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*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 3. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 3

Sections 38 and 50

#### FURTHER PROVISION ABOUT ACCESS CONDITIONS

#### PART 1

#### PROVISION THAT MAY BE MADE BY ACCESS CONDITIONS

##### *Introduction*

- 1 Access conditions imposed on a person may include provision of the kind mentioned in the following provisions of this Part of this Schedule.

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**Commencement Information**

- I1** Sch. 3 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

##### *Terms of access*

- 2 An access condition imposed on a person may include provision—
- (a) requiring the terms and conditions on which the person is willing to offer access to include such terms and conditions as may be specified or described in the condition, or
  - (b) requiring the person to make such modifications as OFCOM may direct of any offer which sets out the terms and conditions on which the person is willing to offer access.

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**Commencement Information**

- I2** Sch. 3 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

##### *Price controls etc.*

- 3 (1) An access condition imposed on a person may include provision imposing on the person—
- (a) such price controls as OFCOM may direct in relation to matters connected with the giving of access (“access matters”),
  - (b) rules made by OFCOM in relation to access matters about the identification of costs and cost orientation,
  - (c) rules made by OFCOM for those purposes about the use of cost accounting systems,

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- (d) obligations to have compliance with those systems audited annually by a qualified independent auditor, and
  - (e) obligations to adjust prices in accordance with directions given by OFCOM.
- (2) An obligation within sub-paragraph (1)(d) may require the person to meet the costs of the audit.
- (3) In sub-paragraph (1)(d) “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
  - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

**Commencement Information**

**I3** Sch. 3 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 4 An access condition may include provision requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations referred to in paragraph 3.

**Commencement Information**

**I4** Sch. 3 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 5 (1) If an access condition imposes rules on any person about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the person to make arrangements for a description to be made available to the public of the cost accounting system used.
- (2) If OFCOM impose an obligation on a person under sub-paragraph (1), the description of information to be made available must include details of—
- (a) the main categories under which costs are brought into account for the purposes of that system, and
  - (b) the rules applied for the purposes of that system with respect to the allocation of costs.

**Commencement Information**

**I5** Sch. 3 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Arrangements for provision of services by others*

- 6 (1) This paragraph applies if—
- (a) services are provided to a postal operator pursuant to arrangements made between the operator and another person (“B”),
  - (b) an access condition requires the operator to secure that those services are also provided to a third person (“C”), and
  - (c) the provisions of the arrangements are such that the operator cannot secure that the services are provided to C without B's agreement.

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- (2) The access condition may include—
- (a) provision in relation to the giving of agreement by B (including provision for agreement to be deemed to be given in circumstances specified in the condition), and
  - (b) provision for determining the terms and conditions on which B is to secure the provision of the services to C.
- (3) Provision may not be included in an access condition as a result of this paragraph if it would have the effect of requiring a person who provides services pursuant to the arrangements to do more than the person could be required to do pursuant to the arrangements as they have effect before the condition is imposed.

**Commencement Information**

**I6** Sch. 3 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Separation for accounting purposes*

- 7 An access condition requiring a separation for accounting purposes between different matters may include provision—
- (a) requiring the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
  - (b) requiring particular accounting methods to be used in maintaining the separation.

**Commencement Information**

**I7** Sch. 3 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Restriction on use of information obtained in connection with giving access*

- 8 An access condition imposed on a person may include provision requiring the person not to use information which—
- (a) is obtained in connection with the giving of access, and
  - (b) relates to the provision of postal services by any person to whom access is given,
- for any purpose other than the purpose of the access given by the condition.

**Commencement Information**

**I8** Sch. 3 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Periods for compliance*

- 9 An access condition imposed on a person may include provision for securing that obligations contained in the condition are complied with within the periods or at the times required by or under the condition.

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**Commencement Information**

**I9** Sch. 3 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Dealing with requests for access*

- 10 An access condition imposed on a person may include provision for securing fairness and reasonableness in the way in which requests for access are made and responded to.

**Commencement Information**

**I10** Sch. 3 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Non-discrimination*

- 11 An access condition imposed on a person may include provision requiring the person not to discriminate unduly against particular persons, or against a description of persons, in relation to access matters.

**Commencement Information**

**I11** Sch. 3 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Transparency*

- 12 An access condition imposed on a person may include provision requiring the person—
- (a) to publish all such information as OFCOM may direct (in such manner as they may direct) for the purpose of securing transparency in relation to access matters, or
  - (b) to publish (in such manner as OFCOM may direct) the terms and conditions on which the person is willing to offer access.

**Commencement Information**

**I12** Sch. 3 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**PART 2**

RESOLUTION OF ACCESS DISPUTES BY OFCOM

*Reference of disputes to OFCOM*

- 13 (1) Any one or more parties to an access dispute may refer the dispute to OFCOM.
- (2) In this paragraph “access dispute” means a dispute between postal operators, or between a postal operator and a user of postal services, about the terms and conditions

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(including those as to price) on which access, required by virtue of an access condition to be given—

- (a) is to be or may be provided,
- (b) is being provided, or
- (c) has been provided.

