



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

Statement

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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 and by imposing on it a designated Universal Service Provider condition (“DUSP condition”) which, among other things, requires it to provide daily collections.
- 1.2 However, Section 33(3)(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. 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, expires on 31 December 2013. We consider that there is an ongoing need to have clear rules and procedures that govern the exceptions to the collections obligations (“collections exceptions”). Therefore, on 21 October 2013, we published a consultation (“the October consultation”) with our proposed direction for collections. We also consulted on a minor change to DUSP Condition 1.8, to ensure that collection points that are subject to exceptional circumstances do not count towards compliance with the access point (postbox) density obligation.
- 1.5 The October consultation identified a number of areas where improvements could be made to the direction for collections. We have fully considered the three responses to the October consultation in making our decision on collection exceptions and the amendment to DUSP 1.8.
- 1.6 We intend to make the direction broadly as specified in the October consultation. However, in light of the responses and our further analysis, we have made the following amendments to our original proposals:
 - Third party blockages: to allow for the rare circumstances when Royal Mail is unable to identify or locate the third party from whom it would need to request access to the premises but to also require Royal Mail to retain evidence of its attempts to contact the relevant third parties.
 - Information on post boxes: to reduce the risk of damage/vandalism to post boxes by allowing Royal Mail to not list the details of alternative access points if it has made an anticipatory closure e.g. when it seals boxes on or around the 5 November for health and safety reasons.
 - Reviews: to limit the potential costs Royal Mail is exposed to, whilst still providing the necessary protection for and covering the needs of users, when providing assistance for users who by reason of age, disability, language or ill health may

be disadvantaged when seeking a review of an exception. The proposed direction did not have a limit and therefore may not have been proportionate.

- 1.7 In light of the responses and our further analysis, we have decided to amend DUSP 1.8 in a way that is more limited than we proposed in order to clarify when an excepted access point counts towards the density calculation. We have concluded that exceptions where collections are made once a week or more will continue to count towards the density obligation. However, exceptions which are subject to all week exceptions and where those circumstances have persisted for twelve months will not count towards the density obligation.
- 1.8 This statement comprises our analysis of the consultation responses, the formal notification of our direction specifying the circumstances we consider to be exceptional and the formal notification of our amendment of DUSP 1.8
- 1.9 This direction and amendment to DUSP 1.8 will take effect on 31 December 2013 and will remain in place unless otherwise revoked.
- 1.10 Today we have also published a statement on exceptions to the postal deliveries universal service obligation.

Section 2

Introduction

Relevant background

- 2.1 The universal service obligation, to be 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
- 2.2 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.² 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.
- 2.3 However, Section 33(3)(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.³ Ofcom can specify the circumstances we consider to be exceptional by making a direction under DUSP 1.3.2 and the existing direction, which was made by Postcomm on 7 December 2010 ("the Postcomm Collections Direction"),⁴ expires on 31 December 2013.
- 2.4 As noted above, Ofcom takes very seriously the issue of exceptions to the universal service obligation to make collections. Although collection exceptions apply to a small proportion (about 1.8%) of all post boxes,⁵ it is important that the circumstances Ofcom considers to be exceptional are clearly set out for users and Royal Mail.
- 2.5 We consider that there is an ongoing need to specify exceptions to the universal service obligation to make collections from every access point every working day. Therefore, on 21 October 2013,⁶ we published "the October consultation" which set out our proposed direction to replace the Postcomm Collections Direction, including our reasons for and effect of our proposals. It also set out the reasons for and effect of our proposed modification to DUSP Condition 1.8.
- 2.6 We received three responses which we have considered fully. A summary of these and our assessment are set out in Section 4. All responses are published in full on Ofcom's website.⁷ Responses were received from:
- Royal Mail;

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 Requirement 2, section 31, Postal Services Act 2011.

³ Section 33(3)(b) Postal Services Act 2011.

⁴ <http://stakeholders.ofcom.org.uk/binaries/post/1568.pdf>.

⁵ 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.

⁶ <http://stakeholders.ofcom.org.uk/consultations/post-collection-usage/>.

⁷ <http://stakeholders.ofcom.org.uk/consultations/post-deliveries-usage/>.

- Consumer Futures; and
 - TechUK.
- 2.7 This statement comprises our analysis of the responses, our formal notification of our direction specifying the circumstances we consider to be exceptional and the formal notification of our amendment of DUSP 1. The structure of the remainder of this document is as follows:
- Section 3 sets out the legal framework;
 - Section 4 summarises the consultation responses, our assessment and our decision regarding the direction including the consequential minor modification to DUSP Condition 1;
 - our formal notification of our direction is at Annex 1; and
 - our formal notification of our modification to DUSP Condition 1 is at Annex 2.
- 2.8 The direction and modification to DUSP 1.8 will take effect from 31 December 2013 and will remain in place unless otherwise revoked.

General impact assessment

- 2.9 The analysis presented in this document is intended to complement the analysis contained in the October consultation. Together that analysis constitutes an impact assessment, as defined in section 7 of the Communications Act 2003 (the “2003 Act”). In Section 4 we set out our analysis and decisions, including their impact on stakeholders.
- 2.10 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.⁸
- 2.11 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 what we propose.

Equality impact assessment

- 2.12 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 apply. 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

⁸ *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.

background or identity. We have given careful consideration to whether or not the direction and modification to DUSP Condition 1.8 will have a particular impact on protected groups such as race, age, disability, gender, pregnancy and maternity, religion or sex equality.

