



Proposed direction relating to
exceptions to the postal
collections Universal Service
Obligation, and minor
amendment to Designated
Universal Service Provider
Condition 1

Consultation

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Contents

Section		Page
1	Summary	1
2	Introduction	3
3	Relevant legal framework	6
4	Ofcom's assessment and proposed changes to the direction and designated USP condition	10

Annex		Page
1	Responding to this consultation	23
2	Ofcom's consultation principles	25
3	Consultation response cover sheet	26
4	Statutory Notification: proposed direction under designated USP condition 1.3.2 and 1.3.2A regarding collections	28
5	Statutory Notification: proposed modification of designated USP condition 1.8	35
6	Marked up version of DUSP condition 1.8	38

Section 1

Summary

- 1.1 The Postal Services Act 2011 (“the Act”) sets out that as part of the universal service in the United Kingdom, there must be a collection every Monday to Saturday of letters, and every Monday to Friday of other postal packets, from public access points. Ofcom secures this by designating Royal Mail as the universal service provider (“USP”) and by imposing on it a designated USP condition (“DUSP condition”) which, among other things, requires it to provide daily collections.
- 1.2 However, Section 33(2)(b) of the Act states that the obligation to make daily collections does not need to be met in such geographical conditions or other circumstances as Ofcom consider to be exceptional. Ofcom can specify the circumstances we consider to be exceptional by making a direction.
- 1.3 The universal service obligation, fulfilled by Royal Mail, is central to the role that post plays in society and is relied upon by many residential users and small and medium businesses. Ofcom’s ‘Review of Postal Users’ Needs’, published in March 2013, found that post is highly valued by residential users and businesses across the UK.¹ Ofcom takes the issue of exceptions to Royal Mail’s obligations to provide those services very seriously.
- 1.4 The existing direction, which was made by Postcomm on 7 December 2010 (“the Postcomm Collections Direction”)², will expire on 31 December 2013. We consider that there is an ongoing need to have clear rules and procedures that govern the exceptions to the collection obligations (“collection exceptions”).
- 1.5 This consultation document comprises our formal notification of our proposal to make the direction and an explanatory statement setting out our reasons for proposing to make the direction and the effect of the proposals.
- 1.6 In general, subject to consultation responses, we consider that the current arrangements are proportionate and effective. However, we have identified a number of areas where we can make improvements:
 - Setting out all the relevant requirements relating to collection exceptions in the direction itself, rather than relying on references in policy documents.
 - No longer differentiating between permanent and temporary collection exceptions, a distinction which had little practical effect.
 - Clearly distinguishing between the circumstances which we consider to be exceptional, and the processes and procedural matters we require in association with determining specific cases.

¹ Ofcom, *Review of Postal Users’ Needs – Statement*, March 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-user-needs/statement/statement1.pdf>

² Link to the 2010 direction, which extended the direction already in place can be found here: <http://stakeholders.ofcom.org.uk/binaries/post/1568.pdf>, The direction which was extended in 2010 can be found here: http://webarchive.nationalarchives.gov.uk/20091003032515/http://www.psc.gov.uk/postcomm/live/policy-and-consultations/consultations/universal-service--services-to-be-provided-exceptions/2008_10_01_Direction_Collections_letterpolicydirection_v1_0.pdf

- Defining more clearly why circumstances are ‘exceptional’ in the case of business boxes.
 - Allowing postal users to appeal exceptions at any time (currently there is a time limit after which no appeals can be made).
 - Requiring steps to be taken to protect users, particularly users whose circumstances may mean that they are vulnerable.
 - Reducing repetition in the drafting.
 - Making the direction permanent rather than time limited as is currently the case.
- 1.7 We have also identified a need for a minor change to DUSP Condition 1.8. This is to ensure that access points that are subject to exceptional circumstances do not count towards compliance with the post box density obligation. We are therefore also consulting on making this minor change. This consultation document comprises:
- an explanatory statement setting out our reasons for proposing to make the direction and condition modification, and the effect of the proposals;
 - our formal notification of our proposal to make the direction – Annex 4; and
 - our formal notification of our proposal to modify the DUSP Condition – Annex 5.
- 1.8 We seek feedback from interested parties. Ofcom invites comments on this proposal by 22 November 2013.
- 1.9 We are also consulting on exceptions to the postal deliveries universal service obligation and that consultation was published alongside this document.

Section 2

Introduction

Relevant background

- 2.1 As noted above, the Act sets out that as part of the universal service in the United Kingdom, there must be a collection every Monday to Saturday of letters, and every Monday to Friday of other postal packets, from public access points. We secure this by designating Royal Mail as the universal service provider and by imposing on it a DUSP condition which, among other things, requires it to provide daily collections. However, Section 33(2)(b) of the Act states that the obligation to make daily collections does not need to be met in such geographical conditions or other circumstances as Ofcom consider to be exceptional.
- 2.2 Ofcom specifies the circumstances we consider to be exceptional by making a direction under DUSP condition 1.3.2. The Postcomm Collections Direction will expire on 31 December 2013.
- 2.3 As noted above, Ofcom takes very seriously the issue of exceptions to Royal Mail's obligations to provide those services. Although collection exceptions apply to a small proportion (about 1.8%) of all post boxes³, it is important that the circumstances Ofcom considers to be exceptional are clearly set out for users and Royal Mail.
- 2.4 We provisionally consider that there is an ongoing need to specify exceptions to the universal service obligation to collect letters or postal packets from access points.
- 2.5 The Postcomm Collections Direction deals not only with the circumstances which Ofcom consider to be exceptional, but also with various procedural matters. On this point, at the time of issuing this consultation, the period for comments on a separate consultation had just closed (7 October 2013).⁴ That consultation proposes to amend the DUSP condition to add a new provision DUSP 1.3.2A, to read:

“OFCOM may by direction impose requirements for the universal service provider—

- (a) to establish and comply with procedures in relation to determining whether the circumstances specified in any direction issued under DUSP 1.3.2 have arisen in any particular case;
- (b) to establish and comply with reporting and notification obligations in relation to such exceptions; and
- (c) to make alternative delivery or collection arrangements where appropriate.”

- 2.6 The intention of this change is to make it clearer that Ofcom's direction-making power may be used to require the universal service provider to make arrangements of this

³ There were 2,134 collection exceptions (taken from Royal Mail's annual list of exceptions 2012) and around 115,500 post boxes according to Ofcom's review of access points. This figure does not include post offices.

⁴ *Technical and minor amendments in postal regulation - Notifications of proposed technical and other minor amendments to the Universal Postal Service Order and related conditions*, (Ofcom) 5 September 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/post/summary/condoc.pdf>.

type, and enable us to separate the definition of what is “exceptional” from associated procedural matters. This consultation document assumes that the amendment will be implemented as Ofcom proposed. However, clearly that is subject to Ofcom’s review of the consultation responses on the change to add DUSP1.3.2A.

- 2.7 We therefore propose to issue a direction to replace the Postcomm Collections direction, under DUSP condition 1.3.2 and (subject to the consultation responses to the separate consultation proposing a new DUSP condition 1.3.2A) under DUSP condition 1.3.2A.
- 2.8 The remainder of this document is structured as follows:
- Section 3 sets out the legal framework;
 - Section 4 sets out our assessment of the Postcomm Collection Direction and proposed changes, including a consequential minor modification to DUSP condition 1.8;
 - Annex 4 is our formal notification of our proposed direction;
 - Annex 5 is our formal notification of our proposed instrument modifying DUSP condition 1.8;
 - Annex 6 is an informal mark up of DUSP condition 1.8 showing how it would look if amended as proposed.
- 2.9 Ofcom invites comments on the proposed direction and instrument by 22 November 2013. Following our consideration of the responses we will aim to issue a direction before 31 December 2013.

