



# Postal Services Act 2000

## 2000 CHAPTER 26

### PART II

#### LICENCES FOR POSTAL SERVICES

##### *Restriction on provision of postal services*

#### **6 Restriction on provision of postal services.**

- (1) Subject to section 7, no person shall convey a letter from one place to another unless—
  - (a) he holds a licence authorising him to do so, or
  - (b) he is acting as an employee or agent of a person who is authorised by a licence to do so.
- (2) A person who contravenes subsection (1) commits an offence and shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (3) No proceedings shall be instituted in England and Wales or Northern Ireland in respect of an offence under subsection (2) except by or on behalf of the Commission or the Secretary of State.
- (4) Without prejudice to subsection (2), compliance with subsection (1) shall be enforceable by civil proceedings by or on behalf of the Commission or the Secretary of State for an injunction or interdict or for any other appropriate relief or remedy.
- (5) Without prejudice to subsections (2) and (4)—
  - (a) the obligation to comply with subsection (1) shall be a duty owed to any person who may be affected by a contravention of subsection (1), and
  - (b) where a duty is owed by virtue of paragraph (a) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

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- (6) Any reference in this section and section 7(1) to conveying a letter from one place to another, or the conveyance of a letter, includes a reference to performing, or the performance of, any of the incidental services of receiving, collecting and delivering a letter.
- (7) For the purposes of this Part references to a licence are to a licence under this Part and references to a licence holder shall be construed accordingly.

## **7 Exceptions from section 6.**

- (1) Section 6(1) is not contravened by the conveyance of a letter—
  - (a) which is conveyed in consideration of a payment of not less than £1 made by or on behalf of the person for whom it is conveyed, or
  - (b) which weighs not less than 350 grams.
- (2) Section 6(1) is not contravened by—
  - (a) the conveyance and delivery of a letter personally by the sender,
  - (b) the conveyance and delivery of a letter by a personal friend of the sender,
  - (c) the conveyance and delivery of a single letter by a messenger sent for the purpose by either correspondent,
  - (d) the conveyance of an overseas letter out of the United Kingdom,
  - (e) the conveyance and delivery of any documents in respect of which a method of service other than by post is required or authorised by law,
  - (f) the conveyance of letters from merchants who are the owners of a merchant ship or commercial aircraft, or of goods carried in such a ship or aircraft, by means of that ship or aircraft, and the delivery of the letters to the addressees by any person employed for the purpose by those merchants, provided that no payment or reward, profit or advantage of any kind is given or received for the conveyance or delivery of those letters,
  - (g) the conveyance and delivery of letters by any person which are letters concerning, and for delivery with, goods carried by that person, provided that no payment or reward, profit or advantage of any kind is given or received for the conveyance or delivery of those letters,
  - (h) the conveyance and delivery to a licence holder of pre-paid letters for conveyance and delivery by that person to the addressees, and the collection of such letters for that purpose,
  - (i) the conveyance and delivery of letters by a person who has a business interest in those letters, and the collection of letters for that purpose,
  - (j) the conveyance and delivery of banking instruments from one bank to another or from a bank to a government department, and the collection of such instruments for that purpose,
  - (k) the collection, conveyance and delivery of coupons or other entry forms issued by authorised promoters,
  - (l) the collection, conveyance and delivery of Christmas cards by a charity, provided that the activity concerned takes place during the period starting with 25th November in any year and ending with 1st January in the following year,
  - (m) the conveyance and delivery of letters from one government department to another or within the same government department, and the collection of letters for that purpose,

