

16 November 2011

Royal Mail,
Consumer Focus, and
other interested parties

Sean O'Hara, Principal
Consumer Affairs

Direct line: 0207 981 3657

Sean.o'hara@ofcom.org.uk

Dear Colleague,

Notification of extension to USO deliveries exceptions Direction

Background

On 31 January 2003, Postcomm issued a Direction as to the geographical conditions and other circumstances which may be considered to be exceptional in relation to the provision of a universal postal service, i.e. the circumstances in which Royal Mail may be exempted from its licence requirement to deliver letters to every home or premises every working day ("the 2003 Direction"). Following a consultation on exceptions to Royal Mail's delivery service in August 2006, Postcomm published its delivery exceptions policy and Direction designating geographical conditions and other circumstances as exceptions in April 2007 ("the Direction").

The policy and Direction were modified on 1 October 2008 to remove references to Postwatch following its abolition under the Consumers, Estate Agents and Redress Act 2007.

Proposed extension of Direction

The Direction has now expired and Ofcom, as the new regulatory body for post, is notifying stakeholders of its proposal to extend the Direction until 31 December 2013. Ofcom is proposing this extension as there has not been any indication from customers that the policy has not worked effectively to protect them. The extension does not prevent the issuing of a new policy and direction before 31 December 2013 if circumstances require that a review be undertaken. We may consider reviewing the policy at the same time as the universal service postal order if we think it may be appropriate to do so.

We do not propose modifying the policy and Direction other than to reflect the coming into force of the Postal Services Act 2011 and the transfer of regulatory responsibility for post to Ofcom from Postcomm.

Under Schedule 6 of the Postal Services Act 2011, Ofcom may not give or modify a direction unless it is 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.

We consider that the proposed extension to the Direction is objectively justifiable because the Postal Services Act 2011 and the relevant initial condition (DUSP 1) to which Royal Mail is subject both contain provisions that recognise that there are circumstances in which it is appropriate to exempt Royal Mail from its licence requirement to deliver letters to every home or premises every working day. These provisions are essentially the same as those that were set out in the Postal Services Act 2000 and Royal Mail's licence. Given that Postcomm considered that there were valid justifications for granting Royal Mail an exemption from the universal service delivery requirement in the circumstances identified in the Direction, we consider it appropriate to grant the extension to the Direction.

The proposal to extend the Direction does not discriminate unduly against particular persons or a particular description of persons. The Direction sets out a clear basis for determining the circumstances in which it would not be appropriate to require Royal Mail to deliver to certain homes or premises. The Direction also provides a process for appealing any decision by Royal Mail not to deliver to a home or premises.

The proposal to extend the Direction is proportionate to what it is intended to achieve. The Direction identifies only limited circumstances in which Royal Mail may decide that it is not required to provide a delivery service to particular homes or premises.

Finally, the proposed extension to the Direction and the proposed changes to the Direction to reflect the coming into force of the Postal Services Act 2011 and the transfer of regulatory responsibility to Ofcom are transparent since they are the subject of this consultation and since we have set out the text of the proposed policy and Direction for consultation.

Next steps

If you have any comments on the draft Direction below, please send them to [michelle.koretz @ofcom.org.uk](mailto:michelle.koretz@ofcom.org.uk) by 16 December 2011.

Yours sincerely,

Sean O'Hara,

Principal, Consumer Affairs