## 4. Royal Mail's D+5 Letters access services

4.1 In this section 4, we explain Royal Mail's new D+5 Letters access services, including how the new services 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.<sup>25</sup>

4.3 Royal Mail's letter stated:

- a) the new D+5 Letters access services would be at a lower price than the standard D+2 Mailmark services;
- b) the new D+5 Letters access services would 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, would 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

<sup>25</sup> Royal Mail Wholesale, 2020. [Access Service Development and Improvement](#)



- 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 Letters access services in January 2021. A non-confidential copy of this letter is attached in Annex 2.

## 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 services being mandated and price controlled would be that they 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 control might work by stating the retail services the margin squeeze control should apply to (as defined under the term 'relevant retail services' in the USPA condition).<sup>26</sup> 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 services

- 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

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<sup>26</sup> 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 would “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<sup>27</sup> (as well as price rises for its current D+2 access services).<sup>28</sup>
- 4.14 Royal Mail confirmed that the D+5 Letters access services 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 new D+5 Letters access services and the existing D+2 access services.

**Table 4.1: Royal Mail's prices for a selection of D+2 and D+5 access services<sup>29</sup>**

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

Source: Ofcom analysis, Royal Mail pricing workbook<sup>30</sup>

<sup>27</sup> Royal Mail Wholesale, 2020. [Price Changes for the Access Letters Contract](#).

<sup>28</sup> Royal Mail, 2021. [Price List](https://www.royalmailwholesale.com/price-list). <https://www.royalmailwholesale.com/price-list> [accessed 1 March 2021].

<sup>29</sup> 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.

<sup>30</sup> Royal Mail, 2021. [Price List](#) [accessed 1 March 2021].

- 4.16 The price differential (excluding VAT) between the D+2 and D+5 access services varies around 3% depending on the product variant.

## 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 D+5 Letters access services on the current D+2 access services, the impact of D+5 Letters access services 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 information 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 services.<sup>31</sup> <sup>32</sup>

### 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 access services and the new D+5 Letters access services, future Royal Mail D+5 retail services, the rationale for Royal Mail's new services 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 28 October 2020.

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<sup>31</sup> Royal Mail's response dated 4 September 2020 to the s.55 notice dated 20 August 2020, pages 7 to 8. 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.

<sup>32</sup> 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.

## 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)<sup>33</sup>, to understand their views on Royal Mail's new D+5 Letters access services, including their level of interest and likely take up of the new services and the need for any formal regulation.

## Further information since our November 2020 consultation

### Quality of service

- 4.21 On 9 December 2020, Royal Mail wrote to access customers, stating the quality of service standard for the D+5 Letters access services.<sup>34</sup> In its letter, Royal Mail confirmed that:
- a) the quality of service standard would be 97.5% (i.e. 97.5% of all mail delivered within four working days after handover to Royal Mail);
  - b) the compensation target would be 92.5% (i.e. if less than 92.5% of D+5 access letters are delivered on or before the fourth working day after handover to the IMC over a 12-month period, then compensation may be awarded).
- 4.22 Ofcom subsequently engaged with both Royal Mail and the MCF on these specific issues, as well as how Royal Mail was proposing to meet its quality of service reporting obligations. We provide further information on these discussions and on how we expect quality of service reporting to work in our decision below.

### No undue discrimination

- 4.23 We asked Royal Mail how its processes within the IMCs would prevent undue discrimination between mail users from its provision of D+5 Letters access services. In its response of 4 February 2021 to Ofcom, Royal Mail confirmed that, when Downstream Access ('DSA') Economy mail enters the IMC, [X]. If there is, the DSA Economy item is released to the delivery unit and will be delivered on D+2. If there is not, the item is retained [X]. The process repeats until D+5, at which point the DSA item is automatically released for D+5 delivery, regardless of whether there is another item due to be delivered at the same address.
- 4.24 Royal Mail also confirmed that the same machine and the same algorithm are also processing [X] Economy Bulk Sorted Mail [X]. The algorithm works in a consistent way across all products, assessing whether there is a matching item due for next day delivery and if there is, releasing the item. If there is not, the item is retained and reprocessed until it reaches its product due specification delivery day, at which point it is released.

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<sup>33</sup> 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.

<sup>34</sup> Royal Mail Wholesale, 2020. [Mailmark Economy Service Standard](#).

4.25 Finally, Royal Mail confirmed [REDACTED].

## 5. Our decisions

- 5.1 In this section 5, we set out our decisions to extend the USPA condition to the new D+5 Letters access services. We also set out the details of how the USPA condition will apply to the new D+5 Letters access services.
- 5.2 We received 12 responses to our November 2020 Consultation. The stakeholders that responded were: Royal Mail, Whistl, the Mail Competition Forum (MCF), the Mail User's Association (MUA), the Communications Workers Union (CWU), Critiqom, The Postal Group, [X], Citizen's Advice Scotland (CAS), Financial Data Management (FDM), FCS LaserMail, and CFH Docmail.
- 5.3 We have considered all submissions made by stakeholders in their responses and have summarised and addressed these points below. Non-confidential versions of all the responses received are published on the Ofcom website.<sup>35</sup>
- 5.4 In summary, we have decided to require Royal Mail to provide D+5 Letters access services, on regulated terms,<sup>36 37</sup> 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 decisions will promote efficiency within Royal Mail's delivery operations and confer benefits to users of postal services. We have also decided to bring its D+5 Letters 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 decisions 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 will be able to offer retail services based on either D+2 or D+5 regulated access.
- 5.5 Our modifications to the USPA condition (which are set out in the new USPA condition in Annex 1) will take effect from and including 5 April 2021.

### D+2 access under the existing USPA condition

- 5.6 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

- 5.7 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

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<sup>35</sup> Stakeholder [responses to the November 2020 Consultation](#) are available on the Ofcom website.

<sup>36</sup> In addition to the current regulation for D+2 access services, which remains unchanged as a result of this decision.

<sup>37</sup> The regulated terms for D+5 access services will be the same as those for D+2 access services, with the exception of QoS reporting, which we set out how it differs from current regulation, and our rationale for doing so, below.

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.

- 5.8 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.<sup>38</sup>

## **Services in scope of D+2 access regulation**

- 5.9 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.
- 5.10 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 particularly because, at the time when we imposed this condition, D+2 was the most common model of access, accounting for 99% of access volumes.<sup>39</sup>
- 5.11 Other forms of access provided by Royal Mail at the time included a D+1 Letters access 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.<sup>40</sup>

## **Pricing of D+2 access**

- 5.12 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 new D+5 Letters access services and summary of our decisions**

- 5.13 The D+5 Letters access services allow access customers to inject bulk mail at the IMC for delivery up to four working days from the injection date. We have already explained in

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<sup>38</sup> Ofcom, March 2012 Statement, paragraphs 10.9 to 10.11.

<sup>39</sup> Ofcom, March 2012 Statement, paragraph 10.211.

<sup>40</sup> Ofcom, March 2012 Statement, paragraph 10.216.

section 2 why we consider that these new services currently fall outside of the USPA condition.

- 5.14 As we explain further below, we expect that there will be considerable demand for these new D+5 Letters 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 have decided to extend the USPA condition to the new D+5 Letters access services.
- 5.15 In short, we are making the following modifications to 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 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) 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).
- 5.16 In the rest of this section, we structure our discussion on our decisions as follows:
- first, we deal with our decision to mandate access to D+5 Letters access services (to sit alongside existing and regulated D+2 access services), including our decision for ancillary obligations in support of the main access obligation;
  - second, we set out how we are bringing 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 decisions.
- 5.17 At each stage, we summarise our consultation proposals and any stakeholder responses. We then make our assessment and set out our decisions having taken those responses into account.

## **Mandating access to D+5 Letters access services**

### **Our consultation proposals**

- 5.18 In our November 2020 Consultation, we proposed to extend the USPA condition to require Royal Mail to provide D+5 Letters access services (additionally to existing D+2 Letters and Large Letters access) to access operators on reasonable request.