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- (n) the conveyance of letters of members of a document exchange from a departure facility for that exchange to an arrival facility for another document exchange by persons who are not members of either exchange, and the collection and delivery by such persons for that purpose of letters delivered to the departure facility concerned,
  - (o) the conveyance and delivery of brokers' research, during the relevant period and by any person who has printed it, from the business premises where it is printed to the premises of any person who is to convey it onwards,
  - (p) the conveyance and delivery by any person of brokers' research within the period of 24 hours starting with its delivery to his premises or its collection by him during the relevant period from a collection point, and any such collection.
- (3) Nothing in paragraphs (a) to (g) of subsection (2) shall authorise any person to make a collection of letters for the purpose of their being conveyed in any manner authorised by those paragraphs.
- (4) For the purposes of paragraph (i) of subsection (2) a person has a business interest in a letter if, and only if—
- (a) he is an employee of one of the correspondents or of a member of the same group as one of the correspondents and the letter relates to the business affairs of that correspondent, or
  - (b) he and one of the correspondents are employees of the same person or of different members of the same group and the letter relates to the business affairs of that person or (as the case may be) the employer of that correspondent.
- (5) In this section—
- “arrival facility”, in relation to a document exchange, means any box, receptacle or other facility associated with that exchange which is provided for the receipt of letters from members of another document exchange which are conveyed to the facility from a departure facility for that other exchange for collection by members of the first exchange,
- “authorised promoter” means—
- (a) a registered pool promoter, or
  - (b) a person who is or has at any time been an associate (within the meaning of section 184 of the <sup>M1</sup>Consumer Credit Act 1974) of such a promoter,
- “bank” means—
- (a) the Bank of England,
  - (b) an institution authorised under the <sup>M2</sup>Banking Act 1987,
  - (c) a European authorised institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992 which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits or other repayable funds from the public,
  - (d) a building society authorised under the <sup>M3</sup>Building Societies Act 1986, or
  - (e) the central bank of an EEA State other than the United Kingdom,
- “banking instrument” means—
- (a) any cheque or other instrument to which section 4 of the <sup>M4</sup>Cheques Act 1957 applies,

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- (b) any document issued by a public officer which is intended to enable a person to obtain payment from a government department of the sum mentioned in the document,
- (c) any bill of exchange not falling within paragraph (a) or (b) or any promissory note,
- (d) any postal order or money order,
- (e) any credit transfer, credit advice or debit advice, or
- (f) any list of items, or any copy of an item, falling within paragraphs (a) to (e),

“brokers’ research” means any printed documentation prepared by persons licensed or authorised to trade on any regulated stock, share, futures, foreign exchange or commodities market which contains research, analysis and information relating to items traded on that market and which has not been prepared for or on the instructions of any particular person to whom it is addressed or delivered,

“charity” means a body, or the trustees of a trust, established for charitable purposes only,

“collection point” means any business premises where brokers’ research is printed or an international airport,

“departure facility”, in relation to a document exchange, means any box, receptacle or other facility associated with that exchange which is provided for the collection of letters of members of that exchange which are delivered to the facility by those members for conveyance to an arrival facility for another document exchange for collection by members of that other exchange,

“document exchange” means a system involving at least three members for the exchange of letters between members of the system,

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993,

“government department” includes any Minister of the Crown, any part of the Scottish Administration, the National Assembly for Wales, the Northern Ireland Assembly, any Northern Ireland Minister or Northern Ireland junior Minister and any Northern Ireland department,

“group” means a body corporate and all of its wholly owned subsidiaries taken together,

“overseas letter” means a letter which is directed to a specific person or address outside the United Kingdom,

“pre-paid letter” includes any letter which, in pursuance of arrangements made with a licence holder, does not require to be pre-paid,

“registered pool promoter” has the meaning given by section 4(2) of the <sup>M5</sup>Betting, Gaming and Lotteries Act 1963, and

“relevant period” means—

- (a) in the case of a collection from an international airport, the period starting with 6.00 pm on any day other than Friday or Saturday and ending with 10.00 am on the next day and the period starting with 6.00 pm on any Friday or Saturday and ending with noon on the next day, and
- (b) in any other case, the period starting with 6.00 pm on any day and ending with 6.00 am on the next day.

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#### Marginal Citations

- M1** 1974 c. 39.
- M2** 1987 c. 22.
- M3** 1986 c. 53.
- M4** 1957 c. 36.
- M5** 1963 c. 2.

