



## An exception to Royal Mail's universal service obligation

- exception under Designated Universal Service Provider Condition 1.3.2 for the day after the Battle of the Boyne holiday in Northern Ireland

Statement

Publication date: 13 February 2013



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## Section 1

# Executive summary

- 1.1 Royal Mail has requested a direction under the relevant regulatory condition Designated Universal Service Provider ("DUSP") Condition 1.3.2(a) for the day after the Battle of the Boyne holiday in Northern Ireland to be permanently designated as an exception to the universal service in Northern Ireland.
- 1.2 An exception to the universal service obligation can be allowed for a day which is not an officially recognised bank holiday. It means that Royal Mail will not have to meet its universal service obligations to deliver or collect mail on that day. Under Royal Mail's regulatory condition DUSP 1.3.2: "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.
- 1.3 "Public holiday" is defined in the DUSP as including "in relation to a particular territory, any day in relation to which OFCOM has by direction stated that exceptional circumstances require it to be treated as a public holiday"<sup>1</sup>.
- 1.4 For the avoidance of doubt, an exception under DUSP Condition 1.3.2(a) does not mean that no mail will be collected or delivered during the period of the exception. It does mean that Royal Mail's performance against its Universal Service quality of service targets will not be measured or assessed during the period.
- 1.5 Following the expiry on 31 October 2012 of a Direction<sup>2</sup> by the former postal regulator, Postcomm, covering exceptions to Royal Mail's Universal Service Obligation, Ofcom proposed to issue a Direction to allow Royal Mail an exception from performing its universal service obligations for the day following the Battle of the Boyne bank holiday in Northern Ireland,<sup>3</sup> on the basis that exceptional circumstances require it to be treated as a public holiday.
- 1.6 Neither Postcomm, Ofcom or Royal Mail received objections to Postcomm's original consultation regarding Royal Mail's applications in respect of this excepted day. Royal Mail says there is a reduced demand for postal services on this day, which is due to the closure of some local businesses and local organisations such as the Northern Ireland Civil Service and the construction and manufacturing industries.

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<sup>1</sup> DUSP condition 1.1.2(aa).

<sup>2</sup> *Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document* (Postal Services Commission, October 2009), <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>.

<sup>3</sup> Except when 12 July (the day the Battle of the Boyne bank holiday is normally observed) is a Saturday. In that case, the Battle of the Boyne bank holiday would instead be observed on the following Monday, i.e. 14 July, and the no universal service day would be the Saturday 12 July rather than the day following the bank holiday Monday. See the table at paragraph 4.4 below which sets out how the no universal service day would fall depending on what day of the week the Battle of the Boyne bank holiday falls.

Volumes of social mail posted on 13 July are lower in relation to the average daily postings.

- 1.7 Ofcom issued a consultation on 6 December 2012 to seek views from stakeholders on how they may be affected Royal Mail's request is implemented, and the appropriateness of Royal Mail's application.
- 1.8 The consultation closed on 11 January 2013. We received 5 responses. This statement sets out a summary of responses to the consultation and our conclusion in regard to Royal Mail's application.
- 1.9 After analysis of these responses we have decided to accept Royal Mail's application. This statement will extend the direction until further notice.

## Section 2

# Introduction

## Purpose of this statement

2.1 This statement:

- summarises the responses from stakeholders on Ofcom's proposal, following an application from Royal Mail, to designate the day after the Battle of the Boyne bank holiday as an exception to Royal Mail's universal service obligations, unless otherwise revoked,
- outlines our analysis and decision after considering the responses and;
- sets out a direction allowing certain dates to be designated as exceptions to the universal service.

## Background

- 2.2 In October 2009, the previous postal regulator, Postcomm, issued a decision document and direction<sup>4</sup> following a consultation on Royal Mail's application for exceptions to its universal service obligation for 26 December 2009 in the UK, where a bank holiday falls on a Saturday in the UK, Easter Monday in Scotland and local holidays in Northern Ireland and Scotland ("the Postcomm Direction"). The Postcomm Direction included an exception for a local holiday on the day following the Battle of the Boyne bank holiday in Northern Ireland.<sup>5</sup>
- 2.3 No issues were subsequently raised with Postcomm or Ofcom with regard to the day following the Battle of the Boyne bank holiday being excepted from the universal service obligation under the Postcomm Direction.
- 2.4 The Postcomm Direction expired on 31 October 2012. On 5 October 2012, Royal Mail wrote to Ofcom requesting a direction under DUSP condition 1.3.2 excepting Royal Mail in perpetuity from performing its universal service obligations for the day following the Battle of the Boyne bank holiday in Northern Ireland.
- 2.5 Ofcom issued a consultation on 6 December 2012 to seek views from mail users on how they may be affected if this day is designated as an exception to the universal service. The consultation closed on 11 January 2013. We received 5 responses from Royal Mail, CWU, Consumer Focus Post, the Chief Executive of the Northern Ireland Chamber of Commerce and the Free Presbyterian Church of Ulster.