General impact assessment

- 2.10 The analysis presented in Section 4 of this document constitutes an impact assessment, as defined in section 7 of the Communications Act 2003 (the “2003 Act”).
- 2.11 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the 2003 Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom’s approach to impact assessments, see our guidelines⁵.
- 2.12 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, in relation to what we propose.

⁵ *Better Policy Making – Ofcom’s approach to Impact Assessment*, Ofcom, 21 July 2005
http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

Equality impact assessment

- 2.13 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply¹⁰. Equality impact assessments (EIAs) assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity. We have given careful consideration to whether or not our proposal to extend the direction will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. Our assessment of the potential impact on equality of certain groups is outlined below.
- 2.14 While we have not received any evidence to suggest that the Postcomm Collections Direction has been to the detriment of any particular group in society, certain aspects of the direction have the potential to impact protected groups more than the rest of society. For example, certain people may find it difficult to travel further to an alternative access point. However, this impact is mitigated by the regulatory obligation on Royal Mail under DUSP 1.8.1 and 1.8.2 to procure the provision of post boxes and other access points for the purpose of providing universal postal services. The density obligation is such that there has to be a post box within half a mile of 98% of users of postal services and for the remaining 2% Royal Mail must provide or procure the provision of access to the universal service in a manner which sufficiently meets the reasonable needs of such users.
- 2.15 We provisionally consider that for the most part, any impacts may be mitigated by other aspects of the direction, and that where there is no alternative the impacts represent a proportionate means of achieving a legitimate aim (the protection of the health and safety of Royal Mail employees and the avoidance of the universal service representing a disproportionate cost to society). Ofcom also has a duty to further the interests of consumers and citizens and issuing a direction setting out when exceptions can be made provides clarity and certainty to Royal Mail and users and reduces Royal Mail's ability to apply inconsistent exceptions or exceptions for reasons other than those set out in the direction. Also, Royal Mail itself is subject to the Equality Act 2010 in relation to its provision of services to the public.
- 2.16 We set out in section 4 how we propose to deal with these matters in our proposed direction.

Section 3

Relevant legal framework

The universal service

3.1 Section 31 (Minimum requirements) of the Act “sets out the services that must, as a minimum, be included in a universal postal service”. It goes on to set out seven minimum requirements. In this document we are concerned with Requirement 2: collection of letters or other postal packets”, which states:

(1) At least one collection of letters every Monday to Saturday from every access point in the United Kingdom used for the purpose of receiving postal packets, or any class of them, for onwards transmission in connection with the provision of a universal postal service.

(2) At least one collection of other postal packets every Monday to Friday from every access point in the United Kingdom used for that purpose.

(3) The reference in this requirement to the onwards transmission of letters or other postal packets include their onwards transmission to place outside the United Kingdom.

3.2 Ofcom secures this by designating Royal Mail as the universal service provider and by imposing on it a DUSP condition which, among other things, requires it to make daily collections.

3.3 Under Schedule 6 paragraph 2(1), Ofcom’s power to impose a regulatory condition includes a power to impose a requirement to comply with directions given by Ofcom with respect to the matters to which the condition relates.

Exceptions to the universal service

3.4 Under section 33(2) of the Act:

“The requirements in section 31 in respect of the delivery or collection of letters or other postal packets (requirements 1 and 2):

- a) do not need to be met on any day which is (in part of the United Kingdom concerned) a public holiday, and
- b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.

3.5 In accordance with section 33(2) of the Act and the Order, DUSP condition 1.3.2 permits the following exceptions to Royal Mail’s universal service obligations:

“The requirements in this DUSP Condition in respect of the delivery or collection of postal packets and the target routing times of services do not need to be met:

- a) on any day which is (in the territory concerned) a public holiday; or

- b) in such geographic conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes.”

Related matters

- 3.6 The Postcomm Collections Direction deals not only with the circumstances which Ofcom consider to be exceptional, but also various procedural matters and obligations relating to alternative collection arrangements. As at the date we are publishing this consultation, a separate consultation has just closed on 7 October 2013⁶, on amending the DUSP condition to add a new provision DUSP condition 1.3.2A, to read:

“OFCOM may by direction impose requirements for the universal service provider—

- (a) to establish and comply with procedures in relation to determining whether the circumstances specified in any direction issued under DUSP condition 1.3.2 have arisen in any particular case;
 - (b) to establish and comply with reporting and notification obligations in relation to such exceptions; and
 - (c) to make alternative delivery or collection arrangements where appropriate.”
- 3.7 This would make it clearer that Ofcom’s direction-making power may be used to require the universal service provider to make arrangements of this type, and enable us to separate the definition of what is “exceptional” from associated procedural matters. The current consultation assumes that the amendment will be implemented as Ofcom proposed, but that is clearly subject to Ofcom’s review of all consultation responses.

Test for giving a direction and modifying a regulatory condition

- 3.8 Paragraphs 3 and 4 of Schedule 6 of the Act respectively set out the procedure which Ofcom must follow to modify a regulatory condition or give a direction affecting a regulatory condition imposed on a postal operator, including where Ofcom wishes to give a direction under DUSP condition 1.3.2 and 1.3.2A.
- 3.9 Under paragraphs 1 and 4(2) of Schedule 6 respectively, Ofcom may only impose or modify a regulatory condition, or give a direction if satisfied that to do so:
- is objectively justifiable;
 - does not discriminate unduly against particular persons or a particular description of persons;
 - is proportionate to what it is intended to achieve; and
 - is transparent in relation to what it is intended to achieve.

⁶ *Technical and minor amendments in postal regulation - Notifications of proposed technical and other minor amendments to the Universal Postal Service Order and related conditions*, (Ofcom) 5 September 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/post/summary/condoc.pdf>.

- 3.10 In accordance with paragraph 3(3) and 4(3) of Schedule 6, before modifying the condition or giving the direction, Ofcom must publish a notification stating that there is a proposal to do so. The notification must:
- set out Ofcom’s proposal and its effect;
 - give reasons for the making of the proposal; and
 - specify the period within which representations may be made about the proposal. This must be at least one month beginning with the day after the day the notification is published, unless there are exceptional circumstances justifying a shorter period.

General duties

- 3.11 Ofcom’s duty to secure the provision of a universal postal service is set out in section 29 of the Act. In this respect, section 29(1) provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service.
- 3.12 Section 3 of the Communications Act 2003 (the “2003 Act”) provides that it shall be Ofcom’s principal duty, in carrying out our functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 3.13 This principal duty applies also to functions carried out by us in relation to postal services. Section 3(6A) of the 2003 Act provides that where we are carrying out any of our functions in relation to postal services, the duty under section 29 of the Act takes priority over our general duties in the 2003 Act in the case of conflict between the two.
- 3.14 In performing our general duties, we are also required under section 3(4) of the 2003 Act to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations appear potentially relevant, including:
- the opinions of consumers in relevant markets and of members of the public generally; and
 - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 3.15 Section 3(5) of the 2003 Act provides that in performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 3.16 Pursuant to section 3(3) of the 2003 Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.

3.17 In this regard, we note Ofcom's general regulatory principles⁷ including in particular the following in the present context:

- ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
- seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and
- consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.

3.18 Finally, we have an ongoing duty under section 6 of the 2003 Act to keep the carrying out of our functions under review with a view to ensuring that regulation by Ofcom does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.

⁷ A full list of the principles can be found here: <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

Section 4

Ofcom's assessment and proposed changes to the direction and designated USP condition

Introduction

4.1 The Postcomm Collections Direction has been (with minimal changes) in place since 2006⁸, and was last extended in 2010 by Postcomm. The direction and associated policy set out:

- the duration of the direction;
- the circumstances in which exceptions can be made;
- the requirement to provide details on or near the access point as to when collections will be made, consider providing reasonable alternative arrangements in some circumstances and provide contact details;
- the requirement to provide Ofcom and Consumer Futures with an annual report of exceptions which have been in place for twelve months or more (or every four months for temporary exceptions that have been in place for twelve months or more); and
- details of the appeals process.