VALID FROM 01/01/2003

#### [<sup>F1</sup>7A

Scope of the universal postal service: meaning

- (1) For the purposes of section 7(1A), a postal service is outside the scope of the universal postal service in the United Kingdom if it is not, or is not substantially similar to, a postal service within subsection (2).
- (2) A postal service is within this subsection if it is a postal service—
  - (a) which a postal operator is required to provide in the discharge of any duty to provide a universal postal service, or part of such a service,—
    - (i) imposed under section 3(2) as a condition of the operator’s licence under Part II, or
    - (ii) included in his licence as a condition by virtue of section 13(1), or
  - (b) which a postal operator is required to provide in the discharge of any duty to provide a postal service imposed on him by an order under section 102(2).
- (3) For the purposes of subsection (1), a postal service is not to be regarded as being not substantially similar to a postal service within subsection (2) merely because—
  - (a) the service in question does not comply with section 4(1),
  - (b) where the person providing the service provides it only to persons within a class specified by him for the purposes of its provision, it is not available to all persons within that class, or
  - (c) where the service has the characteristic of three day delivery, it also has one or more of the characteristics mentioned in subsection (4).
- (4) Those characteristics are that—
  - (a) the service provides for the collection of a postal packet at a place specified by the sender of the packet,
  - (b) the service provides for the delivery of a postal packet at or by a time specified by the sender of the packet,
  - (c) the service provides for the delivery of a postal packet to be recorded, and
  - (d) the service provides for postage to be chargeable in a form or manner, or to be paid at a time or in a manner, different from that provided for by a postal service within subsection (2).
- (5) For the purposes of subsection (3)(c), a postal service has the characteristic of three day delivery if, in all or the majority of cases in which a postal packet is sent by it, it seeks to deliver the packet before the end of the period of three working days beginning with the day after the day on which it is received or collected.]

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### Textual Amendments

**F1** S. 7A inserted (1.1.2003) by [S.I. 2002/3050](#), [reg. 4](#)

## 8 Power to modify section 7 by order.

- (1) The Secretary of State may by order modify section 7.
- (2) No such order shall be made except on the recommendation of the Commission.
- (3) Before making such a recommendation, the Commission shall consult—
  - (a) the Council,
  - (b) licence holders, and
  - (c) such other persons as the Commission considers appropriate.
- (4) Where the Commission makes such a recommendation but the Secretary of State decides not to make an order under this section, the Secretary of State shall lay before each House of Parliament a report containing the reasons for his decision.

## 9 General power to suspend the restriction.

- (1) The Secretary of State may by order suspend the operation of section 6.
- (2) No such order shall be made except on the recommendation of the Commission.
- (3) Where the Commission makes a recommendation to make an order under this section but the Secretary of State decides not to make such an order, the Secretary of State shall lay before each House of Parliament a report containing the reasons for his decision.

## 10 Emergency power to suspend the restriction.

The Secretary of State may, if he considers it expedient in the national interest, by order suspend the operation of section 6—

- (a) for such period not exceeding six months as may be specified in the order, and
- (b) to such extent as may be so specified.

### *Licences*

## 11 Licences: general.

- (1) The Commission may, on an application by a person under section 12, grant a licence to that person authorising him to do anything which—
  - (a) would otherwise contravene section 6(1), and
  - (b) is specified in the licence or determined by or under it.
- (2) A licence shall not be valid unless it is in writing.
- (3) A licence shall not be transferred.
- (4) A licence shall, unless it previously ceases to have effect in accordance with its provisions, continue in force for the period specified in it or determined by or under it.

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## 12 Licences: grant.

- (1) An application for a licence shall be made in writing to the Commission in accordance with such requirements as the Commission may specify.
- (2) The Commission may, in particular, require the application to be accompanied by such reasonable application fee as it may determine.
- (3) Before granting a licence the Commission shall—
  - (a) publish a notice in such manner as the Commission considers appropriate for bringing it to the attention of persons likely to be affected by the grant,
  - (b) serve a copy of the notice on the Council, and
  - (c) consider any representations made in accordance with the notice and not withdrawn.
- (4) The notice shall—
  - (a) state that the Commission proposes to grant the licence and the reasons for so proposing, and
  - (b) state the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposed licence.
- (5) As soon as practicable after granting a licence the Commission shall send a copy of it to the Secretary of State and the Council.