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<sup>4</sup> *Exceptions to Royal Mail's universal service obligation – for 26 December 2009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document* (Postal Services Commission, October 2009), <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>

<sup>5</sup> Except when 12 July (the day the Battle of the Boyne bank holiday is normally observed) is a Saturday. In that case, the Battle of the Boyne bank holiday would be observed on the following Monday instead, i.e. 14 July, and the no universal service day would be the Saturday 12 July rather than the day following the bank holiday Monday.

## Section 3

# Legal framework

## The universal service

- 3.1 Royal Mail is the designated universal service provider and subject to designated universal service provider ("DUSP") conditions.<sup>6</sup>
- 3.2 Section 30(1) of the Postal Services Act 2011 ("the Act") provides that Ofcom must set out in an order a description of the services Ofcom considers should be provided in the United Kingdom as a universal postal service and the standards with which those services must comply. The universal service must include the minimum requirements set out in section 31 of the Act. These include:
- the delivery of letters every Monday to Saturday and of other postal packets every Monday to Friday to the home or premises of every individual or other person in the United Kingdom; and
  - The collection of letters every Monday to Saturday and of other postal packets every Monday to Friday from post boxes and other access points.
- 3.3 Ofcom has met its requirements under section 30 of the Act by making the Postal Services (Universal Postal Service) Order 2012 ("the Order"). Articles 6 and 7 of the Order set out the universal services requirements for collection and delivery, as required under section 31 of the Act. These are mirrored in the obligations imposed on Royal Mail under the DUSP conditions.
- 3.4 Under DUSP condition 1.4.1 Royal Mail must ensure that:
- "Except as set out in DUSP 1.3, the universal service provider shall offer to provide at least one delivery of letters originating from anywhere in the world every Monday to Saturday-
- a) to the home or premises of every individual or other person in the UK; and
  - b) to delivery points approved by OFCOM for the purposes of this Condition".
- 3.5 Under DUSP condition 1.5.1 Royal Mail must ensure that:
- "Except as set out in DUSP 1.3, the universal service provider shall offer to provide at least one collection-
- a) every Monday to Saturday, from public access points for letters for the services described in DUSP 1.4; and
  - b) every Monday to Friday, from public access points for other postal packets for the services described in DUSP 1.4".

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<sup>6</sup> In accordance with the Postal Services (Universal Postal Service) Order 2012 and pursuant to the Designated USP Conditions imposed on Royal Mail under section 36 of the Act, <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/annex7.pdf>.

## Exceptions to the universal service

- 3.6 Section 33(2) of the Act sets out the legal basis for exceptions to the universal service obligations under section 31:

“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 the part of the United Kingdom concerned) a public holiday<sup>7</sup>, and
- b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional”.

- 3.7 Articles 6(3) and 7(2) of the Order also provide that an exception to the universal service obligations for delivery and collection applies on a day which is (in the part of the United Kingdom concerned) a public holiday.

- 3.8 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.”

- 3.9 “Public holiday” is defined in the DUSP as including “in relation to a particular territory, any day in relation to which OFCOM has by direction stated that exceptional circumstances require it to be treated as a public holiday” (DUSP 1.1.2(aa)).<sup>8</sup>

## Public and bank holidays

- 3.10 Public holidays in England and Wales include traditional common law holidays of Christmas and Good Friday, as well as bank holidays. Bank holidays in England and Wales, Scotland and Northern Ireland are set under the Banking and Financial Dealings Act 1971<sup>9</sup>. In Scotland and Northern Ireland different public and statutory bank holidays are observed.

- 3.11 In summary, there are currently ten permanent bank holidays in Northern Ireland:

- New Year's Day;
- St Patrick's Day (17 March);
- Good Friday;

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<sup>7</sup> “Public holiday” is not defined in the Act.