- 5.19 In the November 2020 Consultation, we discussed why we considered that our proposal to extend the USPA condition to D+5 Letters access services would be appropriate for three purposes. Namely, we considered that such extension would support competition in the upstream bulk mail market, would help to promote a more efficient Royal Mail network, and would confer benefits to consumers.<sup>41</sup>
- 5.20 We also considered the scope of the proposed D+5 USPA condition. We proposed to extend the USPA condition to Letters, but not to include Large Letters.<sup>42</sup> This was based on our understanding that it would be uneconomical for Royal Mail to offer a D+5 Large Letters access service at this time.
- 5.21 We also proposed not to exclude different variants of D+5 Letters access services in the USPA condition, reflecting the current mandation of D+2 access and allowing access operators in the future to request alternative variants of the D+5 Letters access services.
- 5.22 To reflect those proposals, we proposed changes to the USPA condition, including proposals for ancillary obligations in support of the main access obligation.<sup>43</sup> They were set out in Annex 6 of the November 2020 Consultation.<sup>44</sup>

## **Stakeholder responses**

- 5.23 Stakeholders generally agreed with our proposals to extend the USPA condition to include D+5 Letters access services.<sup>45</sup> Whistl and CFH agreed that it may improve efficiencies within Royal Mail.<sup>46</sup>
- 5.24 A number of stakeholders stated that it would be welcome if these efficiencies were shared with users via lower prices,<sup>47</sup> while Whistl and the MCF stated the new service would not deliver efficiencies upstream (i.e. for access operators).<sup>48</sup>
- 5.25 Some stakeholders supported our proposals, but on the basis that D+2 is not diluted into a premium service, with the Postal Group questioning whether there was still a demand for the service in a “digital, more time sensitive” age.<sup>49</sup>
- 5.26 The CWU agreed that the new service could help sustain letter volumes and provide cheaper products, but argued that no forecasted data was provided to assess the

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<sup>41</sup> Ofcom, November 2020 Consultation, pages 20 to 24.

<sup>42</sup> Ofcom, November 2020 Consultation, pages 25 to 26.

<sup>43</sup> Ofcom, November 2020 Consultation, pages 26 to 28.

<sup>44</sup> Ofcom, November 2020 Consultation, Annex 6, pages 42 to 59.

<sup>45</sup> See non-confidential responses to Ofcom's November 2020 Consultation from FDM, FCS, Critiqom, Whistl, CAS, MCF, MUA, [§<] and Royal Mail.

<sup>46</sup> See non-confidential responses to Ofcom's November 2020 Consultation from CFH and Whistl.

<sup>47</sup> See non-confidential responses to Ofcom's November 2020 Consultation from [§<], CAS and CFH.

<sup>48</sup> See non-confidential responses to Ofcom's November 2020 Consultation from Whistl and MCF.

<sup>49</sup> CFH's non-confidential response to Ofcom's November 2020 Consultation; The Postal Group's non-confidential response to Ofcom's November 2020 Consultation, page 2.

effectiveness of the new service. Regarding the wider universal postal service, the CWU sought assurances that the D+5 Letters access service will sustain letter volumes.<sup>50 51</sup>

## Our assessment

### 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*

- 5.27 We understand from the information we have gathered that the new D+5 Letters access services could 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 sensitive<sup>52</sup>, and such mail could therefore move to the new D+5 Letters 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. [30-40]%<sup>53</sup> of existing D+2 letters access volumes could switch to D+5 access by 2023/24 in the event it is not mandated.<sup>54</sup> Therefore, in contrast to the Postal Group's view, we believe that there is likely to be material demand for a deferred D+5 Letters access service.
- 5.28 However, customers who 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.
- 5.29 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 Letters access services are likely to become an important input for access operators going forwards. This means that a material proportion of volumes would move outside of the regulatory safeguards under the USPA condition if D+5 Letters access is not mandated.

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

- 5.30 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 services 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

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<sup>50</sup> CWU's non-confidential response to Ofcom's November 2020 Consultation, paragraphs 2 and 10 to 12.

<sup>51</sup> In regard to the points made by the CWU, we note that sustaining letter volumes is not one of the three legal tests for mandating an access service (as set out in Section 2).

<sup>52</sup> Royal Mail's response dated 4 September 2020 to the s.55 notice dated 20 August 2020.

<sup>53</sup> Royal Mail's response dated 11 September 2020 to the s.55 notice dated 20 August 2020, pages 8 to 10. 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.

<sup>54</sup> 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.

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.

- 5.31 Given that we expect D+5 Letters access services will become an important input for access operators going forwards (alongside the existing D+2 access services), we conclude that 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*

- 5.32 As described above, we have concluded that extending the USPA condition to D+5 Letters access services is necessary to continue to support access-based competition. Competition is an 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).
- 5.33 In addition, the introduction of D+5 Letters access services is expected to enable the delivery of cost savings downstream in relation to Royal Mail's delivery operations. Currently, D+2 access volumes are delivered the day after they are received from access operators at the IMC. As explained in section 4, the new D+5 Letters access services will allow Royal Mail to sequence and hold back the mail (up to a maximum of four working 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.
- 5.34 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.
- 5.35 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.
- 5.36 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 Letters 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 decision to bring them within the margin

squeeze control (discussed further below) will also result in the new service being VAT exempt, which we understand will further increase scope for take-up.

- 5.37 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.[X]% to c.[X]%.<sup>55</sup> Royal Mail anticipates that this higher take-up will enable the DTS initiative to deliver additional cost savings of £[X]m per year by 2026/27.<sup>56</sup>
- 5.38 In light of the above, we consider that our extension of the USPA condition to D+5 Letters access services will 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*

- 5.39 The introduction of the new D+5 Letters access services will increase choice for bulk mail customers, giving them the option of a cheaper slower speed service.
- 5.40 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).<sup>57</sup> This means that customers moving from D+2 to D+5 could receive price savings in the region of 3%.
- 5.41 As described above, extending the USPA condition to D+5 Letters access services will 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.<sup>58</sup> As such, we expect that our decisions will 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.
- 5.42 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 decisions in relation to D+5 Letters access services do not affect their choice relative to today.
- 5.43 We have, however, considered whether extending the USPA condition to the new D+5 Letters access services could result in higher prices for bulk mail customers who are reliant

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<sup>55</sup> Royal Mail's response dated 11 September 2020 to the s.55 notice dated 20 August 2020, pages 8 to 10. 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.

<sup>56</sup> Royal Mail's response dated 4 September 2020 to the s.55 notice dated 20 August 2020, page 9; Royal Mail's response dated 11 September 2020 to the s.55 notice dated 20 August 2020, page 3. 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.

<sup>57</sup> 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.

<sup>58</sup> 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).

on the regulated D+2 access services (as noted by some stakeholders who raised concerns about D+2 becoming a 'premium' product). This could occur because the introduction of the cheaper D+5 Letters access service might enable Royal Mail to impose higher 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 has already introduced this service regardless of our decision, and so any such segmentation (and ability to price discriminate) will be likely to occur to some degree, even if we decided not to mandate D+5 Letters access. We also note that 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.<sup>59</sup>

- 5.44 Accordingly, we have concluded that our extension of 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 statement), we consider that our decisions will 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*

- 5.45 Royal Mail is the provider of the universal postal service ("UPS") and therefore is subject to universal service obligations. Those obligations require Royal Mail to deliver single-piece letters and parcels throughout the UK six and five days a week, respectively, and at uniform prices.
- 5.46 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.
- 5.47 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.<sup>60</sup> Although in recent months Royal Mail's financial position has shown improvements, the general trends of letter volume decline and growth in parcel volumes are expected to continue.<sup>61 62 63</sup>
- 5.48 As set out above, extending the USPA condition to the new D+5 Letters access services will 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

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<sup>59</sup> Royal Mail's response dated 4 September 2020 to the s.55 notice dated 20 August 2020.

<sup>60</sup> [2020 AMR](#), paragraphs 5.8 to 5.11 and paragraph 5.16.

<sup>61</sup> Royal Mail, 2020. [Royal Mail plc AGM Trading Statement](#).

<sup>62</sup> In this regard, we note that in Royal Mail's most recent trading update (11 February 2021), whilst Royal Mail's overall Q3 year-on-year revenues grew significantly, addressed letter volumes, whilst improving compared to the beginning of 2020/21 (down 33%), continued to decline (down 14%).