- 2.13 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 groups such as the elderly or disabled may find it difficult to walk further to an access point, although 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 letter boxes and other access points for the purpose of providing the universal postal services. The density obligation is such that there has to be a letter box within half a mile of 98% of users of postal services
- 2.14 We 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 consumers 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.
- 2.15 Our assessment of the potential impacts on protected groups was outlined in Section 4 of the October consultation and is also outlined in Section 4 of this document. Where we have made changes to what we proposed in the October consultation, as a result of responses to the consultation, we have again considered any potential impact on protected groups as a result of those changes.

Section 3

Relevant legal framework

The universal service

- 3.1 Under section 31 of the Act, as part of the universal postal service in the United Kingdom, the universal service must include the minimum requirements set out in section 31 of the Act. These include “the collection of letters every Monday to Saturday and of other postal packets every Monday to Friday from every access point in the UK 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”.
- 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. A separate statement published on 10 December 2013⁹ amended the DUSP condition to add a new provision DUSP 1.3.2A, to read:

- 3.7 “Ofcom may by direction set out the things which must be done when exceptional circumstances under DUSP 1.3.2(b) may have arisen in any particular case, including but not limited to: reporting, notification, appeals, reviews and the establishment of alternative delivery or collection arrangements.”
- 3.8 This makes it clearer that Ofcom’s direction-making power may be used to require the universal service provider to make arrangements of this type, and enables us to separate the definition of what is “exceptional” from associated procedural matters.

Test for giving a direction and modifying a regulatory condition

- 3.9 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.
- 3.10 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.

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 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.

⁹http://stakeholders.ofcom.org.uk/consultations/post/statement/?utm_source=updates&utm_medium=email&utm_campaign=post-statement.

- 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 principles¹⁰ 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.

¹⁰ See this link for a full list of the principles, <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>.

Section 4

Ofcom's assessment and decision

- 4.1 Section 4 of the October consultation set out our proposals for the exceptions direction and modifying DUSP condition 1 based on our analysis of the current arrangements and relevant Ofcom market research and complaints numbers.
- 4.2 In this section we summarise the responses to the October consultation and set out our analysis and decisions for each proposal made in the October consultation. Save to the extent and as modified by what is set out below, in this decision we adopt all the reasoning set out in the October consultation.
- 4.3 We received three responses to the October consultation which we have considered fully. All responses have been published in full on Ofcom's website.¹¹ Responses were received from:
- Royal Mail;
 - Consumer Futures; and
 - techUK.
- 4.4 The respondents were broadly supportive of our proposals and agreed that the direction should be made. Royal Mail agreed with our assessment that the current arrangements are proportionate and effective. Consumer Futures considered that the changes we proposed were beneficial, in the consumer interest and will bolster the current arrangements in place. TechUK agreed with our overall approach regarding business boxes and collections. However, respondents did provide some specific feedback on the drafting of the proposed direction and modification of DUSP 1.8. These are discussed in the relevant sub-sections below.

Appropriate categories of exception

- 4.5 In the October consultation we proposed to:
- remove the distinction between long-term and short-term collections;
 - provide more detail on the threshold for health and safety exceptions;
 - specify more detailed sub-categories for difficulty of access;
 - define business boxes as a specific category; and
 - define anticipatory closures as a specific category.

¹¹ <http://stakeholders.ofcom.org.uk/consultations/post-collection-uso/>.

Long-term and short-term collections exceptions

Proposal

- 4.6 In the October consultation we proposed to remove the distinction between long term and short term categories in our definition of exceptional circumstances, and refer where relevant only to the length of time for which exceptional circumstances have existed. This was because our review identified that the distinction between long and short term exceptions in the Postcomm Collections Direction has no practical impact on Royal Mail and that 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.

Responses

- 4.7 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.8 We remain of the view, for the reasons set out in paragraph 4.6 and in the October consultation, that there is no need for the direction to class exceptions as “long term” or “short term”.

Health and safety category

Proposal

- 4.9 In the October consultation we proposed 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, repeated vandalism and changes to traffic flow making it unsafe to park or pull out after collection.
- 4.10 However, we considered that the direction could be clearer about when a health and safety-related exception would apply. In particular, it could be clearer that the exception arises when a hazard arises, rather than only after the hazard has been formally assessed by Royal Mail. We also proposed to clarify when and how an assessment must be made.

Responses

- 4.11 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.12 We remain of the view, for the reasons set out in our October consultation and in paragraphs 4.9 and 4.10 above, that the direction should specify when health and safety exceptions would apply and when and how an assessment should be made. In this respect, we have made the direction with no changes from the version on which we consulted.

Difficulty of access category

Proposal

- 4.13 As set out in our October consultation, we remain 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.
- 4.14 We considered that there were three categories of 'difficulty of access': lack of road access, third party blockage and other causes.

Difficulty of access: lack of road access

- 4.15 Some places in the United Kingdom (usually islands) cannot be reached by land. Access relies on scheduled air and/or ferry services from the Great Britain or Northern Ireland mainland. For some such 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.
- 4.16 We proposed that it would be unreasonable 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 direction therefore provides 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, so collections are required on those days.
 - In cases where there is no service, or any 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

- 4.17 Access problems may arise where post boxes cannot be accessed on particular days due to their location inside closed buildings, 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.
- 4.18 We proposed 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 the direction.

Difficulty of access: other causes

- 4.19 We also considered there 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 (which are protected by law) 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 4.17 above. Nor would it necessarily fall under the health and safety category. We therefore proposed to provide for this in the direction. We stated that 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.