<sup>8</sup> DUSP 1.1.3 (f) provides that the days which the Postcomm Direction determined should be exceptions to the public service, should be treated as public holidays for the purposes of DUSP 1.1.2(aa). As explained at paragraph 2.5 above, this Direction expired on 31 October 2012.

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/1971/80/section/1>



- Easter Monday;
- First Monday in May;
- Last Monday in May;
- Anniversary of the Battle of the Boyne (12 July);
- Last Monday in August;
- Christmas Day; and
- Boxing Day.

3.12 More information on bank holidays in Northern Ireland in 2012-14 can be found on the NIdirect website<sup>10</sup>.

### **Test for giving a direction**

3.13 Paragraph 4 of Schedule 6 to the Act applies if a regulatory condition has effect by reference to directions, approvals or consents given by a person and the person proposes to give such a direction, approval or consent affecting the operation of the condition.

3.14 Under paragraph 4(2) of Schedule 6, Ofcom may only give a direction, approval or consent if satisfied that to do so:

- is objectively justifiable;
- does not discriminate unduly against particular persons or a particular description of persons;
- is proportionate to what it is intended to achieve; and
- is transparent in relation to what it is intended to achieve.

3.15 In accordance with paragraph 4(3) of Schedule 6, before the direction is given, Ofcom must publish a notification stating that there is a proposal to give the direction and which:

- sets out the direction to which the proposal relates and its effect;
- gives reasons for the making of the proposal; and
- specifies the period within which representations may be made about the proposal, which must be at least one month beginning with the day after the notification is published, unless there are exceptional circumstances justifying a shorter period.

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<sup>10</sup> <http://www.nidirect.gov.uk/bank-holidays>

## General duties

- 3.16 Ofcom's duty to secure the provision of a universal postal service is set out in section 29 of the Act. In this respect, section 29(1) provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service.
- 3.17 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be our 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.
- 3.18 This principal duty applies also to functions carried out by us in relation to postal services. Section 3(6A) of the 2003 Act provides that the duty in section 29(1) of the Act takes priority over our general duties in the 2003 Act in the case of conflict between the two where we are carrying out our functions in relation to postal services.
- 3.19 In performing our general duties, we are also required under section 3(4) of the 2003 Act to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations appear potentially relevant, including:
- the opinions of consumers in relevant markets and of members of the public generally; and
  - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 3.20 Section 3(5) of the 2003 Act provides that in performing our duty to further the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 3.21 Pursuant to section 3(3) of the 2003 Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.
- 3.22 In this regard, we note Ofcom's general regulatory principles<sup>11</sup> 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;
  - consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.

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<sup>11</sup> See this link for a full list of the principles, <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

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

## General impact assessment

- 3.24 The analysis presented in section 6 of this document represents an impact assessment, as defined in section 7 of the 2003 Act.
- 3.25 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the 2003 Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see our guidelines<sup>12</sup>.
- 3.26 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, in relation to what we propose.

## Equality impact assessment

- 3.27 In carrying out our functions, we are under a general duty under the Equality Act 2010 to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between different groups; and
  - foster good relations between different groups,
- in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 3.28 We also have obligations to consider the likely impact of proposed policies on the promotion of equality of opportunity and the promotion of good relations between people of a different religious belief, political opinion or racial group in Northern Ireland in accordance with our Northern Ireland Equality Scheme.<sup>13</sup>
- 3.29 Such equality impact assessments also assist us in making sure that we are meeting our principal duty under section 3 of the 2003 Act discussed above.

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<sup>12</sup> *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](http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf)

<sup>13</sup> Published in accordance with our duties under section 75 of the Northern Ireland Act 1998.  
<http://stakeholders.ofcom.org.uk/binaries/consultations/950336/statement/Revised-NI-Equality-Scheme.pdf>

- 3.30 In line with our duties under Section 75 of the Northern Ireland Act 1998, we consulted directly with relevant equality stakeholders in Northern Ireland, as outlined in our Northern Ireland Equality Scheme.
- 3.31 We have therefore given careful consideration as to whether granting exceptions to the universal service obligation for the day following the Battle of the Boyne bank holiday will have a particular impact on any particular group within society. We do not believe it does because the exception would apply to all address points within Northern Ireland and would observe local tradition.