Categories of exceptions

4.2 The Postcomm Collections Direction currently defines exceptions as either long-term exceptions or short-term exceptions.

4.3 The only reason in the Postcomm Collections Direction for long-term exceptions is difficulty of access. Long-term exceptions relate to post boxes from which Royal Mail makes collections on a consistent basis, but not six days per week all year. Therefore, for all long term collection exceptions, there will still be collections on certain days or certain times of the year. Examples include:

- part-time Post Offices, i.e. that are open only on certain days of the week;
- post boxes inside other buildings that are not open six days a week, for example, office buildings which are closed on Saturdays; and
- post boxes in locations where transport infrastructure does not allow six days per week access, e.g. islands where the ferry service is not daily.

4.4 Business boxes are post boxes solely used for the posting of pouches of meter mail and outer posting envelopes for low volumes of meter mail. They are a separate

⁸ The policy was amended in 2010 in order to reflect the Consumers, Estate Agents and Redress Act which amongst other things abolished Postwatch and created Consumer Focus.

category of the direction and not formally categorised as long-term or short-term, but in practice these are long-term exceptions which only relate to Saturdays.

- 4.5 Short term exceptions are where no collections can be made from an access point due to either health and safety or difficulty of access. Examples of short-term exceptions on difficulty of access grounds include:
- post boxes being inaccessible due to road closures, building/demolition work etc;
 - post boxes damaged by accident or vandalism;
 - birds nesting in the post box; and
 - post-offices being temporarily closed due to staff shortages.
- 4.6 Short-term exceptions on health and safety grounds include:
- temporary post box closures due to crime and/or threatening behaviour, animal attacks or infestation, persistent damage e.g. continual vandalism, etc.;
 - preventative closure to avoid damage e.g. from fireworks in October/ November; and
 - changes to traffic flow making it unsafe to park or pull out after collection.
- 4.7 Table 1 below sets out the current number of collections exceptions in total and in each of the categories described above (long term exception figures are as of March 2013 and short term exceptions are as of July 2013).

Table 1: Number of collection exceptions

Categories of exception	Volume
Long-term exceptions (as of March 2013)	2,001
- Business boxes	1,234
- Other difficulty of access	767
Short-term exceptions (in July 2013)	133
- Difficulty of access	120
- Health and safety	13
Total collections exceptions	2,134

Source: Royal Mail 2013

- 4.8 Collections exceptions do not currently cover circumstances that might be described as emergencies, such as widespread flooding, epidemic disease or security alerts.

This is because Section 33(3)(a) of the Act states that nothing in Section 31 of the Act on the minimum requirements is to be read as “requiring a service to continue without interruption, suspension or restriction in cases of an emergency”. We have reflected this in the DUSP condition. However, DUSP 1.11.1 requires the universal service provider to maintain appropriate contingency plans to ensure as far as practicable the provision of the universal service (including daily collections) without interruption, suspension or restriction in the event locally, regionally or nationally of an emergency, and to implement those plans as appropriate where such events occur.

Ofcom’s assessment and proposals

User satisfaction with the current arrangements

- 4.9 In order to consider whether the current arrangements are satisfactory to users of the universal postal service we have:
- reviewed relevant Ofcom market research;
 - reviewed complaints received by Ofcom and Royal Mail; and
 - asked Consumer Futures, the consumer organisation with responsibility for postal users’ issues, for its opinion.
- 4.10 Ofcom’s quantitative residential ‘tracker’ survey from 2013 includes research into users’ satisfaction with the provision of post boxes. This showed that 82% of UK users were very or fairly satisfied with the number of days the post box was emptied, compared to 92% of users’ located off-shore. It also showed that 81% of both UK and off shore users were very or fairly satisfied with the location of post boxes in their local area”.⁹ We note that these general levels of satisfaction are encouraging, but would not capture the concerns of users directly affected by exceptions as there are such a small number of these.
- 4.11 We have reviewed the complaints received directly by Ofcom since we took over responsibility for postal regulation in October 2011. Out of a total of 1,011 complaints on postal issues we have identified seven complaints regarding post box provision. Of these only two related to collection exceptions, the other five cases related to post box removals. We have received three letters from MPs or other elected representatives regarding post box removals, but not about collection exceptions. We have also reviewed the data¹⁰ provided by the Citizens Advice consumer service¹¹. The number of contacts received about collection problems generally (these might not necessarily relate to collection exceptions) represents a very small proportion of total contacts about Royal Mail.
- 4.12 We have also reviewed complaints received by Royal Mail. Between 1 January 2013 and 1 July 2013, Royal Mail received 474,856 complaints about its service, of which 106 related to post box removal, replacement or closure. Of these nine were escalated to the Postal Review Panel (meaning the customer was dissatisfied with

⁹ <http://stakeholders.ofcom.org.uk/market-data-research/statistics/>

¹⁰ Based on number of contacts received by the consumer service between April 2012 and March 2013 and which were categorised as concerning Royal Mail and collection problems.

¹¹ The Citizens Advice consumer service provides free, confidential and impartial advice on consumer issues.

the response to the original complaint) and six related to removal or failure to replace a post box. None of these escalated cases resulted in an appeal to Ofcom.

- 4.13 Consumer Futures has told us that it routinely reviews the annual reports provided by Royal Mail in order to identify if there have been any marked increases in the number of collection exceptions and also would review any case brought to its attention by its regional offices in the Nations¹². It has confirmed that since the creation of Consumer Focus (the forerunner of Consumer Futures) in 2008, there have been no such increases in numbers of exceptions, and it has not identified any concerns associated with exceptions. Its overall view is that the current approach to collection exceptions is working effectively.

Appropriate categories of exceptions

- 4.14 In our review we have considered whether the current categories of collections exception are appropriate and whether they provide sufficient transparency of the reasons for the collections exceptions. In summary we propose to:

- remove the distinction between long-term and short-term collections;
- simplify health and safety exceptions;
- specify more detailed sub-categories for difficulty of access;
- define the business boxes exception more transparently; and
- define anticipatory closures as a specific category.

Long-term and short-term collections exceptions

- 4.15 Our review has identified that the distinction between long and short term exceptions in the Postcomm Collections Direction has no practical impact on Royal Mail. The distinctions which matter more are those which trigger specific obligations, for example, reporting obligations for exceptional circumstances which persist for four and twelve months, and a duty to consider taking action triggered at six months.
- 4.16 We therefore propose to remove the distinction between long term and short term categories in our definition of exceptional circumstances, and to refer where relevant merely to the length of time for which exceptional circumstances have existed.

Health and safety category

- 4.17 Ofcom provisionally remains of the view that health and safety risks should in principle be considered exceptional circumstances such that the universal service provider should not be required to provide daily collections from affected access points. Health and safety exceptions may arise in relation to crime and/or threatening behaviour around access points, animal attacks or infestation, persistent damage for example continual vandalism, and changes to traffic flow making it unsafe to park or pull out after collection.
- 4.18 We consider that the direction could be clearer than it is at present about when a health and safety-related exception would apply. In particular, it could be clearer that

¹² This is in addition to considering any issues brought to their attention e.g. by press articles, MP contact etc.

the exception arises when a hazard arises, rather than only after the hazard has been formally assessed by Royal Mail. Therefore, at paragraphs 5 and 6 of the proposed direction we have set out that a collections exception for health and safety reasons is one that involves an “immediate hazard to the health or safety of employees, sub-contractors or agents of Royal Mail”, where there is “no reasonable alternative means of overcoming the hazard”. We also intend to clarify when and how an assessment must be made and the proposed direction specifies “Where such a collections exception lasts longer than two weeks it must be evidenced by a formal health and safety risk assessment and a general assessment of the circumstances, which must be conducted by an appropriately competent and experienced individual”.

