
Decision to grant an exception to Royal Mail's universal service obligations

No requirement for deliveries and collections in Scotland when 2 January falls on a Saturday

STATEMENT

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1. Overview

As the Designated Universal Service Provider (“DUSP”), Royal Mail is required to provide a universal postal service, including delivery and collection of letters, six days per week, Monday to Saturday. This obligation does not however apply on public holidays, which includes bank holidays and any other date which Ofcom directs. These are known as ‘exceptions.’

Royal Mail has requested that Ofcom issue a direction which makes 2 January an ‘exception’ in Scotland, when this date falls on a Saturday. The 2 January is generally a public holiday in Scotland (known as the New Years’ Holiday) although, when this date falls on a Saturday, the following Monday is ordinarily designated as the official public holiday. This would mean that, in the absence of a direction from Ofcom, Saturday 2 January would be a normal working day on which Royal Mail would be required to deliver and collect letters.

Royal Mail has confirmed that, if Ofcom agrees to its request, it intends to provide universal services on the substituted bank holiday (ordinarily Monday 4 January) when it considers there will be greater demand.

During October 2020, Ofcom consulted on a proposed direction that would implement Royal Mail’s request. We received four responses to our consultation, none of which objected to the proposal. Taking account of those responses, we have decided to agree to Royal Mail’s request.

What we have decided – in brief

Ofcom has issued a direction providing an exception to the universal service in Scotland when 2 January falls on a Saturday. This means that Royal Mail will not have to collect or deliver mail on that day until further notice.

The overview section in this document is a simplified high-level summary only. Our final decision and associated reasoning are set out in the full document.

2. Background and legal framework

Background

- 2.1 As the DUSP, Royal Mail is required to collect and deliver letters every Monday to Saturday, excluding public holidays. Whilst public holidays include the traditional holidays of Christmas Day and Good Friday, as well as bank holidays, Ofcom may also direct that specific days (which may not technically be bank holidays) become exceptions to the universal service obligations.
- 2.2 The 2 January is usually a public holiday in Scotland.¹ However, if it falls on a Saturday, the public holiday ordinarily moves to the following Monday (4 January) and Saturday 2 January is treated as an ordinary Saturday. This would mean that the universal service obligations on Royal Mail to collect and deliver letters would not apply on 4 January, it being a public holiday, but that they would apply on Saturday 2 January. This specific issue will arise on 2 January 2021.²
- 2.3 On 29 July 2020, Royal Mail asked Ofcom to make a direction exempting it from its universal service obligations in Scotland on 2 January, whenever this date falls on a Saturday. In the remainder of this Section, we set out the legal framework relevant to Royal Mail's request and summarise Royal Mail's request.

Relevant Legal Framework

Royal Mail's duty to provide the universal service

- 2.4 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.

¹ Bank holidays in England and Wales, Scotland and Northern Ireland are set under the Banking and Financial Dealings Act 1971. It provides that 2 January be observed as a bank holiday in Scotland. Additional bank holidays may be provided for in a given year by Royal Proclamation (for example the Jubilee bank holiday in 2012). When the usual date of a bank or public holiday falls on a Saturday (or Sunday), a substitute day is also given by Royal Proclamation, normally the following Monday.

² The GOV.UK website currently lists all the expected bank and public holidays for England, Wales, Scotland and Northern Ireland in 2020-21. In Scotland, 2 January would normally be designated a Bank Holiday if it falls on a weekday. However, in 2021, 2 January falls on a Saturday and therefore Monday 4 January 2021 is the substitute bank holiday.

2.5 Ofcom has met its requirements under section 30 of the Act by making [the Postal Services \(Universal Postal Service\) Order 2012 \("the Order"\)](#)³. Articles 6 and 7 of the Order set out the universal service requirements for collection and delivery, as required under section 31 of the Act. These are mirrored in the obligations imposed on Royal Mail (as the DUSP) under the DUSP conditions.

2.6 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"

2.7 Under DUSP condition 1.5.1 Royal Mail must ensure that:

"Except as set out in DUSP 1.3, the universal service provider shall provide at least one collection-

(a) every Monday to Saturday, from public access points for letters for the services described in DUSP 1.4..."

Exceptions to the universal service obligations

2.8 DUSP condition 1.3.2 permits certain exceptions to Royal Mail's universal service obligations. Specifically, it provides that:

"The requirements in this DUSP Condition in respect of the delivery or collection of postal packets do not need to be met:

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

(b) in such geographical conditions or other circumstances as OFCOM has by direction specified to be exceptional for the relevant purposes."

2.9 "Public holiday" is defined in the condition as "Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom, and, in relation to a particular territory or place, any day in relation to which OFCOM has by direction provided for an exception at that place under DUSP 1.3.2"⁴ (emphasis added).

Test for giving a direction

2.10 Paragraph 4 of Schedule 6 of the Act sets out the procedure which Ofcom must follow to 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(a).

³ Amended in December 2013

⁴ DUSP condition 1.1.2(aa).

2.11 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.