### Commencement Information

- II** S. 12 wholly in force; s. 12 not in force at Royal Assent see s. 130; s. 12(1)(2)(3)(a)(c)(4) in force at 6.11.2000 and s. 12 in force insofar as not already in force at 1.1.2001 by [S.I. 2000/2957](#), [art. 2\(1\)\(2\)](#), [Sch. 1](#), [Sch. 2](#) (with transitional provisions in [arts. 3-8](#))

VALID FROM 01/01/2003

### [<sup>F2</sup>12A Licences: refusal

Where the Commission determines not to grant a licence (in whole or in part), it shall, as soon as practicable after making that determination, notify the applicant and give him a written statement of its reasons for the determination.]

### Textual Amendments

- F2** S. 12A inserted (1.1.2003) by [S.I. 2002/3050](#), [reg. 5](#)

VALID FROM 01/01/2003

### [<sup>F3</sup>12B Licences: determination of applications

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(1) For the purposes of this section—

“non-reservable service” means a service of conveying letters from one place to another, where each letter has either or both of the following characteristics, namely—

- (a) that it is conveyed in consideration of a payment of not less than 80 pence made by or on behalf of the person for whom it is conveyed, or
- (b) that it weighs not less than 100 grams;

“reservable service” means a service of conveying letters from one place to another, where each letter—

- (a) is conveyed in consideration of a payment of less than 80 pence made by or on behalf of the person for whom it is conveyed, and
- (b) weighs less than 100 grams;

and subsection (6) of section 6 applies as it applies for the purposes of that section.

(2) Where an application for a licence seeks authority for the provision of a reservable service which no person (other than a universal service provider) is authorised by a licence to provide in the manner sought in the application—

- (a) in a case where the application seeks authority for the provision of that service alone, the Commission shall grant a licence if, and only if, it is satisfied that the requirements of subsections (5) and (6) will be met in relation to the licence (if and when it is granted), and
- (b) in any other case, the Commission shall grant a licence so far as the application relates to the provision of that service if, and only if, it is satisfied that (if and when the licence is granted) those requirements will be met in relation to so much of the licence as relates to the provision of that service.

(3) Where an application for a licence seeks authority for the provision of a reservable service which a person (other than a universal service provider) is authorised by a licence to provide in the manner sought in the application—

- (a) in a case where the application seeks authority for the provision of that service alone, the Commission shall grant a licence if, and only if, it is satisfied that the requirements of subsection (5) will be met in relation to the licence (if and when it is granted), and
- (b) in any other case, the Commission shall grant a licence so far as the application relates to the provision of that service if, and only if, it is satisfied that (if and when the licence is granted) those requirements will be met in relation to so much of the licence as relates to the provision of that service.

(4) Where an application for a licence seeks authority for the provision of a non-reservable service, the Commission—

- (a) in a case where the application seeks authority for the provision of that service alone, shall grant a licence if, and only if, it is satisfied that the requirements of subsection (5) will be met in relation to the licence (if and when it is granted), and
- (b) in any other case, shall grant a licence so far as the application relates to the provision of that service if, and only if, it is satisfied that (if and when the licence is granted) those requirements will be met in relation to so much of the licence as relates to the provision of that service.

(5) The requirements of this subsection are—



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- (a) that the licence includes provisions designed to safeguard the provision of a universal postal service,
  - (b) that the licence includes provisions designed to ensure that the holder complies with such requirements as the Commission considers necessary for the purpose of—
    - (i) safeguarding confidentiality in connection with the sending, conveyance and delivery of letters;
    - (ii) safeguarding security where dangerous goods are transported;
    - (iii) safeguarding the confidentiality of information conveyed;
    - (iv) preserving privacy;
    - (v) protecting the environment;
    - (vi) promoting such policies as the Secretary of State may from time to time have in respect of regional planning and development, and
  - (c) that the holder of the licence is in a position to comply with any requirement imposed on him by provision made under paragraph (a) or (b).
- (6) The requirement of this subsection is that—
- (a) the grant of the licence, and
  - (b) the grant to the holder or any other person of any licence of a similar nature, does not endanger the ability of a universal service provider to provide basic postal services.
- (7) In subsection (6) “basic postal services”, in relation to a universal service provider, means such postal services as he is required to provide in the discharge of any duty to provide a universal postal service, or part of such a service,—
- (a) imposed under section 3(2) as a condition of his licence,
  - (b) included in his licence as a condition by virtue of section 13(1), or
  - (c) imposed on him by an order under section 102(2).]