Difficulty of access category

4.19 Ofcom provisionally remains of the view that difficulty of access should in principle be considered exceptional circumstances such that the universal service provider should not be required to provide daily collections from affected access points. The alternative would be to maintain an obligation on the universal service provider which in some cases would be impossible to meet, and in others could not be met without disproportionate cost and disruption in the provision of the universal service.

Difficulty of access: lack of road access

4.20 Some places in the United Kingdom (usually islands) are not reachable by land. Access relies on scheduled air and/or ferry services from the Great Britain or Northern Ireland mainland. For some of these places, a scheduled service does not run every day from Monday to Saturday. In order for Royal Mail to collect from these locations six days a week, it would be necessary to make alternative arrangements to normally scheduled travel services. In practice, this could mean creating new travel infrastructure on days when existing services do not run.

4.21 Ofcom provisionally remains of the view that it would not be reasonable to require Royal Mail to collect postal packets on other days when there is no operationally compatible scheduled transport service, and there are no alternative means of access. However, we also remain of the view that it is appropriate for such users to have a collection at least once a week. The proposed direction therefore provides, in paragraph 7, that:

- Access points located in places that can only be accessed by water or air from the nearest delivery office on the mainland of Great Britain or the mainland of Northern Ireland, should be classed as exceptions to the extent that there is no operationally compatible service on the day concerned.
- The exception does not exist on the days when an operationally compatible scheduled air or ferry service is available. Collections are required on those days.
- In cases where there is no scheduled service, or any scheduled service runs less than once a week (for example, if ferry services stop in winter), Royal Mail must make arrangements to collect once a week.

Difficulty of access: third party blockage

4.22 Access problems may arise where post boxes cannot be accessed on particular days due to their location inside closed buildings or other private land. For example: post boxes that are closed for one or more working days each week (excluding satellite and mobile post offices), public boxes inside business premises which do not trade

every working day, post offices in public buildings closed at weekends and post boxes in holiday camps that are closed at certain times of the year.

- 4.23 Ofcom provisionally remains of the view that the universal service provider should not be expected to pay to access premises in order to collect mail, nor that postal workers should be required to scale fences or other physical barriers. If access is not granted, then the premises concerned will be subject to exceptional circumstances on difficulty of access grounds and we have provided for this in paragraph 8 of the proposed direction.

Difficulty of access: other causes

- 4.24 We also consider that there continues to be a risk that difficulty of access problems may arise in other circumstances, outside Royal Mail's control. For example, it may be impossible or extremely difficult for Royal Mail to collect from a box if there are nesting birds inside the access point or if there are road works barriers obstructing free access. Such scenarios would prevent access, but would not be due to third party blockage in relation to an access point in a privately controlled building or on private land as described at 4.22 above. Nor would it necessarily fall under the health and safety category. We therefore provide for this as set out in paragraph 9 of the proposed direction. We would expect to receive complaints from users or consumer bodies if Royal Mail interpreted this too liberally and we would identify any material increases in this category from the annual reporting.

Business boxes

- 4.25 Collection exceptions for business boxes (i.e. post boxes solely used for the posting of pouches of meter mail and which in many cases Royal Mail only collects from on weekdays) make up the majority of all collections exceptions (58% or 1,234 out of 2,134 collections exceptions). The argument for excepting these boxes from Saturday collections is that they are all located in city centre office areas where overwhelmingly the senders of metered mail are closed on Saturdays. Customers who need to post metered mail on a Saturday can either send small volumes via a special meter mail posting envelope in a normal box (pre-arranged with the local delivery office) or may choose to pay for a business collection.
- 4.26 Therefore, we provisionally remain of the view that it is reasonable that most business boxes continue to be excepted from Saturday collections and propose to treat business boxes as a separate category of collection exception.
- 4.27 Currently, the 'exceptional circumstances' defined in the direction are that collections were not routinely made on Saturdays prior to 1 October 2006. We are concerned that as time goes on it is increasingly difficult for Ofcom to be satisfied that any exceptional circumstances which existed in 2006 still do exist. Therefore, this drafting needs to be clarified. We propose to clarify in the direction that as part of its annual review of exceptions, Royal Mail will need to consider whether the absence of demand still applies in relation to these access points:
- on a Saturday; and
 - in relation to metered mail items contained within an outer posting envelope which is greater in size than 380 mm by 255 mm by 35 mm. This refers to the maximum size of the outer posting envelope that meter mail users are permitted to post through the aperture of a normal post box in the absence of a business box on a Saturday. If the business user only needs to post volumes of mail on a

Saturday that can be accommodated in an outer posting envelope, there is no need for a separate collection to be made from the business box on a Saturday.

Anticipatory closures

- 4.28 The Postcomm Collections Direction provides that at certain times during the year, for example 5 November, Royal Mail may seal or restrict the aperture of post boxes to remove the ability to post any items larger than a letter in order to prevent the insertion of fireworks. This is for security or safety purposes to avoid damage to the box and mail, and avoid danger to Royal Mail employees and the public.
- 4.29 We provisionally remain of the view that where it is necessary to fully seal an aperture for health and safety reasons, this arrangement should continue to be dealt with as an exception to the daily collection obligation. However, we are establishing the separate category of anticipatory closures as such collections exceptions are not health and safety exceptions but rather preventative measures intended to ensure no health and safety risk arises.
- 4.30 If a post box has its aperture restricted temporarily, although this in effect temporarily makes it a post box for a reduced set of classes of postal packets, it is not an exception and does not prevent Royal Mail from removing items from the access point. Therefore, the proposed direction does not refer to restricted apertures.

Arrangements for users who may be vulnerable

- 4.31 The impact of an exception is likely to be greater on some individuals than others. For example, certain users, e.g. due to age, disability or ill health may find it more difficult to travel further to an alternative access point. Also, certain users may find complaining about an exception difficult.
- 4.32 Royal Mail (like all service providers) is subject to the Equality Act 2010 in its provision of services. Also, currently the policy statement, not the direction, requires Royal Mail, when it is contacted directly, to make an effort to reach an arrangement which causes customers who may find it difficult to travel further to an access point minimum difficulty.
- 4.33 In this context we note that the majority of collection exceptions relate to business mail boxes which are not used by residential users. However, we provisionally consider it appropriate to clarify the existing requirements (currently in the policy statement) and therefore to require that when Royal Mail becomes aware of a person who for reasons of age, disability or ill-health may be particularly disadvantaged by the suspension of an access point, Royal Mail should consider and document its view on whether it would be appropriate and proportionate to make collections in spite of any exceptional circumstances, and whether alternative arrangements ought to be made. This would mean that Royal Mail would be required to make it clear in its internal guidance for employees that the needs of users whose circumstances may mean that they are vulnerable are relevant to decisions on exceptions. Our provisional approach is in paragraph 15 of the proposed direction.
- 4.34 We have also considered the effect of the review/appeal arrangements on all users and in particular, any specific users who may be disadvantaged in bringing an appeal in respect of any exception made. For example due to age, ill health, disability or where English is not the user's first language. Paragraphs 4.48 to 4.66 below provide the detail, but in summary, we consider that it would be appropriate for the direction to require the universal service provider specifically to make appropriate facilities

available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that reason disadvantaged in the review/appeals process.