<sup>63</sup> Royal Mail, 2021. [Trading update for the nine months ended December 2020](#).

of illustration, we note that Royal Mail estimates the potential additional cost savings to be in the region of £[3<]m per annum (subject to take up, among other factors).<sup>64</sup>

- 5.49 Therefore, we have concluded that extending access regulation to D+5 Letters access services will likely help towards the financial sustainability of the UPS by enabling Royal Mail to realise additional cost savings.<sup>65</sup> This would benefit all users of the UPS, including those who are neither recipients nor senders of bulk mail.

## Scope of the D+5 USPA Condition

- 5.50 Having described above why we are mandating D+5 Letters access services, we now discuss our decision on the scope of the USPA condition.

### Our consultation proposals

- 5.51 In the November 2020 Consultation, we proposed to extend the USPA condition to D+5 Letters only, but not to Large Letters. Our assessment was that it would not be appropriate to introduce a D+5 Large Letter service if, as we understand, it would be a higher cost to deliver than the existing D+2 service.<sup>66</sup>
- 5.52 We did not propose 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. Our rationale for this was that this would be 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 Letters access services.<sup>67</sup>

### Stakeholder responses

- 5.53 We received no stakeholder responses on this issue.

### Our assessment

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

- 5.54 Royal Mail has introduced the new D+5 access services for Letters only.<sup>68</sup> 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

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<sup>64</sup> 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.

<sup>65</sup> In response to the CWU, having regard to the need for the provision of a UPS to be financially sustainable and efficient, does not necessarily require that letter volumes are sustained. This could also be achieved by making the delivery of letters more efficient.

<sup>66</sup> Ofcom, November 2020 Consultation, paragraphs 5.41 to 5.42.

<sup>67</sup> Ofcom, November 2020 Consultation, paragraphs 5.43 to 5.45.

<sup>68</sup> 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.

letters do not have the capability – of sequencing (and holding back) mail – needed to achieve the additional cost savings expected from the DTS initiative.<sup>69</sup> 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 D+5 Large Letters 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.<sup>70</sup> Accordingly, we have decided not to extend the USPA condition to include D+5 Large Letters.

### **We are not excluding different variants of D+5 Letters services from the scope of the USPA condition**

- 5.55 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).
- 5.56 Royal Mail only offers D+5 Letters access services in the form of economy Mailmark 70 services.<sup>71</sup>
- 5.57 We have decided not to exclude other variants of D+5 Letters service, allowing the possibility for them to be requested in the future in the same way that access operators can request alternative variants of current D+2 services.<sup>72</sup> If a business case can be made for other forms of D+5 Letters access 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 would only need to meet requests if they are reasonable (as per the Statement of Process).<sup>73</sup> As such, we have concluded that this approach is consistent with promoting competition, promoting efficiency, and conferring benefits on the users of postal services.

## **Inclusion of Royal Mail's D+5 access service in the margin squeeze control**

### **Our consultation proposals**

- 5.58 We also proposed in the November 2020 Consultation to subject D+5 Letters access services to a margin squeeze control. We considered that such a price control was appropriate in this case to prevent the universal service provider from engaging in a price squeeze with adverse consequences for users of postal services.<sup>74</sup>

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<sup>69</sup> Royal Mail's response dated 28 October 2020 to the s.55 notice dated 23 October 2020, pages 12 to 13.

<sup>70</sup> Royal Mail's response dated 11 September 2020 to the s.55 notice dated 20 August 2020, pages 12 to 13.

<sup>71</sup> We understand this will include Letters, Advertising Letters, Responsible Entry Letters, Responsible Intermediate Letters, and Partially Addressed versions of Mailmark 70 Letters.

<sup>72</sup> Access operators and customers recently requested a Scan on Delivery D+2 access service.

<sup>73</sup> Royal Mail, 2019. [\*Decision on changes to the Access Service Request Process\*](#).

<sup>74</sup> Ofcom, November 2020 Consultation, paragraphs 5.54 to 5.75.

- 5.59 We proposed to include Royal Mail's new retail economy Mailmark Letter services in the margin squeeze control. We proposed to include these services and their D+5 access equivalent services in the existing D+2 basket.
- 5.60 To allow us to monitor compliance with the margin squeeze control, we also proposed to require Royal Mail to provide information on its retail economy Mailmark Letter services (as it does with its existing retail services). This includes the requirement to disclose to Ofcom the details of bespoke 'retail' contracts for services within the scope of the margin squeeze control.

## Stakeholder responses

- 5.61 All stakeholders either agreed with our proposals to include Royal Mail's new retail economy Mailmark Letter services and their access equivalent services in the margin squeeze control<sup>75</sup> or did not comment on them.<sup>76</sup>
- 5.62 Several stakeholders, whilst supporting our proposals, argued the need for some form of regulatory control over the price relationship between D+2 and D+5 access services. Concerns were expressed that Royal Mail may seek to increase the discount or price differential between the two services<sup>77</sup>, and that the justification for the discount between the two services was not clear.<sup>78</sup> Some noted a possible consequence of this is that time-sensitive mail senders remaining on D+2 services would move to digital communications.<sup>79</sup>

## Our assessment

- 5.63 We have taken into account that stakeholders, largely, supported our proposals to subject D+5 Letters access services to the margin squeeze control.
- 5.64 We note the concerns around the price differential between D+2 and D+5 access services, and the suggestion for a control between these prices. As stated in our November 2020 Consultation, our main concern with regards to access pricing is that Royal Mail could impose a price squeeze in order to favour its own retail business over access operators. A price squeeze is determined by the price differential between Royal Mail's retail services and their access equivalents, rather than by the price differential between D+2 and D+5 access services. While the latter is likely to affect the relative take-up of D+2 and D+5 access services, this is unlikely to raise competition price squeeze concerns. We are therefore of the view that setting a control over the price differential between D+2 and D+5 access services would not address our concern of a price squeeze by Royal Mail.
- 5.65 Moreover, as we already mentioned in paragraph 5.43, Royal Mail confirmed that its relative pricing between D+2 and D+5 access is not sensitive to our decision to mandate

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<sup>75</sup> See non-confidential responses to Ofcom's November 2020 Consultation from [X], FDM, FCS Limited, Critiqom, CFH, MCF, Postal Group, MUA, Royal Mail, and Whistl.

<sup>76</sup> See non-confidential responses to Ofcom's November 2020 Consultation from CAS and the CWU.

<sup>77</sup> See non-confidential responses to Ofcom's November 2020 Consultation from Whistl, MCF and Critiqom.

<sup>78</sup> Whistl's non-confidential response to Ofcom's November 2020 Consultation, page 3.

<sup>79</sup> See non-confidential responses to Ofcom's November 2020 Consultation from CFH and MUA.



the D+5 Letters access service. In addition, we consider that the price flexibility that Royal Mail currently has over the price differential between D+2 and D+5 access services would allow Royal Mail to respond more quickly to changes in market conditions, particularly given that D+5 access is a new service with untested demand. However, we will monitor the market, including the level of D+2 and D+5 prices, and so, if evidence of any issue materialises, we will consider this in our 2022 review of future of postal regulation (the "2022 review").<sup>80</sup>

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

- 5.66 Royal Mail has now launched a suite of retail services which reflects the attributes of the D+5 access services.<sup>81</sup> Given this, and the material volume of mail which is expected to migrate 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 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.
- 5.67 As mentioned in section 2 of this statement, 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 decisions should not hinder Royal Mail's ability to recover its upstream costs and investments. This is because we are not requiring Royal Mail to set D+5 Letters access prices at a particular level, but rather requiring 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 upstream costs, which ensures Royal Mail's upstream costs are recovered).

**Royal Mail's new retail economy Mailmark Letter services have been included in the margin squeeze control**

- 5.68 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.
- 5.69 As discussed above, we will now be regulating the D+5 Letters access services and bringing them and the relevant retail services under the margin squeeze control in the USPA 6. Therefore, we need to specify the retail services to be included in the margin condition.
- 5.70 Royal Mail has only introduced a D+5 Letters access service in the form of an economy Mailmark 70 service (see section 4). It has also introduced retail economy Mailmark Letter

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<sup>80</sup> As set out in [Ofcom's proposed plan of work 2021/22](#), we plan to review the future regulatory framework of post, with a review statement to be published in 2022. This will assess what the appropriate regulatory framework should be for regulating the postal sector.