Responses

- 4.20 Respondents were supportive of our proposals in relation to difficulty of access lack of road access and other causes and we did not receive any responses which raised specific recommendations or issues with these categories.
- 4.21 However, in relation to third party blockages Royal Mail recommended an amendment to paragraph 8 of the direction regarding the requirement to request access in writing where there is a third party blockage. Royal Mail stated that it may not know the identity of the third party i.e. in multi-occupancy buildings and to determine the owner in order to write to them would incur additional costs by obtaining Land Registry information. Also, as access to the premises has been blocked it may not be appropriate to write. Royal Mail suggested the following wording for paragraph 8(c)(ii) of the direction changing where "the universal service provider has reasonably requested access in writing from the third party" to "reasonable steps to request access from either the occupier or the third party concerned".

Analysis and conclusions

- 4.22 We remain of the view, for the reasons set out in our October consultation and above, that difficulty of access should constitute exceptional circumstances. In relation to "lack of road access" and difficulty of access caused by "other causes", we have made the direction with no changes from the version on which we consulted
- 4.23 In relation to the third party blockage category, we consider that it is reasonable, under Royal Mail's universal service obligation, that Royal Mail should be required to try to obtain access. This is particularly because it may mean access is allowed, reducing the number of exceptions. Therefore, Royal Mail should make reasonable efforts to find out whether access may be granted. We do not consider that the costs

of writing to the third party would be disproportionate¹² given the small number of exceptions,¹³ of which not all would be due to third party blockage.

- 4.24 However, we do acknowledge that there may be circumstances, although we consider this would be extremely rare, when the relevant third party may not be identifiable or contactable. Therefore, we have changed paragraph 8 of the direction to require Royal Mail to take reasonable steps to request access from either the occupier or the third party concerned. However, we have also added a requirement for Royal Mail to retain a record of the steps it has taken in this regard for at least 12 months. We consider that requiring Royal Mail to keep such records is objectively justifiable and proportionate as it will provide verification that it has attempted to request access and in view of the small number of exceptions, with not all of these likely to relate to third party blockages, the administrative costs of maintaining such records should be minimal.

Business boxes

Proposal

- 4.25 In our October consultation we set out that 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 commercial areas where overwhelmingly the senders of metered mail are closed on Saturdays. Those 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 considered that it was reasonable that most business boxes continue to be excepted from Saturday collections and to treat business boxes as a separate category of collection exception.
- 4.27 We also proposed to clarify the direction as to how these exceptional circumstances are defined, as the Postcomm collections direction definition was linked to collections which were not routinely made on Saturdays prior to 1 October 2006. We proposed to require Royal Mail as part of its annual review of exceptions to consider whether the absence of demand still applies in relation to these access points:
- on a Saturday; and
 - in relation to metered mail in volumes of greater 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.

¹² A Land Registry search to determine ownership is currently £3.

¹³ There were 887 difficulty of access exceptions out of a total of 2,134 exceptions, Table 1 of the October consultation: <http://stakeholders.ofcom.org.uk/consultations/post-collection-uso/>.

Responses

- 4.28 Royal Mail in its response recommended a minor change to paragraph 10(b) of the direction to provide greater clarity on the process it must undertake as part of the annual review. It suggested the wording be amended from the universal service provider “knows of no users” to be replaced by a requirement for the universal service provider “having no express knowledge” of customer demand for Saturday collections. Royal Mail stated that since the first collection direction in 2006, only one customer has called to discuss the possibility of a Saturday collection which was resolved by informing the customer they could take their Saturday mail to the Post Office.
- 4.29 techUK welcomed Ofcom’s approach to strengthening and formalising the position on business boxes as they are a long-term exception which only relate to Saturdays and this fact should be recognised. techUK also stated that it would expect metered mail to be accepted into the Royal Mail network via the Post Office or through the Royal Mail delivery office and mail centre.

Analysis and conclusions

- 4.30 In relation to Royal Mail’s suggested amendment, we have not identified any difference between our proposed wording and Royal Mail’s proposed wording in terms of effect. In both cases, Royal Mail would be made aware of a demand and would have to ensure it was in compliance with the direction requirements. Therefore, we do not consider any change is required to the drafting of the direction.
- 4.31 We acknowledge techUK’s comments that metered mail be accepted into the Royal Mail network via the Post Office or through the Royal Mail delivery office and mail centre which is what currently happens. We do not consider that it would be appropriate for the direction to specify this as the direction only deals with exceptional circumstances for the purposes of the collections universal service obligation and related matters.
- 4.32 In light of the responses and our analysis above, we remain of the view that the direction should provide for an exception on a Saturday for business boxes for which Royal Mail knows of no demand. We have made the direction in this respect in the form in which we consulted.

Anticipatory closures

Proposal

- 4.33 In the October consultation we proposed to continue to allow for an exception to the collections obligation where it is necessary to fully seal an aperture temporarily for health and safety reasons. For example around 5 November, Royal Mail may seal post boxes to prevent the insertion of fireworks to avoid danger to Royal Mail employees and the public. However, we proposed to establish a 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.

Responses

- 4.34 Royal Mail in its response recommended an amendment to paragraph 14(c) as follows: “the location of the three nearest access points that are subject to no

exception, except where to do so creates a further risk of a health and safety concern in relation to those alternate access points". It asked for this amendment to cover off situations, e.g. around 5 November, where to state the location of alternative access points may help malicious individuals identify the alternative boxes and create further health and safety risks. Royal Mail stated that this should only affect a very small number of boxes and information regarding alternative boxes would continue to be available on Royal Mail's website.