## Section 4

# Royal Mail's request

- 4.1 On 5 October 2012, Royal Mail submitted a request for a Direction under DUSP condition 1.3.2 for an exception to its universal service obligation: that the day following the Battle of the Boyne holiday (or the appropriate substitute day where 12 July falls on Saturday or Sunday) be considered a no universal postal service day in perpetuity in Northern Ireland.
- 4.2 This excepted day, where Royal Mail would not have to provide the universal postal service, only applies to postal services in Northern Ireland – deliveries and collections in the rest of the UK will be unaffected, apart from mail sent to and from Northern Ireland.
- 4.3 Royal Mail has requested an excepted day for collections as well as deliveries so as to remove the obligation to collect from all post boxes, many of which have previously been found to contain no mail on the day after the Battle of the Boyne bank holiday. It proposes to make collections from those post boxes which it expects from experience to contain mail, post offices that are open and business customers by arrangement where advanced notice of sufficient volume has been received. Such mail will be processed or advanced through the system as far as possible, given the constraints on staffing levels, ready for the next working day.
- 4.4 Royal Mail accepts downstream access (DSA)<sup>14</sup> on the day following the Battle of the Boyne bank holiday. This applies to the whole of Northern Ireland as the only hand over point is at the Northern Ireland Mail Centre in Belfast. The mail is accepted on the same basis as the mail that Royal Mail will collect from customers' premises or heavily used post boxes as discussed above. It is accepted and sorted in advance to ease the operational strain on the business on the next normal working day.
- 4.5 The anniversary of the Battle of the Boyne day (12 July) is a widely observed statutory bank holiday in Northern Ireland. Royal Mail has said that most businesses also remain closed on the day following the Battle of Boyne bank holiday (normally 13 July), which, whilst not a public or bank holiday, is generally recognised as a local holiday. The Northern Ireland Civil Service and Crown Post Offices also traditionally take leave on 13 July.
- 4.6 The day following the Battle of the Boyne holiday is usually 13 July but as the Battle of the Boyne day (12 July) can fall on any day of the week, the date of the Battle of the Boyne bank holiday and local holiday can vary. Royal Mail's proposed no universal postal service day would also vary accordingly as shown in the following table:

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<sup>14</sup> Downstream access mail is mail that has been collected and sorted by another postal operator, but is then handed over to Royal Mail mail centres for final processing and onward distribution to local delivery offices, from where it is delivered by Royal Mail staff.

<b>Day 12 July falls on</b>	<b>Battle of the Boyne bank holiday</b>	<b>Excepted day</b>	<b>Normal service resumes</b>	<b>Example of years relevant</b>
Friday	Friday 12 July	Saturday 13 July	Monday 15 July	2013
Saturday	Monday 14 July	Saturday 12 July	Tuesday 15 July	2014
Sunday	Monday 13 July	Tuesday 14 July	Wednesday 15 July	2015
Monday to Thursday	12 July	13 July	14 July	

- 4.7 The proposed no universal postal service day would therefore fall on the day following the Battle of the Boyne bank holiday, apart from when 12 July is a Saturday and the bank holiday occurs on the following Monday in lieu of the Saturday (as in 2014). In that case, the proposed excepted day would not be the Tuesday following the bank holiday Monday (i.e. 15 July) – instead it would be the previous Saturday (i.e. 12 July which is the actual anniversary of the Battle of the Boyne).

## Mail user expectations

- 4.8 Royal Mail believes that it remains in the interest of the majority of its customers in the area concerned, in regard to mail expectations, to align this day with the holiday taken by local authorities and other local businesses. It argues that whilst a customer outside Northern Ireland may expect their mail to be delivered, if the day after Battle of the Boyne holiday is being observed by the mail recipient, ie they are taking the day as a holiday, it is less likely that the mail will be expected or acted upon.
- 4.9 Royal Mail submitted evidence in support of the application for a Direction in 2009<sup>15</sup> that there was a reduced demand for postal services on this day, and has now provided updated data for social mail, posted in post boxes, for the last 3 years, excluding any business mail collected from customers' premises. This indicates that the small amount of mail posted on 13 July continues to be substantially lower in relation to the average daily postings.