<sup>81</sup> As confirmed in email from Royal Mail to Ofcom, 5 November 2020.

services<sup>82</sup> which have inward processing and delivery attributes which are substantially equivalent to the new D+5 Letters access service.

- 5.71 Therefore, at this stage, we will include the new retail economy Mailmark Letters services in the margin squeeze control. However, 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 in line with the approach for D+2 services.
- 5.72 We will implement those decisions by making our proposed modifications of the USPA 6 as specified in our statutory notification published in Annex 6 of the November 2020 Consultation. 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 modifications to USPA 6 are straightforward as we can achieve this by simply amending the existing definition of 'Relevant Retail Services'.
- 5.73 We have, however, taken the opportunity to make some other textual (non-substantive) changes that affect D+2 retail services. Specifically, we have inserted 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 to make it clearer. We have also inserted 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 now want to deal with this matter in the new USPA 6.9 (instead of including this notification obligation as part of a definition).

**For the basket test, the new retail economy Mailmark Letter services and their D+5 access equivalent services have been included in the existing D+2 basket**

- 5.74 Given that we are applying the same tests to the new D+5 Letters access services, we believe that including the D+2 and D+5 Letters access services in a single basket has the benefit of not increasing the complexity of an already complex calculation.
- 5.75 In reaching this conclusion, 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.<sup>83</sup>

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<sup>82</sup> 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.

<sup>83</sup> 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 contracts for retail services below cost in order to win new contracts.<sup>84</sup>

5.76 We have therefore included the retail economy Mailmark Letter services and their D+5 access equivalent services in the existing D+2 basket.

## Ancillary access obligations under the USPA condition in support of our main D+5 access obligation

### Our consultation proposals

5.77 Given that we expect that the D+5 Letters access services will become an important input for access operators going forwards, we proposed in the November 2020 Consultation to apply the same ancillary conditions that exist for D+2 access services for the new D+5 Letters access services.<sup>85</sup> We considered that those obligations form part of the necessary safeguards to promote competition and extending them to D+5 Access would minimise the risk of inadvertently undermining existing D+2 Access regulation.

5.78 We therefore proposed to impose on Royal Mail, in addition to the requirement to provide D+5 Access on reasonable request (USPA 2), the following ancillary access obligations<sup>86</sup> 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 ("QoS") information for its access services (USPA 8).

5.79 As part of replicating the current legal instrument for D+5 Letters access services, we proposed a number of amendments to the current USPA condition, including proposing for Royal Mail to apply and extend its current Statement of Process to both D+2 Access and

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<sup>84</sup> 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.

<sup>85</sup> Ofcom, November 2020 Consultation, paragraphs 5.49 to 5.53.

<sup>86</sup> 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.

D+5 Access. Our starting point for considering the type of margin squeeze control to be applied in relation to D+5 Letters access services was the existing margin squeeze control for D+2 access services under USPA 6, as set out above. We did not identify 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 proposed that the new D+5 Letters access services should be subject to the same tests as the existing D+2 access services.

## Stakeholder responses

- 5.80 Stakeholders generally did not comment on any of the ancillary obligations, except regarding Royal Mail's plans for QoS, and by extension, our proposals on QoS (USPA 8).
- 5.81 As mentioned above, Royal Mail notified access operators of its decision to set the QoS target for D+5 Letters access services at 97.5% in a letter on 9 December 2020.<sup>87</sup> This is a single QoS target for delivery by D+5, with no individual targets set by day (i.e., delivery by D+2, D+3, D+4, D+5). Royal Mail has set the compensation threshold at 92.5% (i.e., if less than 92.5% of D+5 Access letters are delivered within four working days after handover to the IMC over a 12-month period, Royal Mail may award compensation).
- 5.82 Royal Mail agreed with our proposals for QoS for D+5 services.<sup>88</sup>
- 5.83 However, Critiqom, MCF, [X] and Whistl argued that Royal Mail's QoS level of 97.5% for D+5 Letters access services is too low.<sup>89</sup> In particular, Critiqom and MCF pointed out that, although that 97.5% target is 2.5% higher than the target for other Royal Mail Access services, it is lower than the regulatory target set for second class USO single piece (98.5%), in circumstances where Royal Mail will have more time to deliver items under D+5 Access.<sup>90</sup>
- 5.84 Critiqom, [X] and Whistl also argued that Royal Mail should be required to set a QoS target on a delivery day basis.<sup>91</sup> In that regard, Critiqom and Whistl pointed out that, otherwise, Royal Mail would be able to claim that service has been delivered even if all of the mail was delivered on D+5.<sup>92</sup>
- 5.85 In addition, Critiqom, Whistl and [X] argued that Royal Mail's compensation threshold should be set at "more appropriate levels".<sup>93</sup>

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<sup>87</sup> Royal Mail Wholesale, 2020. [\*Mailmark Economy Service Standard\*](#).

<sup>88</sup> Royal Mail's non-confidential response to Ofcom's November 2020 Consultation, paragraph 1.29.

<sup>89</sup> See non-confidential responses to Ofcom's November 2020 Consultation from Critiqom, MCF, [X] and Whistl.

<sup>90</sup> Critiqom's non-confidential response to Ofcom's November 2020 Consultation, page 4; MCF's non-confidential response to Ofcom's November 2020 Consultation, page 2.

<sup>91</sup> See non-confidential responses to Ofcom's November 2020 Consultation from Critiqom, [X] and Whistl.

<sup>92</sup> Critiqom's non-confidential response to Ofcom's November 2020 Consultation, page 3, Whistl's non-confidential response to Ofcom's November 2020 Consultation, page 5

<sup>93</sup> Critiqom's non-confidential response to Ofcom's November 2020 Consultation, page 3; Whistl's non-confidential response to Ofcom's November 2020 Consultation, page 5; [X] non-confidential response to Ofcom's November 2020 Consultation, page 2.

- 5.86 Critiqom, Whistl, [3<] and MCF argued for a regulatory requirement on Royal Mail to publish national average delivery performance by day of delivery (the proportion of mail delivered by D+2, D+3, D+4 and D+5). They argued that this would allow access users to measure the true delivery performance of the service and so make informed decisions about the suitability of the service to their needs.<sup>94</sup>

## Our assessment of appropriate QoS information

- 5.87 Stakeholders did not comment on any of our ancillary obligations proposed in the November 2020 Consultation (except for QoS information, which we deal with below). We have decided to adopt our proposed ancillary obligations for the reasons set out in the November 2020 Consultation. We now deal with our conclusions on ancillary obligations relating to QoS in light of stakeholder responses.

### Our general approach to QoS

- 5.88 Under the current regulatory framework, it is important that access users are able to monitor the QoS that Royal Mail provides in relation to delivering access items following injection into Royal Mail's network. As such, since we put in place the regulatory framework in 2012, our general approach has been to require Royal Mail to provide access users with sufficient QoS information based on a fair and reasonable system of monitoring QoS, without imposing more prescriptive regulation. However, through Royal Mail's provision of QoS information, Ofcom, as well as access users, should be able to assess whether Royal Mail is providing access on fair, reasonable and non-discriminatory terms.
- 5.89 That general approach was designed to be industry-led with Ofcom retaining our role to step in where necessary. This approach has resulted in industry developing a transparent and consistent system to monitor QoS that meets the needs of customers and access operators. We also remain ready to intervene as appropriate, for example, either through providing more guidance or resolving a dispute, if an industry led solution is not forthcoming or effective.
- 5.90 Also, our general approach to date is not to supervise the access contract or its relationship with customers, which is Royal Mail's responsibility. We currently do not set QoS levels under the USPA condition, since we are not setting access prices. Therefore, whether Royal Mail has met its contractual QoS target (and thereby whether access users are entitled to compensation for underperformance) is not something we currently regulate under the USPA condition.
- 5.91 We believe that our current general approach has maintained an appropriate QoS system for D+2 access services, and we therefore consider it is appropriate for now to continue this approach also for D+5 Letters access services.

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<sup>94</sup> See non-confidential responses to Ofcom's November 2020 Consultation from Critiqom, Whistl, [3<] and MCF.

- 5.92 We will also continue to monitor the QoS of D+5 access services (as we do for D+2 access), and we retain our ability to intervene as appropriate in the future if we or stakeholders identify evidence of issues.