Relocation of boxes

- 4.35 The Postcomm Collections Direction requires Royal Mail to consider relocating post boxes in circumstances where temporary access or health and safety difficulties mean that collections will be suspended for six months or more.
- 4.36 However, in our statement of 13 June 2013 *Regulation of the provision of post boxes*¹³ we imposed an obligation on Royal Mail to ensure a sufficient density of post boxes. Specifically, we required Royal Mail to ensure that there is a post box within 0.5 miles of 98% of delivery points in the UK, and for the remaining 2% Royal Mail must provide or procure the provision of access to the universal service in a manner which sufficiently meets the reasonable needs of such users. (e.g. collection on delivery from very remote or isolated locations such as farmhouses).
- 4.37 As currently drafted, this density obligation may be met by any access points, including access points that are subject to exceptional circumstances, as a consequence of which collections are suspended.
- 4.38 We consider it would be inappropriate to have a regulatory regime which required a sufficient density of access points to be provided but not collected from. However, we do not think it right to resolve this problem by using the proposed direction to impose obligations to fix or relocate access points, or provide alternative access points. To do so would mean, in effect, that for Royal Mail to understand what obligations it was subject to in relation to the density of access points, it would need to look in two different places: the DUSP condition and the direction specifying exceptional circumstances.
- 4.39 We consider it would be more transparent, and would avoid the need for complicated and lengthy drafting, for us simply to amend DUSP condition 1.8 to ensure that access points that are subject to exceptional circumstances do not count towards the fulfilment of the density of access points obligation.
- 4.40 We therefore provisionally propose:
- not to make any provision requiring alternative collection arrangements to be made as part of our proposed direction; but
 - to amend DUSP condition 1.8 to ensure that access points in relation to which collections are suspended are not counted towards fulfilment of the density obligation.
- 4.41 Our notification of the proposed change to DUSP condition 1.8 is in Annex 5 and a consolidated version of DUSP condition 1.8 if amended as we propose is in Annex 6.

Notifications

- 4.42 Currently, the direction allows circumstances to be considered "exceptional" only if Royal Mail (where possible) includes certain information for customers on the display panel on the front of the post box or in a conspicuous nearby location.

¹³ <http://stakeholders.ofcom.org.uk/consultations/provision-post-boxes/statement/>

4.43 Currently, for post boxes only accessible on certain days, that information is:

- collection days;
- reasonable alternative collection arrangements; and
- Royal Mail's Customer Services telephone number.

4.44 Currently, for post boxes subject to other kinds of exceptional circumstances, that remain closed for less than six months, Royal Mail must (where possible) attach an information notice to the box informing users of:

- the reasons for the temporary exception (including, for health and safety exceptions, the conclusion that the hazard requires the immediate suspension of the daily collection of postal packets),
- the location of the three nearest alternative boxes;
- where known, the anticipated date of daily collections resuming; and
- Royal Mail's Customer Services telephone number.

4.45 Ofcom provisionally considers that users of access points should continue to be notified of the reasons why a daily collection is not being made, where they can go to post their items and who they may call to complain.

4.46 However, we provisionally consider that only providing a telephone number for enquiries about the exception could constitute an unnecessary barrier for those who have difficulty using the phone. Therefore, it would be desirable for Royal Mail to set out all the ways it may be reached by a user. We consider that the cost of this change to Royal Mail is proportionate since the overall number of collection exceptions is low, and the cost of applying the required details to the post box, (e.g. a Royal Mail employee attaching a sticker while on their normal round or with minimum need for additional travel as excepted boxes would originally have been on a normal round) would be minimal. Royal Mail already accepts enquiries and complaints by telephone, email and post.

4.47 Ofcom's provisional approach to notifications is set out in paragraphs 12 to 14 of the proposed direction.

Reviews and appeals

4.48 Over time, the universal service provider may not be aware of changes to circumstances such that collections could resume.

4.49 In the current policy statement, there is a requirement for Royal Mail to report long term exceptions to Ofcom and Consumer Futures following an annual review. However, this only applies to long term exceptions and the requirement to review is not set out explicitly in the direction itself.

4.50 Ofcom provisionally considers that it remains appropriate for Royal Mail to annually review the circumstances relating to every exception. This allows Royal Mail to identify if those circumstances have changed and ensures that reporting to Ofcom is accurate. We therefore propose to include in the direction the requirement to review all exceptions on an annual basis, for example whether circumstances have

changed, e.g. ferry timetables affecting collection times or third party access to premises.

- 4.51 The Postcomm Collections Direction is silent as to whether Royal Mail is required to carry out a review on request of whether exceptional circumstances exist. We consider it important that the universal service provider be required to react on a timely basis to such requests and our proposed direction requires Royal Mail to complete a review within one month of a request. It would be open to Royal Mail to consider the extent to which it was appropriate to rely on any information previously obtained in relation to such a review, or whether new information was needed. The decision would, however, be subject to the normal review and appeals process.
- 4.52 The Postcomm Collection Direction requires Royal Mail to carry out reviews and escalate disputed exception decisions internally before they may finally be appealed to Ofcom. The process is designed to ensure Royal Mail can take day-to-day decisions requiring knowledge of local conditions at an appropriate operational level. However it must still escalate cases in which it says exceptional circumstances have arisen, for a review at an appropriately senior level, where there is any dispute between it and the persons affected. In practice Royal Mail deals with Stage 1 collections exception complaints via its complaints process¹⁴. This provides for Stage 2 escalation to Royal Mail's Postal Review Panel which acts as its final review stage. The final stage of the appeal process is carried out by Ofcom (Stage 3).
- 4.53 Royal Mail has informed us¹⁵ that most cases are resolved before or at Stage 1, while Stage 2 allows Royal Mail to conduct an independent review of its original decision and, if necessary, further health and safety assessments. Stage 3 of the process is the final fall back for unresolved cases and Ofcom expects to only deal with the most difficult cases. However, there have been no appeals to Ofcom or Postcomm since the direction's introduction in 2006.
- 4.54 We asked Consumer Futures for its view of the appeals process. It informed us¹⁶ that it (including its Scotland, Northern Ireland and Wales offices) has not identified any concerns with the current arrangements.
- 4.55 As part of our Equality Impact Assessment, we have considered the effect of the review/appeal arrangements on all users and in particular, any specific users who may be disadvantaged in bringing a review. For example due to age, ill health, disability or where English is not the user's first language. We recognise that some users may find it harder to exercise their rights to seek a review or bring an appeal.
- 4.56 We consider that the only way to prevent this issue from arising at all would be for the user not to have a role in challenging Royal Mail's determinations. Therefore, someone else would need to do it, with the most obvious being Ofcom since it is our role to determine what is "exceptional". However, we consider that this approach would be disproportionate as it would require Ofcom to review every exception Royal Mail made. Further, unlike the person affected, Ofcom would not have a pre-existing knowledge of the local circumstances and it would require more effort for us to understand the situation. The cost of this work would ultimately fall on postal service providers and therefore on postal service users. Were another third party to take on the role, it would face similar challenges and would also be likely to require funding,

¹⁴ Meeting between Royal Mail and Ofcom, 16 September 2013.

¹⁵ Telephone and email conversation Royal Mail to Ofcom, 3 and 4 October 2013.

¹⁶ Feedback from Consumer Futures to Ofcom, correspondence dated 18 September 2013

which may come from postal service providers. Additionally, Ofcom could not regulate how the third party carried out this role.

4.57 However, we consider that the risk to users who may be disadvantaged in bringing and completing a review may be appropriately mitigated as follows.

4.58 First, we provisionally consider that any time limits on bringing an appeal should be removed. Although we recognise that Royal Mail has indicated it would prefer to keep them, it has advised us¹⁷ that it does not and would not, in any event, apply them strictly, and we consider that removing them would make it more likely that a user could access any help they may need to engage in the process.

4.59 Second, our proposed direction is drafted so as to allow any person to seek a review. Therefore, any specific users who may be disadvantaged in bringing a review can seek assistance in order to take forward a review as there can be no question over the right of any person to seek a review, enabling a family member, a friend, carer, local Citizens Advice or other representative, to initiate and take forward a review. This would not need to be somebody from the local area. We have considered whether this approach is proportionate in light of the risk that vexatious objections would be pursued, which would impose an inappropriate burden on Royal Mail. However, we provisionally consider that:

- the number of exceptions is low; and
- the likelihood of persons seeking reviews purely to be vexatious is very low as there is no financial reward and limited likelihood of purely vexatious reviews leading to a different outcome.