<sup>15</sup> <http://stakeholders.ofcom.org.uk/binaries/post/271.pdf>

	<b>Postings on 13 July*</b>	<b>Average daily posting in July*</b>	<b>Drop in postings %</b>
2010	[X]	[X]	47%
2011	[X]	[X]	45%
2012	[X]	[X]	40%

\* Figures confidential

## Employee relations

- 4.10 Royal Mail has a long-standing practice of permitting its employees to take the day after the Battle of the Boyne bank holiday as annual leave if they wish to and a large percentage of Royal Mail employees choose to take this day as part of their annual leave. Royal Mail considers that a wholesale and blanket attempt to change this long standing arrangement across the whole of Northern Ireland would be highly contentious.

## Londonderry

- 4.11 The day after the Battle of the Boyne holiday is traditionally less observed in the Londonderry area and staff do not generally take annual leave on this day. However, Royal Mail says that a no universal postal service day is needed for all Northern Ireland, including Londonderry, as there would only be a skeleton staff at the mail centre and as such no mail would be supplied to the delivery offices. If Londonderry were not included in the no universal postal service day, then the skeleton mail centre staff would have to process all mail posted outside Northern Ireland to identify the two Londonderry sub postcode areas and arrange for it to be dispatched there. The Londonderry staff will deliver what mail is available for delivery on the day following the Battle of the Boyne bank holiday.
- 4.12 Also there would be no collections across most of Northern Ireland on that day, so even where the Londonderry staff make a collection from post boxes in that locality, they would be unable to transmit the mail any further into the network. Wherever staff choose not to take a day's leave, Royal Mail will use those staff in the most efficient manner available, for example staff will undertake some limited business collections of large volumes of mail in order to ensure it is ready for processing on the next working day, thereby reducing the strain on the system.

## Communications

- 4.13 Royal Mail states that if its request is approved, it will place information about Northern Ireland collection and delivery arrangements for the day after the Battle of the Boyne bank holiday on its website. It will also request that Post Office Ltd place information about closures and alternative delivery and collection dates on its website.

## Section 5

# Summary of consultation responses

- 5.1 On 5 October 2012, Royal Mail submitted a request for a Direction under DUSP 1.3.2 for an exception to its universal service obligation: that the day following the Battle of the Boyne holiday (or the appropriate substitute day where 12 July falls on Saturday or Sunday) be considered a no universal postal service day in perpetuity in Northern Ireland.
- 5.2 This section summarises responses to the consultation and our analysis/reply. A list of responses can be found on our website.
- 5.3 We have received 5 responses to the consultation. Three are wholly in favour of Royal Mail's application. Consumer Focus Post generally accepts the application but has raised some issues for consideration. The Chief Executive of the Northern Ireland Chamber of Commerce objects to the proposal.

## Responses

- 5.4 Royal Mail response:

Royal Mail states that it is pleased that Ofcom is minded to grant its request for a Direction providing an exception to the universal service on the day after the Battle of the Boyne bank holiday

- 5.5 CWU response:

The CWU states that it has consistently supported Ofcom's suspension of USO obligations on days following bank holidays. It recognises that the vast majority of businesses and public organisations are closed on this day in Northern Ireland and so there is little social benefit from imposing a full day service. It also recognises the long standing tradition where many postal workers take the day following the Battle of the Boyne bank holiday as annual leave. This arrangement is only made practicable by the USO exemption.

The CWU also believes that the exemption is consistent with Ofcom's primary duty to secure the provision of the USO. The CWU notes that Royal Mail is the only USO operator and suggests that its financial difficulties threaten this delivery. Therefore, it considers that the costs of maintaining full service on days when business closures mean low mail volumes, are likely to be high and disproportionate to any public benefit.

- 5.6 Free Presbyterian Church of Ulster response:

The Free Presbyterian Church of Ulster agrees with Royal Mail's application as it would permit more staff to properly avail themselves of the holiday.

- 5.7 Chief Executive of the Northern Ireland Chamber of Commerce response:



The Chief Executive of the Northern Ireland Chamber of Commerce argues that allowing the exception would mean that internet based businesses in Northern Ireland would be further disadvantaged, because Great Britain and worldwide customers are already confused by the local holidays, and proposals to increase the number of days without post could damage business further.