### QoS levels

- 5.93 We have considered and explored further the 97.5% QoS level for D+5 Letters access services, including by requesting further information from Royal Mail.<sup>95</sup> As stated above, it is currently for industry to agree in the first instance on the terms and conditions (including QoS levels) of access, through commercial negotiations. We would encourage industry to continue discussions to see if industry-led solutions can be effective. For example, we understand that industry has suggested to Royal Mail that a possible solution would be to review Royal Mail's QoS target within a defined period of time after the D+5 Letters access services have launched (e.g., 6 months) to see if the target remains suitable. We consider this to be a practicable solution and would expect Royal Mail to undertake such a review.

### QoS design

- 5.94 As mentioned above, some stakeholders suggested imposing a target on the proportion of D+5 Letters that is delivered by specific delivery day within the four working days after handover (i.e., a target of mail delivered by D+2, D+3, D+4 and D+5). Aside from our above-mentioned general approach not to set QoS targets under the USPA condition, we believe that doing so would be inconsistent with the specification of the D+5 Letters access service. We therefore consider setting such a QoS target would be inappropriate. Indeed, the D+5 Letters access service is designed to allow items to be held back for up to four working days after handover by the access operator, before they are delivered to recipients. As explained above, this is aligned with the purpose of consolidating mail at the IMC in order to reduce the frequency of deliveries to each address and thus reduce delivery costs. Imposing a target to deliver certain proportions of D+5 mail by specific delivery day would therefore restrict Royal Mail's ability to hold back mail, and therefore its ability to achieve cost savings (particularly since the specific delivery day will depend on the mail being posted by customers, and so would be outside of Royal Mail's control).

### QoS compensation

- 5.95 Similarly, regarding compensation levels, we continue to consider that the associated compensation thresholds should be decided as a result of industry negotiations. We also note that the current approach taken by Royal Mail (compensation paid at a level of 5% points lower than the D+5 target) is consistent with the approach for D+2 compensation. However, as above, we remain ready to intervene in the future if appropriate.

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<sup>95</sup> In response to stakeholders' concerns about the level, we have spoken to Royal Mail to understand how they reached this target and have reviewed a confidential submission they have provided.

## QoS reporting

- 5.96 As described above, the regulatory framework for access QoS is reliant on access users being able to monitor the service that Royal Mail provides in delivering access items following injection into its network (rather than more prescriptive regulation). We remain of the view that, for the access regime to continue to work effectively under this model, it is important that Royal Mail provides access users with sufficient QoS information. Transparency of the service provided by Royal Mail allows customers to make informed decisions about whether to buy a particular access service. It will also allow Royal Mail and the industry to discuss and reach appropriate decisions in relation to the QoS level, design and compensation, as all parties will have access to the relevant information. It also helps Ofcom and access users to assess whether Royal Mail is providing access on terms which are fair, reasonable and not unduly discriminatory.
- 5.97 In the November 2020 Consultation, we proposed to update USPA 8.1 to include D+5 Access to impose a general QoS reporting requirement on Royal Mail, similar to that for D+2 Access. Our proposed modification to USPA 8.1 stated that *"The universal service provider shall publish all such information as is reasonably necessary for the purposes of securing transparency as to the quality of service in relation to D+2 Access and D+5 Access provided by the universal service provider in an appropriate manner and form, or as OFCOM may otherwise direct."*
- 5.98 Having reviewed stakeholders responses, we recognise that the new D+5 Letters access services are substantially different to the current D+2 access services, in so far as items may be delivered on a range of (up to four working) days after injection into Royal Mail's network. So even though Royal Mail delivers the new D+5 service within specification, the service might represent a different proposition for customers, if Royal Mail on average delivers a larger proportion of the mail (say) on D+2 or D+3 as opposed to on D+5.
- 5.99 Therefore, in light of stakeholder responses, we have carefully considered what additional and more specific information D+5 access customers might need to make an informed choice about buying this service and input into industry discussions on the appropriate QoS level, design and compensation. We are now of the view that the following information is necessary at a minimum:
- a) An overall D+5 QoS reporting figure, measuring the volume of items delivered by D+5 across industry, and which is published on a quarterly and annual basis. This will help users understand how well the service has been delivering to specification, and input into industry negotiations.
  - b) D+5 QoS reports for individual access operators and/or mailing customers (provided on an individual basis), stating actual performance for their own mail, containing both an overall measurement of mail delivered by D+5 and a breakdown of mail delivered on D+2, D+3, D+4 and D+5. This will help them monitor their own service, to inform future purchasing and product choice decisions.
  - c) A publicly available breakdown of D+5 delivery day performance across all volumes, measuring the volume of items delivered on D+2, D+3, D+4 and D+5. Although the



specification of the product is for delivery by D+5, as noted above the value of the service to users may vary depending on the expected distribution across the days. While this distribution may vary according to different factors (including individual mail profile, volumes of other mail/time of year, etc), the provision of this information will allow potential customers to make better informed choices about their take-up of the service, by being able to observe actual average performance. It will also provide a reference point to help active D+5 access users understand how their mail is being delivered compared to the market as a whole, which in turn may help inform whether Royal Mail is providing D+5 Access on terms that are fair, reasonable and not unduly discriminatory. Stakeholders have also responded to our November 2020 Consultation that it is important for this market level information to be made available by Royal Mail.

- 5.100 In those regards, we understand from Royal Mail that it intends to provide the QoS information described in paragraph 5.99(a) and (b) above.<sup>96</sup> We welcome this transparency by Royal Mail in part to comply with its general QoS requirement under USPA 8.1, since it will provide important insight for customers. However, Royal Mail has not committed to provide the QoS information described in paragraph 5.99(c).
- 5.101 Therefore, having carefully considered stakeholder responses, we have decided to give effect to our proposals in the November 2020 Consultation, with modifications to USPA 8, by requiring that Royal Mail reports publicly (on a quarterly and annual basis) on the performance of the D+5 service by specific delivery day (the proportion of mail that is delivered on D+2, D+3, D+4 and D+5) for all D+5 access volumes.<sup>97</sup> To that end, we have inserted a specific requirement in USPA 8.1A to require such publication by Royal Mail.
- 5.102 We understand from Royal Mail that it may require some time, once the D+5 Letters access service has been mandated under the USPA condition, to arrange for its reporting systems to be set up and ensure that there is a sufficient base of access operators and mailing customers to ensure a statistically representative estimate. Therefore:
- a) In regard to quarterly reporting of public metrics, we have decided that Royal Mail should only be required to collect such quarterly QoS information starting from the second quarter of Royal Mail's financial year 2021/22 (which begins on 28 June 2021) and onwards.
  - b) In regard to annual reporting of public metrics, we have decided that Royal Mail should only be required to collect such annual QoS information starting from Royal Mail's financial year 2022/23 (which begins on 28 March 2022) and onwards.
- 5.103 In regard to the publication of both sets of public metrics outlined above, we expect these to be published alongside, or within, Royal Mail's current QoS reporting on the Royal Mail

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<sup>96</sup> We understand that, to date, Royal Mail has met its QoS reporting obligations using Kantar, who independently measure Royal Mail's performance.