4.60 Third, we consider that it would be appropriate for the direction to require the universal service provider specifically to make appropriate facilities available to ensure that users who for reasons of age, ill health, disability, or where English is not the user's first language are not for that reason disadvantaged in the review process. Depending on the circumstances, this requirement might be met by, for example, provision of interpreters or translations, Braille facilities or advocacy support.

4.61 Royal Mail has told us¹⁸ that if a user needs extra help, its Customer Services staff will escalate their case to a specialist team who can provide services such as Braille and a range of other appropriate tools to assist in dealing with the complaint. We therefore do not consider that this provision would impose any extra costs on Royal Mail.

4.62 We consider that the Postcomm Collection Direction is too vague on what the review and appeals process is and requires. We understand that in practice Royal Mail deals with collections exception via its central Customer Services complaints process.¹⁹ This provides for escalation in the event that a user is dissatisfied with Royal Mail's decision on the initial complaint and then an appeal to Ofcom for collections (in practice there has never been an appeal to the regulator). We are currently consulting on a direction relating to delivery exceptions which sets out the three stage approach²⁰. We consider that the least onerous approach, and one which

¹⁷ Meeting between Royal Mail and Ofcom 16 September 2013

¹⁸ Meeting between Royal Mail and Ofcom 16 September 2013

¹⁹ Royal Mail does not provide details of a separate appeals process for collections and publishes its Customer Services number on excepted access points for any customer complaints.

²⁰ The deliveries exceptions direction consultation is published alongside this consultation

will secure that decisions are taken at the appropriate level within Royal Mail, would be to include the same kind of appeal process in the direction relating to collections.

- 4.63 Our proposed requirements are set out in paragraphs 16 to 21 of the proposed direction.
- 4.64 On receipt of an appeal, Ofcom would first confirm that the case had indeed reached stage 3 and then consider whether Royal Mail had properly determined that “exceptional” circumstances existed in the case.
- 4.65 For health and safety appeal cases Ofcom would normally employ a health and safety consultant to provide it with expert, independent advice. The consultant’s advice would be used to identify what, if anything, could and would have to be done to make access sufficiently safe for daily collections to resume:
- If it were clear from Ofcom’s consultant’s advice that the health and safety problem could be overcome, but at a cost, Ofcom would decide in light of the available evidence whether it was reasonable to expect Royal Mail to take steps to overcome the problem, or whether the circumstances were genuinely exceptional.
 - Before reaching a final determination, Ofcom would take into account Ofcom’s consultant’s advice, along with any other relevant evidence. If the consultant’s view differed from Royal Mail’s view of the health and safety risks and/or remedial actions required, then Ofcom would put these differences to Royal Mail before making a final determination.
- 4.66 Ofcom would notify appellants and Royal Mail of our determination of their appeal. If we considered that Royal Mail’s decision had been incorrect we could take enforcement action in relation to Royal Mail’s duty to make collections, which could potentially result in a financial penalty and/or a notification requiring Royal Mail to take specified steps for complying with the regulatory requirement.

Reporting requirements

- 4.67 Under the Postcomm Collections Direction, Royal Mail must notify Ofcom of cases involving post boxes that have been or are expected to be closed for more than four months. Royal Mail complies with this obligation in practice by reporting to Ofcom every four months. Royal Mail must also provide an annual report of exceptions which have been in place for twelve months or more.
- 4.68 Ofcom provisionally considers that it remains appropriate for Royal Mail to report annually on the number of exceptions. However, we do not consider that it remains necessary to receive four monthly reports, since the purpose it fulfils is equally well met by an annual reporting obligation. We therefore propose to change this to an annual reporting requirement in line with other exceptions to ensure consistency. We also consider that the annual report, for transparency’s sake, should be published.

Changes to duration

- 4.69 The Postcomm Collections Direction was drafted so as to expire on 31 December 2013. We do not propose to set an expiry date in our proposed direction. This should reduce the regulatory burden both on Ofcom and stakeholders in terms of producing and responding to consultations. The change does not prevent Ofcom reviewing or revoking the direction as and when appropriate and following review, either at our

own initiative or if requested. It also aligns with our policy decision relating to allowing an exception to the universal service obligation for the day after the Battle of the Boyne bank holiday in Northern Ireland published on 13 February 2013.²¹

Legal Tests

4.70 We consider that the proposed exception direction and the proposed amendment to the DUSP condition is:

- **objectively justifiable** since the exceptional circumstances we propose to specify relate to obvious difficulties in provision of the universal service, and must be evidenced in the ways we specify. The associated matters, notifications, reviews and appeals, all relate to balancing the interests of Royal Mail and postal service users in a way which will ensure decisions are made at an operationally appropriate level while securing the rights of those users Royal Mail considers are subject to exceptional circumstances. The proposed amendment to the DUSP condition more precisely fulfils the policy aim of securing that a sufficient density of access points is provided, and removes the need for complex drafting in the exceptions direction to explain when alternative provision is required.
- **not unduly discriminatory** as the direction sets out a framework that ensures consistency of treatment for all UK households and provides clarity regarding the grounds on which an access point may be excepted, while providing in certain small respects for different treatment in favour of certain types of user for the reasons set out in this consultation;
- **proportionate** because the exceptions provided for are (in our view) the minimum needed to ensure that Royal Mail is not required to provide collections where it would be clearly disproportionate or impossible for it to do so, having regard to the importance of the universal service. Application of broadly the same policy since 2006 has led to a low number of collection points on the excepted list and no appeals to Ofcom or its predecessor, Postcomm. We have also taken account of the regulatory burden on Ofcom and stakeholders, in particular with regard to notifications, reviews and appeals, alternative collection arrangements and the duration of the proposed direction.
- **transparent** because we would be tightening the drafting to make clearer what circumstances Ofcom consider to be exceptional and what processes we require to be followed in determining cases. We would also be building transparency into the regulatory regime, by imposing the publication obligations set out above.

Therefore, we consider that our proposals to make the direction set out in Annex 4 and the modification of the DUSP condition in Annex 5 meet the relevant legal tests.

²¹ <http://stakeholders.ofcom.org.uk/consultations/uso-exception/>

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 22 November 2013**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/post-collection-iso/howtorespond/form> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email michelle.koretz@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Michelle Koretz
Floor 2
Dept Consumer Affairs
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4 below. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Michelle Koretz on 020 7 981 3659.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement by 31 December 2013.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

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

DECLARATION

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

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

Name

Signed (if hard copy)

Annex 4

Statutory Notification: proposed direction under designated USP condition 1.3.2 and 1.3.2A regarding collections

NOTIFICATION OF PROPOSALS TO MAKE A DIRECTION UNDER DESIGNATED USP CONDITION 1.3.2 and 1.3.2A IN ACCORDANCE WITH SECTION 33(2)(b) OF, AND PARAGRAPH 4 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’²² setting out various decisions, including the imposition of regulatory conditions under section 36 and 37 of the Postal Services Act 2011 (the “Act”).

B. Designated USP condition 1 (“DUSP 1”) relates to requirements on the universal service provider, including obligations as to daily collections and the provision of access points. The requirements as to the provision of access points were amended on 13 June 2013.

C. The obligations as to daily collections are not required to be met in such circumstances as Ofcom consider to be exceptional, and to this end in DUSP 1 Ofcom adopted a direction made by the Postal Services Commission on 7 December 2010: *Extension of Direction designating geographical conditions and other circumstances as exceptional for the purpose of collections*. That direction will expire on 31 December 2013.