Analysis and conclusions

- 4.35 We consider that the risk of an individual using the alternative box location information to identify and then vandalise an alternative access point is low. However, we do acknowledge that at particular times of the year such as 5 November, this risk could exist and further vandalism could occur if alternative boxes were highlighted on the excepted access point. Therefore, we have made the direction to say that Royal Mail should have to state the three nearest alternative access points unless to do so would create or increase a health and safety risk in relation to those access points. There is a balance between ensuring customers are informed about alternative access points and minimising the risk of harm to Royal Mail employees or the public. However, these exceptional circumstances should only affect a very small number of boxes, apply for a short period of time e.g. one or two days, at particular times of the year which should reduce any potential consumer harm which may occur from the alternative access points not being identified on the excepted access point.
- 4.36 In light of the responses and our analysis above, we remain of the view that the direction should provide for an exception for anticipatory closures. Therefore, we have made the direction in this respect as we consulted upon it, except for the amendment we have made to paragraph 15(c).

Arrangements for users who may find it difficult to reach alternative collection points

Proposal

- 4.37 In our October consultation we set out that the impact of an exception is likely to be greater on some individuals than others. For example, certain users 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.
- 4.38 We acknowledged that Royal Mail (like all service providers) is subject to the Equality Act 2010 in its provision of services and that the current 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.
- 4.39 In this context we noted that the majority of collection exceptions relate to business mail boxes which are not used by residential users. However, we considered it appropriate to propose 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.

- 4.40 We also proposed that the direction should require the universal service provider 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. Paragraphs 4.62 and 4.77 below deal with this point.

Responses

- 4.41 In its response, Royal Mail asked that we add wording to paragraph 15 of the direction to make clear that this requirement will not apply if the exception relates to health and safety issues. It asked we that add "for the avoidance of doubt, nothing in (a) and (b) above should be read as taking priority over the universal service provider's health and safety obligations". Royal Mail stated that although it will make every effort to ensure vulnerable users' needs are taken into account, for those exceptions that are due to health and safety concerns, it has a continuing duty of care to its employees.

Analysis and conclusions

- 4.42 Paragraph 15 of the proposed direction requires Royal Mail to consider whether it should make collections despite the exception. It does not require Royal Mail to make collections despite the exception. If it has assessed the situation and considers that it still cannot collect, then the direction allows for this. Therefore we do not consider that the additional wording is required.
- 4.43 In light of the responses and our analysis above, we remain of the view that the direction should provide for Royal Mail to carry out this thought process. In this respect, we have made the direction as we consulted on it.

Relocation/ Density calculation of post boxes

Proposal

- 4.44 In our October consultation we set out that whilst the Postcomm Collections Direction required 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, our statement of 13 June 2013 *Regulation of the provision of post boxes*¹⁴ imposed an obligation on Royal Mail to ensure a sufficient density of post boxes. Specifically it requires 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 needs of such users (e.g. collection on delivery from very remote or isolated locations such as farmhouses). As 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.
- 4.45 We did not consider it appropriate to have a regulatory regime which required a sufficient density of access points to be provided but not collected from. Therefore,

¹⁴ <http://stakeholders.ofcom.org.uk/consultations/provision-post-boxes/statement/>.

we proposed 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. This also meant that the proposed direction did not make any provision to require alternative collection arrangements to be made.

Responses

- 4.46 In its response, Consumer Futures supported our clarification of density requirements and the revision of DUSP 1.8 but asked for further amendment to reflect reporting and notification requirements. Consumer Futures considers it is important that post box access points that are subject to exceptional circumstances with suspended collections are not included for the purpose of assessing Royal Mail's compliance with the access points criteria. Consumer Futures repeated its view (as set out in its response to Ofcom's March 2013 consultation on *Regulation of the provision of post boxes*¹⁵) that it is essential that there is accurate reporting by Royal Mail of any removals, relocations and installations of post boxes and confirmation of a clear consumer-oriented notification process for post box removals and/or relocation. Therefore, it requested that DUSP 1.8 be further amended to reflect the reporting and notification requirements.
- 4.47 In its response, Royal Mail suggested the amendment to DUSP 1.8 should not be made. It calculates that (as per Ofcom's consultation document) 94% of exceptions are post boxes where mail is collected but not on a daily basis (e.g. business boxes, island post boxes, access point within a business premise) and these should count towards the density calculation, as Royal Mail would collect from these boxes six days per week if it were physically able to do so. It was concerned about the cost and man hours of temporarily removing the very small number (estimated at around 133) of post boxes where no collection is possible at any point during the week from its system (which calculates density) and which are likely to remain in place for only a short period of time e.g. due to nesting birds or hypodermic needles found in the collection point which require specialist removal.

Analysis and conclusions

- 4.48 In relation to Consumer Future's point on reporting, as we stated in our decision on the "regulation of the provision of post boxes"¹⁶ which was published on 13 June 2013, we will be monitoring Royal Mail's provision of post boxes by nation together with related customer complaints data. If we identify any significant compliance issues or credible concerns that Royal Mail is not meeting the reasonable needs of users in respect of access arrangements for delivery points not covered by the new 98% criterion in any nation of the UK, we would revisit the matter. Therefore, we have not made any changes to DUSP 1.8 in relation to this point.
- 4.49 In relation to Royal Mail's response, we have considered whether any of the exceptions should count towards the density calculation in light of the impact on Royal Mail of monitoring this and the impact on would-be users of those access points that are subject to exceptional circumstances.
- 4.50 As outlined in our review of the regulation of the provision of post boxes¹⁷, we have not identified any issues with the current provision of post boxes. We agree that

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/provision-post/summary/condoc.pdf>.

¹⁶ <http://stakeholders.ofcom.org.uk/consultations/provision-post-boxes/statement/>.