2.12 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 a 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.

General duties

2.13 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.

2.14 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be Ofcom's principal duty, in carrying out its 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.

2.15 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.

2.16 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.

2.17 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.

2.18 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.

- 2.19 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.

Royal Mail's Request

- 2.20 As explained above, on 29 July 2020, Royal Mail asked Ofcom to issue a direction under DUSP 1.3.2(a) which permanently designates 2 January as an exception to the universal service in Scotland when it falls on a Saturday.
- 2.21 In doing so, [Royal Mail explained that](#), in the absence of a direction from Ofcom, "*Delivery Offices would have to work on Thursday 31st December, not work on Friday 1st January, work on Saturday 2nd January, not work on Sunday 3rd January and Monday 4th January.*"⁵
- 2.22 Royal Mail argues that the impact of no deliveries and collections on Saturday 2 January on businesses and consumers would be minimal. It notes that many businesses are closed on a Saturday and that Saturday business collections represent a very small proportion of business collections. In contrast, Royal Mail expects demand for its services to rise on Monday 4 January and has suggested that some of its largest business customers will be working despite it being a bank holiday.
- 2.23 Royal Mail submits that, due to the fixed nature of the universal service obligation, it is not able to flex its network to meet lower demand and would (in the absence of Ofcom agreeing to its request) incur the cost of operating a full national network over the holiday weekend for relatively low volumes of mail.
- 2.24 Royal Mail also notes that its request is in line with the approach taken on other public [holidays that can fall on a Saturday, such as December 26](#) and January 1 in the rest of the UK, and [12 July in Northern Ireland](#).⁶ The application notes that Postcomm, the previous postal regulator, granted Royal Mail an exception to the universal service the last time the 26 December fell on a Saturday (in 2009) for the same reasons.
- 2.25 Royal Mail has confirmed that, if Ofcom agrees to its request, it will instead treat the alternative bank holiday (ordinarily Monday 4 January) as a normal working day notwithstanding that it would be an official bank holiday.

General impact assessment

- 2.26 The analysis presented in Section 3 of this document constitutes an impact assessment, as defined in section 7 of the 2003 Act.

⁵ Royal Mail, Letter to Ofcom, 29 July 2020, see Annex 6.

⁶ See directions of 1 October 2015 and 13 February 2013.

- 2.27 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the 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](#).
- 2.28 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by, in relation to what we propose.

Equality impact assessment

- 2.29 In carrying out our functions, we are also 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 reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.30 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.
- 2.31 We have therefore given careful consideration as to whether granting exceptions to the universal service obligation for Saturday 2 January will have a particular impact on any particular group within society. We do not believe it will because the exception would apply to all addresses and all access points in Scotland.

3. Summary of consultation responses

Introduction

- 3.1 On 2 October 2020, [Ofcom published a consultation setting out Royal Mail's request](#). The consultation explained that Ofcom was minded to agree to Royal Mail's request for a new exception to the universal service and provided notification of a proposed direction to give effect to that proposed exception.
- 3.2 This section summarises responses to the consultation, non-confidential copies of which are published on our website.

Summary of responses

- 3.3 We received four responses to our consultation:
- a) Citizens advice Scotland ("CAS") emphasised that any proposed change to the universal postal service must not detrimentally impact consumers, particularly those in rural areas and vulnerable groups. CAS recommended that, before any decision is made regarding the exception, Royal Mail should consider conducting further research or analysis on the impact the proposed exemption would have for consumers, take on board comments and share relevant data with CAS and other consumer advocacy bodies. CAS added that, if the exemption is granted, it must be clearly communicated to consumers and businesses across Royal Mail's channels well in advance of 2 January 2021.
 - b) Royal Mail responded to confirm its support for our proposed direction and to confirm that it would provide universal services on the substituted bank holiday (i.e. Monday 4 January).
 - c) A confidential respondent expressed concern about the impact on Royal Mail employee's holiday and leave arrangements should the proposed exception be refused, and therefore supported our proposed direction.
 - d) A confidential respondent supported the proposal.
- 3.4 We set out in Section 4 below our final decision on this matter, taking account of these consultation responses.

4. Ofcom's decision

Summary

4.1 For the reasons set out below, Ofcom has decided to agree to Royal Mail's request. In particular, Ofcom has issued a direction under DUSP Condition 1.3.2(a) for 2 January to be permanently designated as an exception to the universal service when it falls on a Saturday. This means that Royal Mail will not have to collect or deliver letters on that day until further notice.⁷