D. On 5 September 2013 Ofcom consulted on changes to DUSP 1. The consultation proposes to add a condition to DUSP 1. DUSP 1.3.2A would, if the proposals were implemented without modification, read:

“OFCOM may by direction impose requirements for the universal service provider—

- (a) to establish and comply with procedures in relation to determining whether the circumstances specified in any direction issued under DUSP 1.3.2 have arisen in any particular case;
- (b) to establish and comply with reporting and notification obligations in relation to such exceptions; and
- (c) to make alternative delivery or collection arrangements where appropriate.”

PROPOSAL

1. Ofcom hereby proposes, under Designated USP Condition 1.3.2 and (subject to consultation) 1.3.2A and paragraph 4 of Schedule 6 to the Act and pursuant to powers and duties in section 33(2)(b) of the Act, to make a direction
 - (a) specifying geographical conditions and other circumstances which Ofcom consider exceptional such that the requirements relating to the collection of letters and other

²² <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

postal packets set out in s.31 of the Act, regulation 7 of the Postal Services (Universal Postal Service) Order 2012 and Designated USP Condition 1.5.1 do not need to be met; and

(b) requiring the universal service provider to

- (i) establish and comply with procedures in relation to determining whether the circumstances so specified have arisen in any particular case;
- (ii) establish and comply with reporting and notification obligations in relation to such exceptions; and
- (iii) make alternative collection arrangements where appropriate.

2. The proposed direction is specified in the Schedule hereto.

3. The effect of, and Ofcom's reasons for making, this proposal are set out in the accompanying consultation document.

OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 4(2) of Schedule 6 to the Act.

5. In making this proposal, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

MAKING REPRESENTATIONS

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **22 November 2013**.

7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

8. By virtue of paragraph 4(8) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

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

Signed by Chris Taylor



Director, Consumer Policy

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

21 October 2013

SCHEDULE

DIRECTION GIVEN UNDER DESIGNATED USP CONDITION 1.3.2 AND 1.3.2A DESIGNATING GEOGRAPHICAL CONDITIONS AND OTHER CIRCUMSTANCES AS EXCEPTIONAL FOR THE PURPOSE OF COLLECTIONS AND REQUIRING ASSOCIATED PROCEDURES, NOTIFICATIONS, REPORTING AND ALTERNATIVE COLLECTION ARRANGEMENTS

Ofcom hereby directs as follows

Commencement

1. This Direction shall come into effect on 31 December 2013.

Interpretation

2. In this Direction—
 - a. “**Consumer Futures**” means:
 - (i) prior to 1 April 2013, the Council; and
 - (ii) after 1 April 2013, each of the National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux and the General Consumer Council of Northern Ireland.
 - b. “**delivery office**” means premises used by the universal service provider to sort mail;
 - c. “**scheduled service**” means a ferry or aeroplane service:
 - (i) which is available to the general public;
 - (ii) in relation to which a timetable is published; and
 - (iii) the running of which on any particular day does not depend on more than one passenger being aboard.
 - d. “**working day**” means any day which is not a Sunday or a public holiday in the place where the access point concerned is located.”
3. For the purpose of interpreting this Direction—
 - a. except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Designated USP Condition 1;
 - b. except in so far as the context otherwise requires, or as ascribed for the purposes of Designated USP Condition 1, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Postal Services Act 2011;
 - c. headings and titles shall be disregarded;
 - d. expressions cognate with those referred to in this Direction shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.

Exceptions

4. The circumstances set out in paragraphs 5 to 11 are exceptional for the purposes of collections from the access points concerned.

Health and safety

5. The circumstances specified in this paragraph are that:
 - (a) collecting from the access point concerned involves an immediate hazard to the health or safety of employees, sub-contractors or agents of the universal service provider such that it is not reasonable to require them to make the collection; and
 - (b) there is no reasonable means of overcoming the hazard so as to collect postal packets.
6. For the purposes of paragraph 5, an immediate hazard to health or safety which persists for longer than two weeks must be evidenced by a formal health and safety risk assessment and a general assessment of the circumstances, which must be conducted by an appropriately competent and experienced individual as soon as reasonably practicable after the universal service provider has become aware of the circumstances in question.

Difficulty of access: lack of road access

7. The circumstances specified in this paragraph are, in relation to any particular day, that:
 - (a) the access point concerned is located in a place in the United Kingdom that is only accessible by water or air from the nearest delivery office on the mainland of Great Britain or the mainland of Northern Ireland; and
 - (b) a scheduled service to that place is either:
 - (i) not available on the day upon which the collection is required; or
 - (ii) available upon the day upon which the collection is required only at times which are not reasonably compatible with the universal service provider's operations; and
 - (c) a collection is made from at least one access point in the place concerned at least once a week, except where the circumstances described in paragraph 5 (*Health and safety*) exist throughout each working day in the week.

Difficulty of access: third party blockage

8. The circumstances specified in this paragraph are, in relation to any particular day, that:
 - (a) the access point concerned is located within a building or on private land to which access by the public is controlled by a third party;
 - (b) the third party does not permit access on the day in question, or permits access only at times which are not reasonably compatible with the universal service provider's operations; and
 - (c) either:
 - (i) the circumstances in (a) and (b) have persisted for no more than one week; or
 - (ii) the circumstances in (a) and (b) have persisted for more than one week and less than 12 months, and the universal service provider has reasonably requested access in writing from the third party concerned; and

- (iii) the circumstances in (a) and (b) have persisted for more than 12 months and the universal service provider has reasonably requested access in writing from the third party concerned within the past 12 months.

Difficulty of access: other

9. The circumstances specified in this paragraph are that:
- (a) It is impossible or extremely difficult for the universal service provider to make collections from the access point concerned for reasons of difficulty of access other than those set out in paragraphs 7(a)-(b) and 8(a)-(b) of this Direction; and
 - (b) The circumstances creating the impossibility or difficulty are outside the universal service provider's control.

Special purpose boxes: absence of users

10. The circumstances specified in this paragraph are, in relation only to a Saturday, that:
- (a) the access point concerned is only for letters paid for by meter and contained in outer posting envelopes;
 - (b) the universal service provider knows of no users wishing to post metered mail in that access point in volumes requiring an outer posting envelope of dimensions greater than 380mm by 255mm by 35mm.

Anticipatory temporary health and safety closure

11. The circumstances specified in this paragraph are that the universal service provider has for reasons of health and safety prevented users from depositing any postal packets in the access point throughout the period since the last collection was made.

Notifications

12. If the exceptional circumstances set out in paragraph 5 (*Health and safety*) or 9 (*Difficulty of access: other*) arise or change, the universal service provider shall, as soon as is practicable, place a notice on the access point or in a nearby conspicuous location stating:
- (a) the reasons for the suspension of collections;
 - (b) the anticipated date of resumption of daily collections (where that date can be anticipated);
 - (c) the location of the three nearest access points that are subject to no exception; and
 - (d) the universal service provider's postal address, telephone number and email address for the purposes of complaints about the access point.
13. If the exceptional circumstances set out in paragraph 7 (*Difficulty of access: lack of road access*) or 8 (*Difficulty of access: third party blockage*) arise or change, the universal service provider shall, as soon as is practicable, place a notice on the access point or in a nearby conspicuous location stating:
- (a) the days upon which collections are made from the access point;
 - (b) the location of the three nearest access points that are subject to no exception; and
 - (c) the universal service provider's postal address, telephone number and email address for the purposes of complaints about the access point.
14. If the universal service provider intends to rely upon the exception set out in paragraph 11 (*Anticipatory temporary health and safety closure*), it shall, no later

than the time of the last collection, place a notice on the access point or in a nearby conspicuous location stating:

- (a) the reasons for the suspension of collections;
- (b) the date upon which collections will be resumed;
- (c) the location of the three nearest access points that are subject to no exception; and
- (d) the universal service provider's postal address, telephone number and email address for the purposes of complaints about the access point.