#### Textual Amendments

**F3** S. 12B inserted (1.1.2003) by [S.I. 2002/3050](#), [reg. 6](#)

### 13 Licences: conditions and other provisions.

- (1) A licence may include such provisions as the Commission considers appropriate; and a provision need not relate to anything authorised by the licence.
- (2) The provisions of a licence may, in particular, require a payment to the Commission on the grant of the licence, or payments while the licence is in force, or both, of such amount or amounts as may be specified in the licence or determined by or under it.
- (3) Such provisions of a licence as the Commission considers appropriate may be expressed as conditions.
- (4) The Commission shall consult any person who is to be granted a licence about any conditions that the Commission proposes to include in the licence (other than any condition which the Commission is required to include in the licence by virtue of this Act).

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- (5) References in this Act to a condition of a licence are to a provision of a licence which is expressed as a condition.
- (6) Subject to subsection (7) no action shall lie or, in Scotland, be competent in respect of a contravention by a licence holder of a condition of his licence.
- (7) Subsection (6) does not affect—
  - (a) a right of action in respect of an act or omission which takes place in the course of the provision of any postal services or the doing of anything else to which the condition relates,
  - (b) the power to make an order under section 22 or 23, confirm an order made under section 23 or impose a penalty under section 30,
  - (c) the duty to comply with any such order or pay any such penalty and a power to bring proceedings in respect of such a duty.

### *Modification of licences*

## **14 Modification of licences by agreement.**

- (1) The Commission may modify the conditions of a licence if its holder consents to the modifications.
- (2) Before making modifications under this section the Commission shall—
  - (a) give notice of the modifications, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (3) The notice shall state—
  - (a) that the Commission proposes to make the modifications,
  - (b) the effect of the modifications,
  - (c) the reasons for the modifications, and
  - (d) the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modifications.
- (4) A notice under subsection (2) shall be given by—
  - (a) serving a copy of the notice on the licence holder, the Council and the Secretary of State, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (5) The Secretary of State may, within the period stated under subsection (3)(d), direct the Commission not to make any proposed modification if he considers that the modification should be made, if at all, under section 17.
- (6) As soon as practicable after making modifications under this section the Commission shall send a copy of the modifications to the licence holder, the Council and the Secretary of State.

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## **15 References to the Competition Commission.**

- (1) The Commission may make to the Competition Commission a reference requiring the Competition Commission to investigate and report on—
  - (a) whether any matters, which are specified in the reference and which relate to the provision of postal services whose provision is authorised or required by a licence, operate against the public interest or may be expected to do so,
  - (b) if so, whether the effects adverse to the public interest which the matters have or may be expected to have could be remedied or prevented by modifying the conditions of the licence.
- (2) The Commission may at any time by notice given to the Competition Commission vary a reference by adding to the matters specified in it or by excluding from it one or more of those matters; and on receiving a notice the Competition Commission shall give effect to the variation.
- (3) The Commission may, for the purpose of assisting the Competition Commission in its investigation on the reference or the reference as varied, specify in the reference or a variation of it—
  - (a) any effects adverse to the public interest which it considers that the matters specified in the reference or variation have or may be expected to have,
  - (b) any modifications of the conditions of the licence by which it considers that those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference or variation the Commission shall give notice of it by—
  - (a) serving a copy of the reference or variation on the licence holder and the Secretary of State, and
  - (b) publishing particulars of the reference or variation in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (5) The Secretary of State may, before the end of the period of 28 days starting with the day on which he receives the copy, direct the Competition Commission not to proceed with the reference or not to give effect to the variation.
- (6) The Commission shall, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this section, give to the Competition Commission—
  - (a) any information the Commission has which relates to matters within the scope of the investigation and which the Competition Commission requests,
  - (b) any information the Commission has which relates to matters within the scope of the investigation and which the Commission considers that it would be appropriate for it to give without a request,
  - (c) any other assistance which the Commission is able to give in relation to matters within the scope of the investigation and which the Competition Commission requests.
- (7) In carrying out the investigation concerned the Competition Commission shall have regard to any information given under subsection (6).
- (8) In deciding under this section whether a matter operates, or may be expected to operate, against the public interest the Competition Commission shall have regard to

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the matters as respects which duties are imposed on the Commission by sections 3 and 5.