#### 5.8 Consumer Focus Post response:

Consumer Focus Post accepts that following Postcomm's decision in 2009 to allow an excepted day in Northern Ireland for the day following the Battle of the Boyne holiday, no complaints have been received by either Royal Mail or Ofcom. It also welcomes the proposal by Royal Mail to continue to make collections from some post boxes which they anticipate may have mail, post offices that are open and business customers by arrangement. It agrees with Royal Mail that a significant number of businesses remain closed but that it does not apply to all areas of Northern Ireland or business sectors. However, it highlights that many private sector businesses, retail businesses and banks are open on this day.

Consumer Focus Post states that the postal industry is going through significant transformation with falling letter volumes and growth in the packet and parcels market. It considers that Royal Mail needs to be more flexible and adaptable to meet consumer demand. It would be concerned if Ofcom were to grant this exception in perpetuity as this will not reflect the needs of a competitive or changing market. Nor does it reflect the needs of consumers, who are expecting an increasingly flexible and convenient postal service. Therefore, it asks Ofcom to benchmark Royal Mail's excepted days with those of other parcel operators, which operate in Northern Ireland, including Yodel, Parcelforce and City Link. It asks Ofcom to clarify how we intend to monitor this situation into the future, or if we would consider a review of this exception in three to five years, to ensure the postal service continues to meet the needs of consumers in the medium to long term.

It also notes, from data provided by Royal Mail that social mail volumes posted at post boxes in Northern Ireland on 13 July were less than average daily postings but considers that it was not clear if this included mail collected at open post office branches and mail collected at businesses by arrangement. In addition, Royal Mail has not provided the volume of inward mail which arrives at the mail centre from Great Britain or other international countries for onward delivery in Northern Ireland or the volume of parcels that may have been posted on 13 July, as many post office branches are not open and most parcels and packets do not fit through a standard post box. It considers that availability of this data would provide a more accurate picture of mail flows on the day following the Battle of the Boyne holiday and allow a more informed decision to be reached.

It agrees with Ofcom that, if the exception is granted, it is imperative that Royal Mail communicates service restrictions on its website, to large business consumers, in callers' offices and in written

publications. It also considers that the Post Office should play an important role in communicating this information and urges Royal Mail to request Post Office branches to display posters advising of all excepted days and to ensure their staff advise consumers of delays when posting to Northern Ireland, particularly for premium services such as Special Delivery.

## 5.9 *Our analysis*

We note the response from CWU and the Free Presbyterian Church of Ulster that most businesses remain closed on the day following the Battle of Boyne bank holiday (normally 13 July), which, whilst not a public or bank holiday, is generally recognised as a local holiday. The Northern Ireland Civil Service and Crown Post Offices also traditionally take leave on 13 July. Therefore our decision takes into account local working practices. We note Consumer Focus Post's concern that Royal Mail needs to be flexible and is concerned about Ofcom granting the exception indefinitely. However, we would grant the exception until further notice and this would not fetter our discretion to withdraw or modify the direction where appropriate should circumstances change. We would be able to review the situation in the future should the need arise and will continue to monitor complaints and any evidence of consumer harm regarding the no universal postal service day. In doing so we shall also consider the availability of alternatives for users that may be available from couriers and parcel operators who may not treat the day after the Battle of the Boyne bank holiday as an excepted day.

We note the response from the Chief Executive of the Northern Ireland Chamber of Commerce, which comments on a potential detrimental impact for internet based businesses in Northern Ireland. We also note Consumer Focus Post's concern that a number of private businesses remain open on the no universal postal service day. Royal Mail wants a no universal postal service day for collections as well as deliveries so as to remove the obligation to collect from all post boxes, many of which have previously been found to contain no mail on the day after the Battle of the Boyne bank holiday. However, as Consumer Focus Post also acknowledge, Royal Mail will still make collections from those post boxes which it expects from experience to contain mail, post offices that are open and business customers by arrangement where advanced notice of sufficient volume has been received. Such mail will be processed or advanced through the system as far as possible, given the constraints on staffing levels, ready for the next working day. We suggest that Northern Ireland based businesses may wish to contact Royal Mail to discuss what alternative arrangements may be open to them on the day after the Battle of the Boyne bank holiday.

Royal Mail has clarified that the social mail volumes posted on the day following the Battle of the Boyne bank holiday does include social (stamped) mail collected from post office branches that are open but does not include business mail from post office branches or mail that is collected from firms by arrangement.