Ofcom's decision

- 4.2 In 2009, Postcomm granted Royal Mail an exception when 2 January fell on a Saturday. In making that decision, Postcomm took into account that:
- a) there were no objections to Royal Mail's request; and
 - b) only 1.4% of business collections took place on a Saturday and there was evidence that there would be more demand for postal services on the following Monday.
- 4.3 Having consulted on this issue again in October 2020, we note that, while two respondents made comments and/or expressed some concern about the proposal, no respondent objected to the proposed delivery exception in principle.
- 4.4 Further, Ofcom is satisfied – as Postcomm was when it last considered this issue in 2009 – that there is likely to be more demand for postal services on the following Monday (i.e., 4 January) than on the Saturday (i.e., 2 January). As Royal Mail noted in its letter to Ofcom, many businesses are closed on a Saturday and only 2.7% of business collection customers currently have a scheduled collection on Saturday. Further, we understand that Royal Mail has already received indications that some of its largest business customers will be working on 4 January even though it is a bank holiday in Scotland, and therefore that demand for its services is likely to pick up on that day.
- 4.5 We note the points made by CAS that any proposed change to service must not detrimentally impact consumers, particularly those in rural areas and vulnerable groups and that Royal Mail should consider carrying out further research to assess the impact on consumers. We have carefully considered this point and we do not consider that the proposed change to service would detrimentally impact consumers and businesses. In reaching this view we have taken account of the fact that Royal Mail will, instead, provide services on Monday 4 January when demand is likely to be higher. This will ensure that there is no increase in the total number of non-universal service days.
- 4.6 We note the point raised by a confidential respondent about the impact on Royal Mail employee's holiday and leave arrangements should the exception not be granted. It is

⁷ It would also mean that, for the purpose of 'target routing times' under DUSP 1.6, that day would become a non-working day.

however for Royal Mail to manage its leave arrangements with its employees, which is entirely separate to the regulatory framework administered by Ofcom.

- 4.7 In light of the above, our view is that it would be more reflective of customer demand, and therefore further the interests of citizens and consumers, if Ofcom agrees to Royal Mail's request. It also does not appear to us, taking account of Royal Mail's commitment to resume services on 4 January, that it would adversely impact the provision by Royal Mail of the universal postal service.
- 4.8 We agree with CAS that it is essential Royal Mail clearly communicates with consumers and businesses to ensure that they are aware of when deliveries and collections will take place in Scotland, and we note that Royal Mail has committed to do so.
- 4.9 We have considered whether it would be appropriate to impose additional requirements on Royal Mail to provide universal services on 4 January 2021 (and later occasions) which will remain, technically, excepted from the universal service. However, our view is that this is not necessary at this stage. We will however monitor whether Royal Mail fulfils its commitment to resume services on this date.

Legal Tests

- 4.10 We consider that the exception is:
- **objectively justifiable** because the impact of no collections and deliveries on Saturday 2 January is minimal. There is less demand for postal services on Saturdays generally with many businesses closed and this is particularly the case on a Saturday immediately following the New Years' Day bank holiday when most businesses and public sector organisations will be closed;
 - **not unduly discriminatory** because the exception applies to the whole of Scotland and therefore there would be no deliveries to each delivery point and no collections from each access point in Scotland on that day;
 - **proportionate** because it does not go further than is necessary to except Royal Mail from carrying out its universal service obligation on 2 January when this date falls on a Saturday. It is also consistent with previous regulatory practice when Postcomm issued a direction for that day to be a "no service day"; and
 - **transparent** because the reasons for the exception, the legal basis and Ofcom's final decision are set out in this document and were publicly consulted upon. Our consultation also included a proposed direction.
- 4.11 Therefore, we consider that our decision to give a direction excepting Royal Mail from its universal service obligations on Saturday 2 January 2021 (and when 2 January falls on a Saturday in future years) satisfies the statutory criteria at paragraph 4(2) of Schedule 6 of the Act for giving a direction affecting a regulatory condition imposed on a postal operator.

A1. 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 and collection of postal packets in Scotland for the 2 January when this date falls on a Saturday, beginning with 2 January 2021.

Background

- A1.1 On 29 July 2020, 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 and collection of postal packets in Scotland, for 2 January when this date falls on a Saturday.
- A1.2 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.
- A1.3 On 2 October 2020 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 2 November 2020.
- A1.4 OFCOM have considered every representation about the proposed direction received and duly made to it.
- A1.5 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

A1.6 Pursuant to and for the purposes of DUSP conditions 1.1.2(aa) and 1.3.2(a) OFCOM hereby direct as follows:

- a) The day specified in paragraph 2 shall be treated as a public holiday in Scotland 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 and collection of postal packets.
- b) The day referred to in paragraph 1 above is the 2 January when this date falls on a Saturday, beginning with 2 January 2021.

Commencement and interpretation

A1.7 This Direction shall take effect on 18 November 2020.

A1.8 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.


A1.9 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 March 2017 pursuant to sections 36 and 37 of, and paragraph 3 of Schedule 6 to, the Act; and
- c) “Royal Mail” means Royal Mail Group Limited, whose registered company number in England and Wales is 04138203.

A1.10 For the purpose of interpreting this Direction—

- a) headings and titles shall be disregarded;
- b) expressions cognate with those referred to in this Notification shall be construed accordingly;
- c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

Signed by

A rectangular box containing a handwritten signature in black ink that reads "M. Gibbs".

Marina Gibbs

Director, Network and Communications

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

18 November 2020