VALID FROM 20/06/2003

#### **[<sup>F4</sup>15A References under section 15: time limits**

- (1) Every reference under section 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 15 shall not have effect (and no action shall be taken in relation to it under section 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Commission under subsection (3).
- (3) The Commission may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The Commission shall, in the case of an extension made by it under subsection (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) to the licence holder and the Secretary of State.

#### **Textual Amendments**

- F4** Ss. 15A, 15B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(2\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

VALID FROM 20/06/2003

#### **15B References under section 15: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes of references under section 15 as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc. );
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);

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- (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 15 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4), have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

#### Textual Amendments

- F4** Ss. 15A, 15B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(2\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

## 16 Reports on references.

- (1) In making a report on a reference under section 15 the Competition Commission—
- (a) shall include definite conclusions on the questions contained in the reference and such an account of its reasons for the conclusions as it considers facilitates a proper understanding of the questions and of the conclusions,
  - (b) if it concludes that any of the matters specified in the reference operate against the public interest or may be expected to do so, shall specify the effects adverse to the public interest which the matters have or may be expected to have,
  - (c) if it concludes that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify modifications by which the effects could be remedied or prevented.
- (2) A report of the Competition Commission on a reference under section 15 shall be made to the Commission.

*Status: Point in time view as at 26/03/2001. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2000, Part II. (See end of Document for details)*

- (3) The Commission—
- (a) shall, on receiving such a report, serve a copy on the Secretary of State, and
  - (b) shall, after the end of the specified period and subject to subsection (4), publish the report in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (4) If the Secretary of State considers that the publication of any matter would be against the public interest or any person's commercial interests, he may before the end of the specified period direct the Commission to exclude the matter from every copy of the report to be published as mentioned in subsection (3)(b).
- (5) In this section “the specified period” means the period of 14 days starting with the day on which the Secretary of State receives the copy under subsection (3)(a).

VALID FROM 20/06/2003

**[<sup>F5</sup>16A Reports on references under section 15: further provision**

- (1) For the purposes of sections 17 and 18, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (2) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 15.
- (4) In making any report on a reference under section 15 the Competition Commission must have regard to the following considerations before disclosing any information.
- (5) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest
- (6) The second consideration is the need to exclude from disclosure (so far as practicable)—
  - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (7) The third consideration is the extent to which the disclosure of the information mentioned in subsection (6)(a) or (b) is necessary for the purposes of the report.]

**Status:** Point in time view as at 26/03/2001. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2000, Part II. (See end of Document for details)

### Textual Amendments

- F5** S. 16A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(3\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

## 17 Modification following report.

- (1) This section applies if a report of the Competition Commission on a reference under section 15—
  - (a) includes conclusions to the effect that any of the matters specified in the reference operate against the public interest or may be expected to do so,
  - (b) specifies effects adverse to the public interest which the matters have or may be expected to have,
  - (c) includes conclusions to the effect that the effects could be remedied or prevented by modifications of the conditions of the licence, and
  - (d) specifies modifications by which the effects could be remedied or prevented.
- (2) The Commission shall, subject as follows, make such modifications of the conditions of the licence as it considers are needed for the purpose of remedying or preventing the adverse effects specified in the report.
- (3) Before making any such modifications, the Commission shall—
  - (a) have regard to the modifications specified in the report,
  - (b) give notice of its proposed modifications, and
  - (c) consider any representations made in accordance with the notice and not withdrawn.
- (4) If, after considering any such representations, the Commission decides to make any modifications for the purpose of remedying or preventing the adverse effects specified in the report, the Commission shall give notice of the modifications to the Competition Commission.
- (5) If no direction is given to the Commission under section 18(2) within the period of four weeks starting with the date on which the notice under subsection (4) is given, the Commission shall make the modifications set out in the notice.
- (6) If a direction is given to the Commission under section 18(2)(b) within the period of four weeks starting with the date on which the notice under subsection (4) is given, the Commission shall make the modifications which are set out in the notice and are not specified in the direction.