- (3) A reference under this paragraph must be made in such manner as OFCOM require.
- (4) A requirement under sub-paragraph (3) is to be imposed, withdrawn or modified by OFCOM publishing a notice in such manner as they consider appropriate for bringing the requirement, withdrawal or modification to the attention of persons who, in their opinion, are likely to be affected by it.
- (5) Different requirements may be imposed for different cases.

**Commencement Information**

**I13** Sch. 3 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*OFCOM to decide whether to handle dispute*

- 14 (1) This paragraph applies where a dispute has been referred to OFCOM under paragraph 13.
- (2) OFCOM must decide whether it is appropriate for them to handle the dispute.
  - (3) As soon as possible after they have reached a decision, OFCOM must inform each of the parties to the dispute of—
    - (a) their decision,
    - (b) the date it was made, and
    - (c) their reasons for it.

**Commencement Information**

**I14** Sch. 3 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Resolution of disputes by OFCOM*

- 15 (1) This paragraph applies if OFCOM have decided under paragraph 14 that it is appropriate for them to handle a dispute.
- (2) OFCOM must—
    - (a) consider the dispute, and
    - (b) make a determination for resolving it.
  - (3) The determination must be made as soon as reasonably practicable.
  - (4) A determination binds all of the parties to the dispute.
  - (5) Where there has been an attempt to resolve the dispute by other means—
    - (a) OFCOM may, in making their determination, take account of decisions made by others in the course of that attempt, and

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- (b) the determination may include provision ratifying any of those decisions.

**Commencement Information**

**I15** Sch. 3 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Resolution of disputes: OFCOM's powers*

- 16 (1) The powers that may be exercised by OFCOM, on the making of a determination under paragraph 15, are those listed in sub-paragraph (2).
- (2) The powers are—
- (a) to make a declaration setting out the rights and obligations of parties to the dispute,
  - (b) to give a direction fixing the terms or conditions of transactions between parties to the dispute,
  - (c) to give a direction imposing an obligation, enforceable by the parties, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM,
  - (d) to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment (but see sub-paragraph (3)),
  - (e) to require a party to the dispute to pay all or part of another party's costs and expenses incurred in connection with the dispute,
  - (f) to require a party to pay all or part of OFCOM's costs of dealing with the dispute (but see sub-paragraph (4)).
- (3) A direction under sub-paragraph (2)(d) may be given only for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one party to the dispute to another.
- (4) A direction under sub-paragraph (2)(f) may be given to a party only if—
- (a) the party referred the dispute to OFCOM, and
  - (b) OFCOM consider that the reference was frivolous or vexatious or that the party has otherwise abused the right (conferred by paragraph 13) to refer disputes.

**Commencement Information**

**I16** Sch. 3 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Resolution of disputes: procedure*

- 17 (1) The procedure for the consideration and determination of a dispute is the procedure that OFCOM consider appropriate.
- (2) That procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by other means.
- (3) OFCOM must send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute.

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- (4) OFCOM must publish so much of their determination as (having regard in particular to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (5) Information published under sub-paragraph (4) must be published in such manner as OFCOM consider appropriate for bringing it to the attention (to the extent that they consider appropriate) of members of the public.

**Commencement Information**

**I17** Sch. 3 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Reference not to affect legal proceedings or OFCOM's powers*

- 18
- (1) A reference under paragraph 13 of a dispute does not prevent any person from bringing or continuing any civil or criminal proceedings in or before a court with respect to any of the matters under dispute.
  - (2) Sub-paragraph (1) is subject to—
    - (a) paragraph 15(4) (determination binding on all parties), and
    - (b) any agreement to the contrary.
  - (3) Any reference of a dispute to OFCOM, or consideration or determination by OFCOM of a dispute, does not prevent OFCOM from exercising any of their powers (or from doing anything in connection with the exercise of any of their powers) in relation to the subject-matter of the dispute.

**Commencement Information**

**I18** Sch. 3 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Information*

- 19
- (1) This paragraph applies where a dispute has been referred under paragraph 13 to OFCOM.
  - (2) OFCOM may require a person to provide them with specified information, in the specified manner and within the specified period.
  - (3) The information that may be specified is information required by OFCOM for the purpose of—
    - (a) deciding whether it is appropriate for them to handle the dispute, or
    - (b) considering the dispute and making a determination under paragraph 15.
  - (4) The specified period must be reasonable.
  - (5) In fixing that period, OFCOM must have regard, in particular, to—
    - (a) the information that is required,
    - (b) the nature of the dispute, and
    - (c) the obligation imposed by paragraph 15(3) (obligation to make a determination as soon as reasonably practicable).

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- (6) Part 2 of Schedule 8 (information: enforcement) applies in relation to a requirement imposed under this paragraph as if—
- (a) the requirement were imposed under paragraph 1 of that Schedule, and
  - (b) sub-paragraphs (4) and (5) of paragraph 5 of that Schedule were omitted.

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**Commencement Information**

**I19** Sch. 3 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3



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