<sup>97</sup> Royal Mail currently employs a company, Kantar, to undertake independent monitoring via survey data of QoS of both Access and USO mail streams. We consider that reporting of aggregate D+5 service data by specific delivery day, generated via such a survey (or other equivalent means) would be compliant with USPA 8.1A.



website.<sup>98</sup> As is the case currently with QoS information for D+2 access services and all USO mail, we expect Royal Mail to publish QoS data within a maximum of 60 working days of the relevant period in question ending.<sup>99</sup>

## Implementation of changes to the USPA condition

### Our consultation proposals

- 5.104 In our November 2020 consultation, we proposed that, if adopted, our modifications to the USPA condition would take effect immediately from the date of our decision.<sup>100</sup>

### Stakeholder responses

- 5.105 FDM, FCS LaserMail, [3], and the Postal Group agreed with the proposal that, if adopted, the proposed changes to the USPA condition should become effective from the date of this statement.<sup>101</sup> The Postal Group did, however, note that a short notice period would mean that access operators would have to rush through their own service integration.<sup>102</sup>
- 5.106 In contrast, Critiqom, Whistl, MCF, and MUA stated that changes to the USPA condition should be effective from the start of the new tax year, in April 2021, in order to avoid unnecessary accounting complexities and further price changes that access operators would be required to make within a short period of time.<sup>103</sup> Stakeholders also cited the time needed to embed any change in VAT treatment into the billing systems of both Royal Mail and the supply chain and noted it was logical for the VAT status of the D+5 services to change (courtesy of our decision on D+5 mandation) in line with the new tax year.
- 5.107 On the other hand, Royal Mail stated that any changes to the USPA condition should be effective from 29 March 2021 (the start of Royal Mail's financial year).<sup>104</sup> They said that this would allow sufficient time to make the necessary changes in their systems, which they stated will take 4 to 6 weeks total. They noted that this would also allow access operators enough time to plan and implement changes to their own systems.
- 5.108 Royal Mail also noted that an immediate implementation date would raise the practical challenges of issuing VAT credit notes to Royal Mail customers and added complexities for Royal Mail's 2020/21 USPA 6 submissions to Ofcom.
- 5.109 Finally, stakeholders expressed their desire for Ofcom to reach their decision on this issue as quickly as possible, regardless of implementation date.<sup>105</sup>

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<sup>98</sup> Royal Mail. [Quality of Service](#) [accessed 1 March 2021].

<sup>99</sup> For example, for the "first" quarterly publication of D+5 access services quality of service data for the second quarter of 2021/22, we would expect this to be published on Royal Mail's website by late December 2021.

<sup>100</sup> Ofcom November 2020 Consultation, paragraph 5.93.

<sup>101</sup> See responses to Ofcom's November 2020 Consultation from FDM, FCS LaserMail, [3] and the Postal Group.

<sup>102</sup> The Postal Group's non-confidential response to Ofcom's November 2020 Consultation, page 3.

<sup>103</sup> See responses to Ofcom's November 2020 Consultation from Critiqom, Whistl, MCF and MUA.

<sup>104</sup> Royal Mail's non-confidential response to Ofcom's November 2020 Consultation, pages 3 to 6.

<sup>105</sup> See responses to Ofcom's November 2020 Consultation from MCF, MUA, [3], Royal Mail and Whistl.

## Our assessment

- 5.110 We recognise stakeholders' concerns that making modifications to the USPA condition effective immediately from the date of this statement would add unnecessary practical challenges and additional complexities. Whilst moving the date may delay some take-up of the D+5 Letters access services, which launched on 4 January 2021, we agree that it is important to ensure that Royal Mail, its customers, and the industry have enough time to plan for and implement the changes.
- 5.111 We understand that take-up of D+5 Letters access services is unlikely to be significant between 29 March and 5 April 2021, as access operators will likely wait until the latter date to start take up of the product, to prevent a change in product status part way through a billing month. An implementation date of 5 April 2021 would also align with Royal Mail's wider access tariff changes coming into effect, which would allow access operators to avoid the cost and inconvenience of two separate system changes.
- 5.112 For the purposes of compliance with USPA 6.8 and Royal Mail's margin squeeze submissions, we understand why Royal Mail requested for the implementation date to be 29 March. This is because it aligns with Royal Mail's financial year, and therefore Royal Mail's margin squeeze submissions. We understand it might involve some additional amount of work for Royal Mail to remove this week (29 March to 4 April inclusive) from its submission. However, having seen an example submission from Royal Mail regarding the likely impact of this additional week, we understand the impact on the margin squeeze submission is likely to be minimal. Therefore, for the first year of the USPA condition,<sup>106</sup> for its margin squeeze submission, we are satisfied for Royal Mail to include the additional week (29 March to 5 April), prior to the USPA condition taking effect, before then returning to the normal financial year for 2022/23.
- 5.113 Accordingly, we have decided that our modifications to the USPA condition will take effect from and including 5 April 2021.

## Other issues raised by stakeholders

### Guidance on the D+5 product for customers

- 5.114 CAS expressed concern that transactional mail, such as financial documents and healthcare appointments, may not reach consumers in time, noting this was especially true for vulnerable consumers and those living in rural areas. CAS stated there should be clear guidance to explain to companies that using the D+5 services for time critical communications could have negative consequences for end consumers and may not be suitable for some sector specific regulations.<sup>107</sup>

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<sup>106</sup> I.e. 2021/22 starting 5 April 2021.

<sup>107</sup> CAS' non-confidential response to Ofcom's November 2020 Consultation, pages 2 to 3.

- 5.115 We would expect Royal Mail and access operators to make the features and terms of the D+5 Letters access services clear to their customers, and for bulk mail customers to decide whether the D+5 Letters access services would allow them to meet their own needs and regulations. Therefore, we do not consider there is a need for additional guidance to be provided for customers.

## **Impact of D+5 on Saturday deliveries**

- 5.116 The Postal Group raised a concern that D+5 Letters access services could be used to drastically reduce the volume of Saturday delivery, thereby leading to a migration to alternative media that operates more consistently across the week.<sup>108</sup>
- 5.117 Under the specification of the D+5 Letters access services which has been outlined to Ofcom, we do not believe there to be a material risk that the service may be used to drastically reduce Saturday delivery volumes. We understand from Royal Mail that D+5 items will be delivered when there is another mail item (or items) already being delivered to the recipient's address (subject to a maximum of four working days after it enters the network). Currently, many other Royal Mail services are delivered on Saturdays (e.g. D+2 Access services, as well as USO services which are currently required to be delivered six days per week), and so we understand D+5 items will be delivered alongside them.

## **Definitions of D+2 Access and D+5 Access**

- 5.118 Royal Mail pointed out that the proposed USPA 1.3 (fa) contains a definition of "D+5 Access" which is more detailed than the definition of "D+2 Access" in USPA 1.3 (f). Royal Mail therefore suggested either updating the definition of "D+2 Access" or "D+5 Access" to ensure the definitions align.<sup>109</sup>
- 5.119 We disagree with Royal Mail's suggestion. The definitions as drafted both retain the existing D+2 Access definition (to ensure continuity with the current regulation for D+2 access services) and provide clarity that D+5 Access allows for the possibility for access operators to utilise the D+5 access service for innovative services such as D+6 services and so on. We have therefore retained the definitions as originally proposed in the November 2020 Consultation.

## **Other points by stakeholders on access**

- 5.120 The CWU noted their opposition to the current downstream access regulation framework, stating they did not believe the access regime has benefited the majority of postal users and that it puts pressure on the revenues needed to help ensure the financial sustainability of the universal postal service.<sup>110</sup>

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<sup>108</sup> The Postal Group's non-confidential response to Ofcom's November 2020 Consultation, page 2.

<sup>109</sup> Royal Mail's non-confidential response to Ofcom's November 2020 Consultation, paragraph 1.30.

<sup>110</sup> CWU's response to the November 2020 Consultation, paragraph 3.

- 5.121 The Postal Group also stated that they would like to see a margin squeeze control on franking and D+2 access products, noting that Royal Mail's discount for franked mail is "almost exactly the cost of running the franking machinery".<sup>111</sup>
- 5.122 We consider that those points go beyond the scope of our specific proposals relating to D+5 Access set out in the November 2020 Consultation.

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

- 5.123 We have discussed in section 2 of this statement the various statutory tests to be satisfied in respect of any modifications we are making to the USPA condition. While we have already considered key tests in setting out our decisions in this section 5, we summarise below our considerations of all relevant statutory tests in relation to our decisions discussed above.

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

- 5.124 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.
- 5.125 In that regard, we refer to our reasons above why we consider that our 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.

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

- 5.126 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.
- 5.127 We therefore consider that our 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**

- 5.128 As explained in section 2 of this statement, 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:

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<sup>111</sup> The Postal Group's non-confidential response to Ofcom's November 2020 Consultation, page 2.

- 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.
- 5.129 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 extension is therefore needed to maintain effective competition in the longer term.
- 5.130 In that regard, we also note that Royal Mail has already launched this form of access and our understanding from access operators is that there is demand to use it. As a result, we consider that 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.<sup>112</sup> Therefore, we do not believe that there are facilities alternative to those of Royal Mail that would make the access unnecessary.
- 5.131 We have also taken into account those factors in relation to the 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 will 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.