¹⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/provision-post/statement/statement.pdf>

where a collection is made at least one day or days within a week then this should continue to count towards the density calculation. In our decision on the “regulation of the provision of post boxes”¹⁸ which was published on 13 June 2013, an access point was defined as any box or other facility provided for the purpose of accepting postal items into Royal Mail’s network. Further, the term ‘access point’ is defined at section 29(11) of the Act as meaning “any box, receptacle or other facility provided for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission by post”. Therefore, if the access point is able to accept mail on certain days, it should be counted as an access point for density calculation purposes as there will be collections. This would mean that many of the “difficulty of access” exceptions (including all “lack of road access” exceptions) and all business box exceptions would continue to count towards the density calculation. For users of these excepted collection points, they will know that regular collections will be made and when, by the information Royal Mail is required to provide on the access points. Further, as set out in paragraph 4.25 above, business boxes make up the majority of all collections exceptions (58% or 1,234 out of 2,134 collections exceptions) and in these cases, collections are made daily except for Saturdays.

4.51 For the remaining access points, we acknowledge that there is a balance between the cost of amending the calculation and the length of time an exception is in place. We consider that exceptions where a collection is not made at least once a week should be removed from the density calculation. However, as Royal Mail has informed us that the majority of the exceptions remain in place for only a short time (e.g. nesting birds or hypodermic needles in the box requiring specialist removal), we consider it is appropriate to only require their removal after a set period of time. As the reporting requirements for exceptions come into effect after they have persisted for twelve months we consider that this time period should also apply to the density calculation. Therefore, if there has not been a collection from an excepted access point in the last twelve months then the DUSP condition as we have modified it states that the access point may no longer be taken into account by Royal Mail when assessing its compliance with the density obligation. The key difference is that the twelve month trigger will be calculated on a rolling basis i.e. if an exception arises in December year one the access point ceases to count as at December year two. If we do not do this, and instead tied it into the 31 March reporting trigger, then an access point could continue to count towards the density calculation even though collections had not been made for over twelve months. We acknowledge that this requirement will mean that delivery office managers will need to report upwards whenever an exception is coming up to twelve months but do not consider, as Royal Mail has recognised, that this will involve many cases.

4.52 In summary, in light of Royal Mail’s response and our further analysis, we have decided to specify in DUSP 1.8 that:

- collection points from which collections are made once a week or more should count towards the density obligations; and
- collection points which are subject to all-week exceptions should cease to count once the circumstances have persisted for twelve months.

¹⁸ <http://stakeholders.ofcom.org.uk/consultations/provision-post-boxes/statement/>.

Notifications

Proposal

- 4.53 In our October consultation we proposed that Royal Mail must display information so that users of access points are notified of the reasons why a daily collection is not being made from that collection point, where they can go to post their items and who they may call to complain.
- 4.54 However, we considered that providing only a telephone number for complaints about the exception could constitute an unnecessary barrier for those who have difficulty using the phone. We felt it was desirable for Royal Mail to set out all the ways in which it may be reached by a user and that the cost of this change to Royal Mail was proportionate since the overall number of collection exceptions is low, and the cost of applying the required details to the post box would be minimal (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) Royal Mail already accepts enquiries and complaints by telephone, email and post.

Responses

- 4.55 The only response concerning notifications was from Royal Mail in relation to notifications relating to anticipatory closures, such as 5 November. This has already been addressed in paragraph 4.35 and 4.36 above.

Analysis and conclusions

- 4.56 In light of the responses and our analysis above, we remain of the view that Royal Mail should give notifications in relation to excepted access points. Therefore, we have made the direction in this respect as we consulted on it, apart from making the amendment relating to anticipatory closures (see paragraph 4.36 above).

Reviews and appeals

Proposal

- 4.57 In our October consultation we considered that it remained appropriate for Royal Mail to review the circumstances relating to every exception annually. This allows Royal Mail to identify if those circumstances have changed and ensures that reporting to Ofcom is accurate. Therefore, the direction included a 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.
- 4.58 We also considered it important that the universal service provider be required to react on a timely basis to any requests for a review of an exception and the direction proposed to require 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.
- 4.59 As part of our Equality Impact Assessment, we also 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 recognised that some users may find it harder to exercise their rights to seek a review or bring an appeal. Following consideration, we considered that the potential risk to users who may be in disadvantaged in bringing and completing a review may be appropriately mitigated as follows.

4.60 First, we considered that any time limits on bringing an appeal should be removed as removing them would make it more likely that a user could access any help they may need to engage in the process.

4.61 Second, our proposed direction was drafted so as to allow any person to seek a review. Therefore, any specific users who may be disadvantaged in bringing a review could seek assistance in order to take forward a review as there could 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. We considered whether this approach was proportionate in light of the risk that vexatious objections would be pursued, which would impose an inappropriate burden on Royal Mail. However, we considered 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.

4.62 Third, we considered 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. Royal Mail had told us¹⁹ 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 did not consider that this provision would impose any extra costs on Royal Mail.

4.63 We also considered the direction should be clear on what the review and appeals process was and required. We considered that the least onerous approach, and one which would secure that decisions were taken at the appropriate level within Royal Mail, would be to include the a three stage appeal process.

4.64 We also clarified the process we would follow if we received 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:

¹⁹ Meeting between Royal Mail and Ofcom 16 September 2013.

- 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.