Royal Mail does accept downstream access (DSA)<sup>16</sup> on the day following the Battle of the Boyne bank holiday. This applies to the whole of Northern Ireland as the only hand over point is at the Northern Ireland Mail Centre in Belfast. The mail is accepted on the same basis as the mail that Royal Mail will collect from customers' premises or heavily used post boxes as discussed above. It is accepted to ease the operational strain on the business on the next normal working day. As DSA mail is delivered to Royal Mail already pre-sorted, it can be quickly processed at the Royal Mail mail centre even if only a reduced number of staff are working.

In its 2009 application, Royal Mail said that in 2008 when 13 July fell on a Sunday, around 1800 business customers were offered a collection on Monday 14 July (the substituted bank holiday), but less than 20% took this up. Royal Mail has confirmed that it considers that this situation has not subsequently changed. No business groups or access operators have responded to Ofcom's consultation to object to Royal Mail's application. The response level suggests that there is no significant objection to maintaining the no universal postal service day on the day after the Battle of the Boyne bank holiday. The proposed no universal postal service day aligns with the culture and practices of many local customers and the surrounding communities. Whilst a sending customer outside these areas may expect their mail to be delivered, if a local holiday is being observed by the recipient then it is less likely that the mail will be expected or acted upon.

Ofcom agrees that collection and delivery arrangements during the holiday period should be made clear and published on Royal Mail's website with sufficient notice. Ofcom does not regulate post office counters, therefore holiday arrangements for post office staff would be a matter for Post Office Limited. Royal Mail already ensures that arrangements are published well in advance and will continue to publicise closures in callers' offices and in written publications such as leaflets, informing customers of last posting dates. It will also continue to give Post Office Ltd advance notice of any arrangements.

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<sup>16</sup> Downstream access is mail that has been collected and distributed by a competitor, but is handed over to Royal Mail mail centres for final processing onto local delivery offices, where they are delivered.

## Section 6

# Ofcom's decision

- 6.1 We received 5 responses to the consultation. Three of these responses were wholly in favour of Royal Mail's application and support the reasons put forward by Ofcom for accepting the application. Consumer Focus Post was concerned about the granting of the exception indefinitely and the need for Royal Mail to be flexible. It also said that many private businesses remained open on that day. Our decision will not fetter our discretion to review the exception in light of any changing circumstances. We did not receive any responses from private businesses regarding potential harm as a result of the no universal postal service day. In addition, Royal Mail and Ofcom have not received any complaints in relation to this issue to date regarding the no universal service day on this day (which has been in place since the Postcomm Direction was made in 2009).
- 6.2 We therefore accept Royal Mail's application and have issued a direction under the relevant regulatory condition Designated Universal Service Providers ("DUSP") Condition 1.3.2(a) for the day after the Battle of the Boyne holiday in Northern Ireland to be designated as an exception to the universal service unless otherwise revoked (see Annex 1).

## Legal Tests

- 6.3 We consider that our decision to accept Royal Mail's application would be:
- **objectively justifiable** because there is less demand for postal services and postal volumes in Northern Ireland fall during this period due to the closure of many businesses and public sector organisations, including the Northern Ireland Civil Service and Crown Post Offices, and because it is a continuation of long-standing practice in Northern Ireland ;
  - **not unduly discriminatory** because the exception would apply to all households in Northern Ireland and would observe local tradition. Royal Mail believes that its practices are generally in line with the communities it serves;
  - **proportionate** because it is consistent with Royal Mail's current arrangements for collection and delivery services in the local areas concerned and is aligned with local communities' needs for collection and delivery services (we note that there have been no customer complaints received by Postcomm, Ofcom or Royal Mail regarding the lack of a universal service on that day); and
  - **transparent** because Ofcom has issued a public consultation on this issue and Royal Mail will publicise any closures widely on its website, in callers' offices and in written publications such as leaflets informing customers of last posting dates. Royal Mail would also give Post Office Ltd advance notice of any arrangements so that Post Office Ltd could inform its customers, for example when Special Delivery items would arrive;
- 6.4 Therefore, we consider that our decision to grant approval to Royal Mail's application for an exception to its universal service obligation on the day following the Battle of the Boyne bank holiday in Northern Ireland (or on the Saturday prior to the bank holiday when 12 July falls on a Saturday) satisfies the statutory criteria at paragraph

An exception to Royal Mail's universal service obligation

4(2) of Schedule 6 of the Act for granting an approval giving effect to a regulatory condition.