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

- 5.132 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 modifications of the USPA condition.
- 5.133 In that regard, we consider that our 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 access obligations for D+5 Letters access services reflects Royal Mail's position as the only postal operator with a

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<sup>112</sup> Although Whistl made an attempt to roll out its own end-to-end postal network in the past, they withdrew in 2015.

downstream delivery network capable of facilitative participation by access operators in the relevant markets, and we therefore consider that they will 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 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 modifications of the USPA condition as specified in our statutory notification published in Annex 1 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 seek to achieve by those modifications.

## Our statutory duties

- 5.134 Our power to impose (including to modify) the USPA condition is a function in relation to which our statutory duties discussed in section 2 of this statement apply.
- 5.135 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 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 margin squeeze control), Royal Mail should, in theory, be indifferent to whether access is offered.
- 5.136 We also note that Royal Mail has already introduced the D+5 Letters access services, and any additional costs involved with the implementation of our 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 decisions.
- 5.137 Furthermore, we also consider that our 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 decisions will promote effective upstream competition and the interests of consumers will also be furthered in respect of choice, price, quality of service and money, given that access operators will be able to offer retail services based on either D+2 or D+5 regulated access.
- 5.138 Finally, we note our on-going duty under section 6 of the CA 2003 (which duty we also mention in section 2 of this statement) 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 decisions already at this stage.

## Next steps

- 5.139 Royal Mail launched its new D+5 Letters access services on 4 January 2021. The modifications to the USPA condition, as set out above, take effect from and including 5 April 2021.
- 5.140 Within three months of the modifications to the USPA condition taking effect, we expect Royal Mail to issue an updated Statement of Process, to meet the requirement in USPA 4.2, covering also the new D+5 Letters access services.
- 5.141 Within 60 working days after the first quarterly period (as defined in new USPA 8.1A), we expect Royal Mail to publish the performance of the D+5 service by specific delivery day (the proportion of mail that is delivered on D+2, D+3, D+4 and D+5) for all D+5 access volumes for the second quarter of 2021/22, as well as providing the public and private QoS information that Royal Mail has stated that it will provide, as outlined above.
- 5.142 In order to monitor the new D+5 Letters access service, we plan to amend our annual information gathering from stakeholders in regard to access letter volumes, and the services access operators choose, so we can monitor the impact of the new service, as well as the proportion of letters being sent by D+2 and D+5 access services.

# A1. Statutory Notification: New USP access condition (USPA)

## NOTIFICATION OF MODIFICATIONS BY MEANS OF THE REVOCATION OF THE EXISTING USP ACCESS CONDITION (USPA) AND THE IMPOSITION OF A NEW USPA PURSUANT TO SECTION 38 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### **BACKGROUND**

- (A) On 27 March 2012, following a consultation, Ofcom published a statement entitled '*Securing the Universal Postal Service: Decision on the new regulatory framework*'<sup>113</sup> 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 2013, 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*'<sup>114</sup>. Also, on 26 February 2013, Ofcom separately published a notification entitled '*Modification to the Royal Mail margin squeeze control: Statutory Notification of change to USP Access Condition 6*'<sup>115</sup> 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 2013.
- (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*'<sup>116</sup>. 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*'<sup>117</sup> 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 USP access condition referred to in recital (B) above. The statutory notification making such modifications by means of revoking that USP access condition and

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<sup>113</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

<sup>114</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-margin-squeeze/statement/Statement\\_on\\_modification\\_to\\_USPA6.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/royal-mail-margin-squeeze/statement/Statement_on_modification_to_USPA6.pdf)

<sup>115</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/83058/change\\_to\\_uspa\\_6\\_statutory\\_notification.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/83058/change_to_uspa_6_statutory_notification.pdf)

<sup>116</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/royal-mail-regulation-review>

<sup>117</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf)



imposing on Royal Mail a new USP access condition was published in Annex 7 to that statement<sup>118</sup>, 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'*<sup>119</sup> 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)"*.
- (G) On 11 November 2020, Ofcom published a consultation document entitled *"Modifications of the USP Access Condition for regulating access to Royal Mail's postal network—Proposed regulation of new D+5 Letters access services"*<sup>120</sup>. In Annex 6 to that document, Ofcom published its notification of proposals to make modifications to the Existing USPA Condition by means of revoking it and imposing on Royal Mail a new USP access condition about the matters set out in section 38 of the Act (the **"Consultation Notification"**).
- (H) Prior to our publication of the Consultation Notification, on 10 November 2020, Ofcom sent a copy of the Consultation Notification to the Secretary of State for the purposes of both paragraph 5(1)(a) of Schedule 6 to the Act and section 24A(1) of the Communications Act 2003.
- (I) Ofcom invited representations about the proposals set out in the Consultation Notification by 23 December 2020. Ofcom received responses from twelve stakeholders to the Consultation Notification.
- (J) In accordance with paragraph 3(5) of Schedule 6 to the Act, Ofcom has considered those responses in making the decision set out below to give effect, with some modifications (the nature of which are explained in the accompanying statement), to its proposals set out in the Consultation Notification. In doing so, the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of Ofcom giving effect to those proposals.

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<sup>118</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>

<sup>119</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/post-uspac-margin-squeeze>

<sup>120</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/modifications-of-usp-access-condition>

## **DECISION**

1. Ofcom hereby decides, 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 specified in the Schedule to this Notification.
2. Those modifications come into force on 5 April 2021.
3. The effects of, and Ofcom's reasons for making, this decision are set out in the statement accompanying this Notification.

## **OFCOM'S DUTIES AND LEGAL TESTS**

4. Ofcom is satisfied that this decision satisfies the general test set out in paragraph 1 of Schedule 6 to this Act, that it is appropriate for the purposes specified in section 38(4) of the Act, and Ofcom has had regard to such other factors referred to in section 38 as are relevant to this decision.
5. In making this decision, 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.
6. A copy of this Notification has been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act and section 24A(1) of the Communications Act 2003.

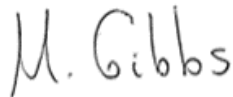
## **INTERPRETATION**

7. 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).
8. In this Notification—
  - (a) **"Act"** means the Postal Services Act 2011 (c.5);
  - (b) **"Consultation Notification"** has the meaning given to it in **recital (G)** to this Notification;
  - (c) **"Existing USPA Condition"** means the USP access condition referred to in **recital (E)** to this Notification;
  - (d) **"Ofcom"** means the Office of Communications;
  - (e) **"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.
9. 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.

**10.** The Schedule to this Notification shall form part of this Notification.

Signed by

A handwritten signature in dark ink, appearing to read 'M. Gibbs'.

**Marina Gibbs**

**Director of Post**

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

**5 March 2021**

## SCHEDULE

### USP ACCESS CONDITION D+2 ACCESS and D+5 ACCESS

#### 1. Application, definitions and interpretation

USPA 1.1	This USP access condition (" <b>USPA Condition</b> ") 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</u> ("<b>IMC</b>") for the purposes of providing both—</p> <p>(a) <u>D+2 and later than D+2 Letters and Large Letters services</u> ("<b>D+2 Access</b>"); and</p> <p>(b) <u>D+5 and later than D+5 Letters services</u> ("<b>D+5 Access</b>").</p>
USPA 1.3	<p>In this <u>USPA Condition</u>—</p> <p>(a) "<b>Act</b>" means the Postal Services Act 2011 (c.5);</p> <p>(b) "<b>access</b>" 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) "<b>Access Operator</b>" 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) "<b>Access Terms and Conditions Change Notice</b>" has the meaning given to it in USPA 7;</p> <p>(d) "<b>Costing Manual</b>" has the meaning given to it in USP accounting condition 1.1.2(f);</p> <p>(e) "<b>D+2 Access Operator</b>" 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) "<b>D+5 Access Operator</b>" 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) "<b>D+2 Access</b>" 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) "<b>D+5 Access</b>" 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;</p>