Responses

4.67 In relation to Ofcom reviews of health and safety exceptions, Royal Mail asked that we amend the direction to provide greater detail on the process Ofcom will follow during an appeal and suggested additional wording for the direction. Royal Mail does not believe it is appropriate for Ofcom to overrule exceptions it has made based on health and safety assessments. Royal Mail stated that by law it is required, as far as is reasonably practicable, to provide a safe working environment for its employees and others affected by its operations. Therefore, Royal Mail considers that as it has a robust risk assessment policy which will be followed before any exception is made on health and safety grounds it is in the best position to judge whether it has satisfied its statutory obligations. Whilst Royal Mail agreed we should have a degree of oversight of any appeal, we should have regard to Royal Mail's legal obligations under Health and Safety legislation. Royal Mail recommended a new paragraph 20 and a revision to paragraph 21 (changes in italics):

20: "Subsequent to the review process set out in paragraphs [16] to [19] should an appeal be brought in front of OFCOM then the following process will apply:

a) OFCOM shall provide written notice to the universal service provider setting out the grounds of the appeal;

b) the universal service provider shall have an opportunity to make written representations responding to the appeal;

c) OFCOM shall, having had due regard to the evidence in front of it and, in particular, any health and safety concerns raised by the universal service provider issue a provisional decision;

d) The universal service provider and the person who requested the appeal shall have the opportunity to make representations in relation to the provisional decision;

e) In circumstances where the universal service provider has made representations that the exceptional circumstance is necessary to protect the health and safety of the universal service provider's

employees, or others affected by its operations, OFCOM may require the universal service provider to carry out a further health and safety assessment, such assessment to be carried out by a suitably qualified professional.

f) In the circumstance that a health and safety assessment (as described in (e) above) finds there is a risk to the health and safety of the universal service provider's employees, or others affected by its operations, OFCOM may not require collections to be made from the access point concerned, but may request that the universal service provider reasonably consider alternatives to a collection in the location concerned.

g) OFCOM's final decision shall be issued having given due regard to all the representations made."

21: "Subject to the process set out in paragraph 20, Ofcom's final decision as to whether exceptional circumstances have arisen shall be binding."

- 4.68 In relation to who can request a review, Royal Mail asked for clarification that where customer wished to be represented by a third party that the customer must provide confirmation of this to Royal Mail.
- 4.69 In relation to the requirement 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, Royal Mail asked that paragraph 22 of the direction be amended because as drafted it could place a disproportionate burden on Royal Mail.. Royal Mail recommended the following changes (in italics): "The universal service provider shall at its own *reasonable* expense make facilities available to ensure that no person is *materially* 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 or the conduct of any second stage review." Royal Mail was concerned that without these changes, the direction could place a disproportionate burden on Royal Mail.

Analysis and conclusions

- 4.70 In relation to Ofcom reviews of health and safety exceptions, we do not consider that it would be consistent with the statutory framework for us to make the change to the direction that Royal Mail has requested and in any event we do not agree that any such changes are needed.
- 4.71 The Act requires the universal service to include daily collections except in circumstances that Ofcom consider to be exceptional. The effect of Royal Mail's proposal would be to place the ultimate decision about whether circumstances were exceptional in Royal Mail's hands not Ofcom's.
- 4.72 The exception we proposed would exist in relation to 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; where there is no reasonable means of overcoming the hazard.

- 4.73 We do not consider this definition likely to be controversial in most circumstances. Broadly the same definition of health and safety exceptional circumstances has applied since 2006, during which time there have been no appeals to the regulator about collections exceptions.
- 4.74 We consider that, in the unlikely event that we did not agree with Royal Mail's view that health and safety exceptional circumstances had arisen, then Royal Mail would be able to challenge such a decision by way of judicial review and would in the meantime be able to take whatever steps it considered necessary (including "unreasonable" ones) to protect its workers while at the same time complying with its obligation to make collections. Only if Royal Mail did not make collections could Ofcom take enforcement action. If Ofcom considered it appropriate to take enforcement action Royal Mail would have further opportunities to present its case and Ofcom's decision could be challenged to the Competition Appeal Tribunal on judicial review principles.
- 4.75 We feel this situation would be unlikely to arise as Royal Mail must, and Ofcom may, undertake health and safety assessments carried out by competent personnel which Ofcom would have to take into consideration in order to reach an informed decision. In addition, before reaching its decision Ofcom would identify any remedial actions that could reasonably be taken by Royal Mail to mitigate any risks. In particular:
- The direction as we consulted on it and as we have made it provides that 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 practical after the universal service provider has become aware of the circumstances in question.
 - During any appeal, we would normally employ a health and safety consultant to provide us with expert independent advice. As stated in our October consultation 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 our consultant's advice was that the health and safety problem could be overcome, but at a cost, Ofcom would decide in light of the available evidence what steps it was reasonable to expect Royal Mail to take to overcome the problem, or whether the circumstances were genuinely exceptional.
 - Before reaching a final determination, we would take into account our consultant's advice, along with any other relevant evidence including Royal Mail's own assessments. If the consultant's view differed from Royal Mail's view of the health and safety risks of the delivery route and/or remedial actions required, then we would put these differences to Royal Mail before making a final determination.
- 4.76 In relation to who can request a review, as set out in our October consultation, we remain of the view, for the reasons set out in our October consultation and above, that anyone should be able to request a review. Customers who are experiencing particular difficulties may not be in a position to contact Royal Mail themselves to explain that they may be disadvantaged. Such customers would necessarily need to rely on a third party to represent them, such as family, carers or a neighbour due to their difficulties. As set out in our October consultation, we considered this approach to be proportionate in light of the risk of vexatious objections to be very low. We also

consider it unlikely that anyone would request a review that did not have an interest in the collection point concerned.