## Annex 1

# Direction

### **DIRECTION UNDER DESIGNATED USP CONDITION 1**

**Direction under Designated USP condition 1.3.2(a) designating an exception to Royal Mail's requirements imposed under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services for the day after the Battle of the Boyne bank holiday in Northern Ireland**

### **Background**

- (A) On 5 October 2012, Royal Mail wrote to OFCOM requesting a Direction under DUSP condition 1.3.2 excepting Royal Mail from its requirements imposed under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services, for the day after the Battle of the Boyne bank holiday in Northern Ireland.
- (B) Prior to making a direction affecting a regulatory condition imposed on a postal operator, including under DUSP condition 1.3.2(a), in accordance with paragraph 4(3) of Schedule 6 to the Act, OFCOM must publish a notification of its proposal to give the direction and its reasons for making the proposal. In accordance with paragraph 4(8) of Schedule 6 to the Act, OFCOM may only give effect to a proposal to make a direction if it has:
  - (a) considered every representation about the proposal that is made to OFCOM within the period specified in the notification; and
  - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State.
- (C) On 6 December 2012 OFCOM published, in accordance with paragraph 4(3) of Schedule 6 to the Act, such a notification of its proposal to give a direction for the reasons set out in the consultation document accompanying that notification. In accordance with paragraph 4(4) of Schedule 6 to the Act, the notification invited representations to OFCOM by 11 January 2013.
- (D) OFCOM have considered every representation about the proposed Direction received and duly made to it and had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State.
- (E) For the reasons set out in the explanatory statement accompanying this Direction, OFCOM are satisfied that giving this Direction satisfies the general test set out in paragraph 4(2) of Schedule 6 to the Act, and OFCOM have considered and acted in accordance with their principal duty in section 29 of the Act and their general duties in section 3 of the Communications Act 2003.

## Decision

Pursuant to and for the purposes of DUSP conditions 1.1.2(aa) and 1.3.2(a) OFCOM hereby direct as follows:

1. Exceptional circumstances require the day specified in paragraph 2 to be treated as a public holiday in Northern Ireland for the purposes of the definition of “public holiday” in DUSP condition 1, and pursuant to DUSP condition 1.3.2(a) that day shall therefore constitute an exception to the requirements imposed on Royal Mail under DUSP condition 1 in respect of the delivery or collection of postal packets and the target routing times of services.
2. The day referred to in paragraph 1 above is the day immediately following the Battle of the Boyne bank holiday in each year, except in a year when the 12 July falls on a Saturday, in which case the day will be Saturday 12 July, as shown in the following table:

Day 12 July falls on	Battle of the Boyne bank holiday	Day of exception to universal service	Normal service resumes	Example of years relevant
Monday to Thursday	12 July	13 July	14 July	
Friday	Friday 12 July	Saturday 13 July	Monday 15 July	2013
Saturday	Monday 14 July	Saturday 12 July	Tuesday 15 July	2014
Sunday	Monday 13 July	Tuesday 14 July	Wednesday 15 July	2015

## Commencement and interpretation

3. This Direction shall take effect on 13 February 2013.
4. In this Direction, unless the context otherwise requires, and subject to paragraph 5 below, words or expressions used shall have the same meaning as they have been ascribed for the purposes of DUSP condition 1.
5. In this Direction—
  - (a) “**Act**” means the Postal Services Act 2011 (c.5);
  - (b) “**DUSP Conditions**” means the Designated USP conditions imposed on Royal Mail with effect from 1 April 2012 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
  - (c) “**Royal Mail**” means Royal Mail Group Ltd, whose registered company number in England and Wales is 04138203.

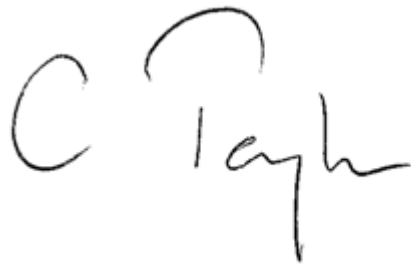
6. For the purpose of interpreting this Direction—

(a) headings and titles shall be disregarded;

(b) expressions cognate with those referred to in this Direction shall be construed accordingly;

(c) the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.

Signed by

A handwritten signature in black ink, appearing to read 'C Taylor'.

**Chris Taylor**

**Director, Consumer Policy - Content, Consumer and External Affairs**

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

13 February 2013