Exceptions affecting users who find it difficult to reach alternative collection points

15. If exceptional circumstances have arisen in relation to an access point known by the universal service provider to be used by a person who for reasons of age, disability or ill-health finds it difficult to reach alternative collection points, the universal service provider shall:
- (a) consider whether it would be appropriate and proportionate to make collections in spite of the exceptional circumstances;
 - (b) consider whether alternative collection arrangements ought to be made, and
 - (c) retain written records of its thinking in relation to (a) and (b) for at least 6 months.

Reviews and appeals

16. The universal service provider shall complete a review of whether exceptional circumstances exist in the case of each access point:
- (a) Within one month of any person's request made using the relevant contact details; and
 - (b) in any event, no later than 12 months from the date of the later of the exceptional circumstances arising and the date of the last review.
17. The universal service provider shall notify the person who requested the review promptly in writing of:
- (a) the outcome of the review; and
 - (b) if the outcome is that exceptional circumstances exist in relation to the access point concerned, the person's right to seek a second stage review and how such a request should be made, which shall include postal, telephone and email methods of communication.
18. The universal service provider shall complete a second stage review of whether exceptional circumstances exist in the case of an access point within 2 months from receipt of a request made in accordance with paragraph 17(b).
19. The universal service provider shall notify the person who requested the second stage review promptly in writing of:
- (a) the outcome of the second stage review; and
 - (b) if the outcome is that exceptional circumstances exist in relation to the access point concerned, the person's right to appeal to OFCOM, giving such contact details as OFCOM shall provide to the universal service provider for the purposes of this paragraph from time to time.
20. Ofcom's decision as to whether exceptional circumstances have arisen shall be binding.

21. The universal service provider shall at its own expense make facilities available to ensure that no person is disadvantaged by reason of age, disability, ill health or because English is not the person's first language, in relation to the making of a review request, the conduct of any review and the conduct of any second stage review.

Reporting requirements

22. The universal service provider shall within 3 months from 31 March each year provide an annual report to OFCOM and Consumer Futures on each access point in relation to which exceptional circumstances have persisted for 12 months or more pursuant to a direction given under DUSP 1.3.2. The report shall include the following information in relation to each access point:
 - the post box number and location;
 - the postcode area;
 - applicable exception under this Direction;
 - date upon which the relevant exceptional circumstances arose under this or any previous Direction, except if the date both precedes and was unknown at the date of this Direction;
 - where the relevant exceptional circumstances relate only to particular days of the week, the days upon which collections are made;
 - the anticipated date upon which collections will resume (if none, reasons why the access point is still considered to be an access point);
 - details of action to be taken to resolve the exceptional circumstances.
23. The universal service provider shall publish the report on its website within 3 months from 31 March.

Statutory Notification: proposed modification of designated USP condition 1.8

NOTIFICATION OF PROPOSALS TO MODIFY REGULATORY CONDITIONS IN ACCORDANCE WITH SECTION 36 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

A. On 27 March 2012, following a consultation, Ofcom published a statement entitled ‘*Securing the Universal Postal Service - Decision on the new regulatory framework*’²³ setting out various decisions, including the imposition of regulatory conditions under section 36 and 37 of the Postal Services Act 2011 (the “**Act**”).

B. Designated USP condition 1.8 (“**DUSP 1.8**”) relates to requirements on the universal service provider to provide or make arrangements for the provision of access points for the purposes of the universal postal service. DUSP 1.8 was amended on 13 June 2013.

PROPOSAL

1. Ofcom hereby proposes, in accordance with section 36 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers and duties in section 36 of the Act, to modify DUSP 1.8 which was imposed on 1 April 2012, to make provision for matters set out in that section 36.
2. The proposed modification to DUSP 1.8 is specified in the Schedule hereto.
3. The effect of, and Ofcom’s reasons for making, this proposal are set out in the accompanying consultation document.

OFCOM’S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
5. In making this proposal, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

MAKING REPRESENTATIONS

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **22 November 2013**.

²³ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

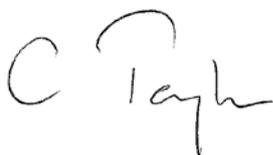
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act and to the European Commission in accordance with paragraph 5(2) of Schedule 6 to the Act.

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a)** considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b)** had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

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

Signed by Chris Taylor

A handwritten signature in black ink, appearing to read 'C Taylor', with a large, stylized initial 'C' and a flourish at the end.

Director, Consumer Policy

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

21 October 2013

SCHEDULE

PROPOSED MODIFICATIONS TO DESIGNATED USP CONDITION 1

	Modification		
1	After DUSP 1.8.2, insert new row: <table border="1" data-bbox="245 483 1302 620"><tr><td data-bbox="245 483 421 620">DUSP 1.8.2A</td><td data-bbox="421 483 1302 620">If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u>, no account shall be taken of that that <u>access point</u> for the purposes of DUSP 1.8.2.</td></tr></table>	DUSP 1.8.2A	If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u> , no account shall be taken of that that <u>access point</u> for the purposes of DUSP 1.8.2.
DUSP 1.8.2A	If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u> , no account shall be taken of that that <u>access point</u> for the purposes of DUSP 1.8.2.		

Annex 6

Marked up version of DUSP condition 1.8

UNOFFICIAL MARKED UP VERSION OF DESIGNATED USP CONDITION 1.8 AS PROPOSED TO BE MODIFIED

This marked up version of DUSP1.8 is provided as an aid to understanding but is not the proposed legal instrument. Additions are marked in red.

1.8 Obligation to provide access points for the universal service

DUSP 1.8.1	Except as <u>OFCOM</u> may have directed otherwise, the <u>universal service provider</u> shall provide, or procure the provision of, <u>letter boxes</u> and other <u>access points</u> for the purpose of providing the universal postal services referred to in DUSP 1.6.
DUSP 1.8.2	In particular the <u>universal service provider</u> must ensure that – <ul style="list-style-type: none"> (a) in the UK as a whole, the distribution of <u>letter boxes</u> is such that there is a <u>letter box</u> within half a mile (805 metres) of the premises of not less than 98% of <u>users</u> of <u>postal services</u>; and (b) in the case of any <u>users</u> of <u>postal services</u> whose premises are not within half a mile (805 metres) of a <u>letter box</u> or other <u>access point</u>, the <u>universal service provider</u> shall provide, or procure the provision of, access to the universal service in a manner which sufficiently meets the reasonable needs of such <u>users</u>, having regard to the costs and operational practicalities of doing so; and (c) the distribution of <u>access points</u> capable of receiving the largest relevant <u>postal packets</u> and <u>registered items</u> is such that – <ul style="list-style-type: none"> i. in the UK as a whole the premises of not less than 95% of <u>users</u> of <u>postal services</u> are within 5 kilometres of such an <u>access point</u>; and ii. in all <u>postcode areas</u> the premises of not less than 95% of <u>users</u> of <u>postal services</u> are within 10 kilometres of such an <u>access point</u>, and such <u>access points</u> are available to the public in accordance with conveniently published schedules.
DUSP 1.8.2A	If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u> , no account shall be taken of that <u>access point</u> for the purposes of DUSP 1.8.2.
DUSP 1.8.3	The <u>universal service provider</u> shall establish, maintain, and review annually a statement of arrangements to ensure that <u>users</u> of <u>postal services</u> whose premises are not within 10 kilometres of an <u>access point</u> provided pursuant to DUSP 1.8.2(c) will be provided with reasonable access to such facilities.
DUSP 1.8.4	The <u>universal service provider</u> shall establish, maintain and review annually a statement of arrangements to ensure that <u>users</u> of <u>postal services</u> who are <u>blind</u> , <u>partially sighted</u> , infirm through age, chronically sick, or disabled are able to post <u>postal packets</u> using the universal services regularly and as far as possible without significant cost to those <u>users</u> attributable to their difficulties.