- 4.77 In relation to making facilities available to ensure 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, we have considered Royal Mail's response. Amending the direction as Royal Mail suggests reduces somewhat the protections for such users. The total number of exceptions is very small and therefore the potential requests for review from those who may be disadvantaged would also be small. However, we acknowledge Royal Mail's point that as drafted for the consultation the direction did not limit the potential burden Royal Mail may face and that this would potentially impose a disproportionate burden on Royal Mail. Equally, in amending the direction as Royal Mail has suggested, we consider that it still provides the necessary protection for, and covers the needs of, users who may be particularly disadvantaged if subject to an exception. Therefore, on balance, we consider there was a need to amend the direction as Royal Mail suggested in order to clarify that the obligation to provide assistance is only to the extent that is reasonable and that it will prevent the appellant from experiencing any material disadvantage, and have done so in the direction as we have made it. This should retain all necessary consumer protection, for example such users could complain to Ofcom if they felt they were being treated unreasonably by Royal Mail, but also prevent Royal Mail from being exposed to disproportionate or unlimited costs.
- 4.78 In light of the responses and our analysis above, we remain of the view that the direction should provide for a review process largely as we consulted on it, and have made the direction in that form apart from the amendments as specified in paragraph 4.77 above.

Reporting requirements

Proposal

- 4.79 In our October consultation we considered that it remains appropriate for Royal Mail to report annually on the number of exceptions but it was no longer necessary for us to receive four monthly reports, since the purpose these fulfil is equally well met by an annual reporting obligation. We also considered that the annual report, for transparency's sake, should be published.

Responses

- 4.80 In its response, Royal Mail recommended we amend paragraph 22 of the direction to make express reference to the exclusion of historic boxes from the reported number of collections exceptions. Royal Mail stated that currently it includes certain historic boxes which are not in use in its exceptions reporting. Royal Mail considered that including historic boxes in the reporting leads to an incorrect estimate of the number of exceptions.

Analysis and conclusions

- 4.81 In relation to Royal Mail's comments on historic boxes, we do not agree that any change to the direction is needed. Section 29(11) of the Act requires Ofcom to "secure the provision of sufficient access points to meet the reasonable needs of users of the universal postal service". "Access points" are defined as "any box, receptacle or other facility provided for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission by post". As historic boxes are

permanently not in use (but remain in place as they cannot be removed due to heritage requirements) they no longer receive postal items for onwards transmission by post and are therefore not access points at all. Therefore, Royal Mail should not include these boxes in its annual reporting. We also make the point that Royal Mail should not be reporting on estimated numbers of exceptions but actual numbers of exceptions.

- 4.82 In light of the responses and our analysis above, we remain of the view that the direction should require annual reporting. In this respect, we have made the direction in the form on which we consulted.

Changes to duration

Proposal

- 4.83 In our October consultation we proposed not to include an expiry date in our direction. We said that this should reduce the regulatory burden both on Ofcom and stakeholders in terms of producing/responding to regular consultations. The change would 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 aligned 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 2013.²⁰

Responses

- 4.84 We did not receive any responses which raised specific recommendations or issues with this point.

Analysis and conclusions

- 4.85 In light of the responses and our analysis above, we remain of the view that it is appropriate not to include any expiry date in the direction.

Ofcom's decision

- 4.86 Following our assessment of the responses, as outlined above, we have made the direction relating to collection exceptions and modified DUSP condition 1. We have outlined in paragraphs 4.24, 4.36 and 4.78 above the amendments we have made to the direction and DUSP 1.8 compared to our original proposals in our October consultation.
- 4.87 The direction ensures that there are clear grounds for when exceptions to universal service collection obligations exist and ensures users have a clear route for appealing exceptions.
- 4.88 We consider that the direction and modification to DUSP 1.8 meet the required legal tests as they are:
- **objectively justifiable** since the exceptional circumstances we are specifying relate to obvious difficulties in provision of the universal service, and must be evidenced in the ways we specify. The associated matters – notifications, reviews

²⁰ <http://stakeholders.ofcom.org.uk/consultations/uso-exception/>.

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 customers Royal Mail considers are subject to exceptional circumstances. The 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 protected groups for the reasons set out in this statement;
- **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. 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 direction.
- **transparent** because we are 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 are also building transparency into the regulatory regime, by imposing the publication obligations set out above.

4.89 Therefore we give notice of a direction (Annex 1) and modification to DUSP condition 1.8 (Annex 2) which will both take effect on 31 December 2013 and remain in place until otherwise revoked.

Annex 1

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

NOTIFICATION OF 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 21 October 2013, at Annex 4 to the consultation document entitled *Proposed direction relating to exceptions to the postal collections Universal Service Obligation, and minor amendment to Designated Universal Service Provider Condition 1*, OFCOM published a notification in accordance with section 33(2)(b) of, and paragraph 4 of Schedule 6 to, the Postal Services Act 2011 (the “**Act**”) setting out their proposals to make a direction under Designated USP (“**DUSP**”) 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 (the “**First Notification**”).
- B. In the First Notification (and the accompanying consultation document), OFCOM invited representations about any of the proposals set out therein by 22 November 2013.
- C. A copy of the First Notification and the accompanying consultation document was sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act
- D. By virtue of section 53 of, and paragraph 4(8) of Schedule 6 to, the Act OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they—
 - (i) have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
 - (ii) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- E. OFCOM received and has considered representations made to them in respect of the proposals set out in the First Notification (and the accompanying consultation document).
- F. The Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.
- G. On 10 December 2013, Ofcom published a notification of modifications to DUSP Condition 1 to add DUSP Condition 1.3.2.