	<p>(g) <b>"D+2 Access Contract"</b> 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) <b>"D+5 Access Contract"</b> 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) <b>"D+2 and later than D+2 Letters and Large Letters services"</b> 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) <b>"D+5 and later than D+5 Letters services"</b> 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) <b>"Directed Adjustments"</b> 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>Access Operators</u> with regards to accessing the <u>universal service provider's</u> network;</p> <p>(j) <b>"Downstream Costs"</b> 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) <b>"General Overheads"</b> has the meaning given to it in the Regulatory Accounting Guidelines;</p> <p>(l) <b>"Inward Mail Centre" or "IMC"</b> 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) <b>"Letters"</b> means any item up to length 240mm, width 165mm, thickness 5mm, and weighing no more than 100g;</p> <p>(n) <b>"Large Letters"</b> 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) <b>"public holiday"</b> 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) <b>"Regulatory Accounting Guidelines"</b> means the Schedule to the Direction given by <u>OFCOM</u> on 18 December 2017 under</p>
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	<p>the USP Accounting Condition set by <u>OFCOM</u> on 18 December 2017;</p> <p>(q) <b>“regulatory condition”</b> means any condition of authorisation set by <u>OFCOM</u> under the <u>Act</u>;</p> <p>(r) <b>“related person”</b> 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) <b>“Relevant Access Service”</b> 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) <b>“Relevant Contracts”</b> 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) <b>“Relevant Downstream Revenue”</b> has the meaning given to it in USPA 6 below;</p> <p>(v) <b>“Relevant End to End Revenue”</b> has the meaning given to it in USPA 6 below;</p> <p>(w) <b>“Relevant Period”</b> 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) <b>“Relevant Retail Services”</b> has the meaning given to it in USPA 6.8;</p> <p>(y) <b>“Relevant Upstream Costs”</b> has the meaning given to it in USPA 6 below;</p> <p>(z) <b>“Relevant Upstream Revenue”</b> has the meaning given to it in USPA 6 below;</p> <p>(aa) <b>“Royal Mail”</b> means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203;</p> <p>(bb) <b>“Standard Terms and Conditions”</b> 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>
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	<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) “<b>Statement of Notice</b>” has the meaning given to it in USPA 7.5 below;</p> <p>(dd) “<b>Statement of Process</b>” has the meaning given to it in USPA 4.1 below;</p> <p>(ee) “<b>Upstream Services</b>” has the meaning given to it in the <u>Regulatory Accounting Guidelines</u>;</p> <p>(ff) “<b>USPA Condition</b>” 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) “<b>working day</b>” 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.
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### **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 "<b>Statement of Process</b>") that will apply to requests by <u>Access Operators</u> for—</p> <p>(a) <u>D+2 Access</u> and variations to existing <u>D+2 Access Contracts</u> made to it; and</p> <p>(b) <u>D+5 Access</u> and variations to existing <u>D+5 Access Contracts</u> made to it.</p>
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	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.
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— <b>(a)</b> <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u> ; or <b>(b)</b> <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u> , 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.
USPA 4.4	On receipt of a written request for either— <b>(a)</b> <u>D+2 Access</u> or a variation to an existing <u>D+2 Access Contract</u> ; or <b>(b)</b> <u>D+5 Access</u> or a variation to an existing <u>D+5 Access Contract</u> ; 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 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.

## **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> or <u>D+5 Access</u> .
USPA 5.2	In this <u>USPA Condition</u> , 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"> <li>(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</li> <li>(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>.</li> </ul>
USPA 5.4	<p>USPA 5.3 shall not apply in so far as—</p> <ul style="list-style-type: none"> <li>(a) <u>OFCOM</u> may consent in writing;</li> <li>(b) every person to whom the information relates has consented in writing to its disclosure or use as mentioned in USPA 5.3;</li> <li>(c) the disclosure is to, or the use is by, a person who— <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> <li>(iii) is restricted by contract with the <u>universal service provider</u> from making any further disclosure or use of the information; or</li> </ul> </li> <li>(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</li> <li>(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.</li> </ul>

## 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> <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 any relevant surcharges related to the supply of those services during the <u>Relevant Period</u>.</p>
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"> <li>(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;</li> <li>(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"> <li>(i) prices;</li> <li>(ii) volumes;</li> <li>(iii) date that the <u>Relevant Contract</u> was signed or most recently amended;</li> <li>(iv) length of the <u>Relevant Contract</u> if applicable; and</li> </ul> </li> <li>(c) such other information as <u>OFCOM</u> considers necessary in order to enable it to ensure compliance with the requirements of USPA 6.</li> </ul>
USPA 6.8	<p>In this <u>USPA Condition</u>, “<b>Relevant Retail Services</b>” means all of the following retail services provided by <u>Royal Mail</u>—</p> <ul style="list-style-type: none"> <li>(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"> <li>(1) Mailmark Letters / Business Mail Large Letters;</li> <li>(2) Mailmark Advertising Letters / Large Letters;</li> <li>(3) Mailmark Advertising Sustainable Entry Letters / Large Letters;</li> <li>(4) Mailmark Advertising Sustainable Intermediate Letters / Large Letters;</li> <li>(5) Mailmark Partially Addressed Letters / Large Letters;</li> <li>(6) OCR Letters / Business Mail Large Letters;</li> <li>(7) OCR Advertising Letters / Large Letters;</li> <li>(8) OCR Advertising Sustainable Entry Letters / Large Letters;</li> <li>(9) OCR Advertising Sustainable Intermediate Letters / Large Letters;</li> </ul> </li> </ul>

	<p>(10) 70 Letters / Business Mail Large Letters;</p> <p>(11) 70 Advertising Letters / Large Letters;</p> <p>(12) 70 Advertising Responsible Entry Letters / 70 Advertising Sustainable Entry Large Letters;</p> <p>(13) 70 Advertising Responsible Intermediate Letters / 70 Advertising 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 Advertising Sustainable Entry Letters / Large Letters;</p> <p>(17) 1400 Advertising 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>(b)</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><b>(c)</b> 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> or a <u>D+5 Access Contract</u> a written notice of any amendment to the charges under the <u>D+2 Access Contract</u> or 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></p>

	<p>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> or 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 "<b>Statement of Notice</b>"). 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> <ul style="list-style-type: none"> <li>(a) a description of the <u>Standard Terms and Conditions</u> that are the subject of the amendment(s);</li> <li>(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 “<b>effective date</b>”); and</li> <li>(c) the current and proposed new <u>Standard Terms and Conditions</u> affected by the amendment(s).</li> </ul>
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> <ul style="list-style-type: none"> <li>(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</li> <li>(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>.</li> </ul>

## **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 8.1A	<p>The obligation in USPA 8.1 includes without limitation a requirement on the <u>universal service provider</u> to publish on <u>Royal Mail</u>'s website information in relation to its estimated provision of <u>D+5 Access</u> to <u>D+5 Access Operators</u>.</p> <p>That information must show, in particular, the total volume of <u>Letters</u> estimated through survey (or other equivalent means) to have been delivered by the <u>universal service provider</u> through its provision of <u>D+5 Access</u> for each quarter and for each year as a whole, respectively, broken down and expressed as a percentage of that volume as follows—</p> <ul style="list-style-type: none"> <li>(a) <u>Letters</u> estimated to have been delivered on the next <u>working day</u> after ‘X’;</li> <li>(b) <u>Letters</u> estimated to have been delivered on the second <u>working day</u> after ‘X’;</li> </ul>



	<p>(c) <u>Letters</u> estimated to have been delivered on the third <u>working day</u> after 'X'; and</p> <p>(d) <u>Letters</u> estimated to have been delivered on the fourth <u>working day</u> after 'X',</p> <p>where "X" means the <u>working day</u> on which a <u>D+5 Access Operator</u> handed over the <u>Letters</u> to the <u>universal service provider</u> at the IMC.</p> <p>References to a "quarter" are references to each period of three consecutive months comprised in any period of twelve consecutive months, the first quarterly period of which begins on 28 June 2021, and references to a "year" are references to any period of twelve consecutive months, the first annual period of which begins on 28 March 2022.</p>
USPA 8.1B	<p>The <u>universal service provider</u> shall publish the information specified in USPA 8.1A—</p> <p>(a) in relation to each quarter, within 60 <u>working days</u> after the end of the quarter for which the information relates and has been prepared;</p> <p>(b) in relation to each year as a whole, within 60 <u>working days</u> after the end of the year for which the information relates and has been prepared.</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.*

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

## A2. Royal Mail's letter to Ofcom

- A2.1 This letter has been [published separately](#) on Ofcom's website. It was first published alongside the consultation (as Annex 5).