DECISION

- 1. Ofcom hereby makes a direction, under Designated USP Condition 1.3.2 and 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:

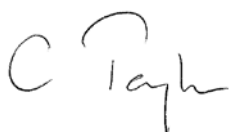
- (a) specifying geographical conditions and other circumstances which Ofcom consider exceptional such that the requirements relating to the collection of letters and other postal packets set out in s.31 of the Act, regulation 7 of the Postal Services (Universal Postal Service) Order 2012 and DUSP Condition 1.5.1 do not need to be met; and
- (b) setting out the things which must be done when exceptional circumstances under DUSP 1.3.2(b) may have arisen in any particular case, including but not limited to: reporting, notification, appeals, reviews and the establishment of alternative collection arrangements.

2. The direction is specified in the Schedule hereto.
3. The effect of, and Ofcom's reasons for making, this direction are set out in the accompanying explanatory statement.

OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this decision satisfies the general test in paragraph 4(2) of Schedule 6 to the Act.
5. In making this decision, 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.
6. Copies of this Notification and the accompanying explanatory statement 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)(b) of Schedule 6 of the Act.
7. 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

18 December 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 2014, the Council; and
 - (ii) after 1 April 2014, 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 12 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 taken reasonable steps to request access from either the occupier or 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 taken reasonable steps to request access from either the occupier or the third party concerned within the past 12 months.
9. The universal service provider shall retain evidence of the steps it has taken to comply with paragraph 8(c)(ii) and (iii) for a period of at least 12 months.

Difficulty of access: other

10. 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

11. 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

12. 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

13. If the exceptional circumstances set out in paragraph 5 (*Health and safety*) or 10 (*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.
14. 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.
15. If the universal service provider intends to rely upon the exception set out in paragraph 12 (*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, unless to do so would create or increase a health and safety risk in relation to those access points; 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

16. 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

17. 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 reasonable 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.
18. 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.
19. 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 18(b).
20. 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.

21. Ofcom's decision as to whether exceptional circumstances have arisen shall be binding.
22. The universal service provider shall at its own reasonable expense make facilities available to ensure that no person is materially 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

23. 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.
24. The universal service provider shall publish the report on its website within 3 months from 31 March.

Annex 2

Statutory Notification: modification of designated USP condition 1.8

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

BACKGROUND

- A. On 21 October 2013, at Annex 4 to the consultation document entitled *Proposed direction relating to exceptions to the postal collections Universal Service Obligation, and minor amendment to Designated Universal Service Provider Condition 1*, OFCOM published a notification in accordance with section 33(2)(b) of, and paragraph 3 of Schedule 6 to, the Postal Services Act 2011 (the “**Act**”) setting out their proposals to modify Designated USP (“**DUSP**”) Condition 1.8 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 make provision for matters set out in that section 36 (the “**First Notification**”).
- B. In the First Notification (and the accompanying consultation document), OFCOM invited representations about any of the proposals set out therein by 22 November 2013.
- C. A copy of the First Notification and the accompanying consultation document was sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
- D. By virtue of section 53 of, and paragraph 4(8) of Schedule 6 to, the Act OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they—
 - (i) have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
 - (ii) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- E. OFCOM received and has considered representations made to them in respect of the proposals set out in the First Notification (and the accompanying consultation document).
- F. The Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for this purpose.

DECISION

1. Ofcom hereby modifies DUSP Condition 1.8, 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 make provision for matters set out in that section 36.
2. The modification is specified in the Schedule hereto.

3. The effect of, and Ofcom's reasons for making, this modification are set out in the accompanying explanatory statement.

OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this decision satisfies the general test in paragraph 4(2) of Schedule 6 to the Act.
5. In making this decision, 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.
6. Copies of this Notification and the accompanying explanatory statement 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)(a) of Schedule 6 of the Act.
7. 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'.

Director, Consumer Policy

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

18 December 2013

SCHEDULE

MODIFICATION TO DESIGNATED USP CONDITION 1

Modification			
1	After DUSP 1.8.2, insert new row: <table border="1" data-bbox="245 483 1305 1261"> <tr> <td data-bbox="245 483 421 1261">DUSP 1.8.2A</td> <td data-bbox="421 483 1305 1261"> <p>If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u>, that <u>access point</u> shall be taken into account for the purposes of DUSP 1.8.2 except as follows:</p> <ul style="list-style-type: none"> (a) If the exceptional circumstances concerned are those set out in paragraphs 5 (health and safety), 10 (difficulty of access: other) or 12 (anticipatory temporary health and safety closure), no account shall be taken of the access point if the exceptional circumstances concerned have persisted for 12 months or longer; and (b) If the exceptional circumstances concerned are those set out in paragraph 8 (third party blockage), account shall be taken of the access point if either: <ul style="list-style-type: none"> a. a collection is made from that access point at least once per week; or b. a collection is not made from that access point at least once per week but the exceptional circumstances concerned have persisted for less than 12 months. </td> </tr> </table>	DUSP 1.8.2A	<p>If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u>, that <u>access point</u> shall be taken into account for the purposes of DUSP 1.8.2 except as follows:</p> <ul style="list-style-type: none"> (a) If the exceptional circumstances concerned are those set out in paragraphs 5 (health and safety), 10 (difficulty of access: other) or 12 (anticipatory temporary health and safety closure), no account shall be taken of the access point if the exceptional circumstances concerned have persisted for 12 months or longer; and (b) If the exceptional circumstances concerned are those set out in paragraph 8 (third party blockage), account shall be taken of the access point if either: <ul style="list-style-type: none"> a. a collection is made from that access point at least once per week; or b. a collection is not made from that access point at least once per week but the exceptional circumstances concerned have persisted for less than 12 months.
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