## 18 Power of intervention of the Competition Commission.

- (1) The Competition Commission may give a direction under subsection (2) if it considers that the modifications set out in a notice under section 17(4) are not the modifications which are needed for the purpose of remedying or preventing all or any of the adverse effects specified by it in the report as effects which could be remedied or prevented by modifications.
- (2) The Competition Commission may direct the Commission—
  - (a) not to make the modifications concerned, or
  - (b) not to make such of the modifications as may be specified in the direction.

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- (3) Subject to subsection (4), the Competition Commission may only give a direction under subsection (2) within the period of four weeks starting with the date on which the notice under section 17(4) is given.
- (4) The Secretary of State may, on the application of the Competition Commission and within the period mentioned in subsection (3), direct that the period (and, accordingly, the period mentioned in section 17(5) and (6)) shall be extended by 14 days.
- (5) The Competition Commission may itself make such modifications as it considers are needed for the purpose of remedying or preventing—
  - (a) if the direction was given under subsection (2)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications,
  - (b) if the direction was given under subsection (2)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Commission under section 17(6).
- (6) In exercising its functions under subsection (5), the Competition Commission shall have regard to the matters to which the Commission is required to have regard when determining the conditions of a licence.
- (7) The Commission shall, for the purpose of assisting the Competition Commission in exercising its functions under this section, give to the Competition Commission—
  - (a) any information the Commission has which relates to the exercise of the functions and which the Competition Commission requests,
  - (b) any information the Commission has which relates to the exercise of the functions and which the Commission considers that it would be appropriate for it to give without a request,
  - (c) any other assistance which the Commission is able to give in relation to the exercise of the functions and which the Competition Commission requests.
- (8) In exercising its functions under this section, the Competition Commission shall have regard to any information given under subsection (7).

## **19 Procedural requirements in relation to modifications.**

- (1) A notice under section 17(3) shall state—
  - (a) that the Commission proposes to make the modifications,
  - (b) the effect of the modifications,
  - (c) the reasons for the modifications, and
  - (d) the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modifications.
- (2) Such a notice shall be given by—
  - (a) serving a copy of the notice on the licence holder, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (3) A notice under section 17(4) shall state—
  - (a) that the Commission proposes to make the modifications,



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- (b) the effect of the modifications, and
  - (c) the reasons for the modifications.
- (4) The Commission shall include with such a notice—
  - (a) a copy of any representations made in accordance with the notice under section 17(3) and not withdrawn, and
  - (b) such information (including information about any change in circumstances since the report was made) as the Commission considers it desirable for the Competition Commission to have.
- (5) As soon as practicable after making modifications under section 17 the Commission shall send a copy of the modifications to the licence holder, the Council and the Secretary of State.
- (6) The Competition Commission shall give notice of any direction given by it under section 18(2).
- (7) The notice shall state—
  - (a) the modifications proposed by the Commission,
  - (b) the terms of the direction, and
  - (c) the reasons for giving it.
- (8) Before making modifications under section 18(5) the Competition Commission shall—
  - (a) give notice of the modifications, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (9) The notice shall state—
  - (a) that the Competition Commission proposes to make the modifications,
  - (b) the effect of the modifications,
  - (c) the reasons for the modifications, and
  - (d) the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modifications.
- (10) A notice under subsection (6) or (8) shall be given by—
  - (a) serving a copy of the notice on the licence holder, the Commission and the Secretary of State, and
  - (b) publishing the notice in such manner as the Competition Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (11) As soon as practicable after making modifications under section 18(5) the Competition Commission shall send a copy of the modifications to the licence holder, the Commission, the Council and the Secretary of State.

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*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2000, Part II. (See end of Document for details)*

VALID FROM 20/06/2003

#### **[<sup>F6</sup>19A Sections 18 and 19: further provision**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 19(6) or (8).
- (2) In giving any notice under section 19(6) or (8), the Competition Commission must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)—
  - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8), in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under section 18 as they apply for the purposes of any investigation on references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc. );
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6), have effect as if—
  - (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words from “the publication” to “reference concerned” there were substituted “the sending of a copy to the Secretary of State under section 19(11) of the Postal Services Act 2000 of the modifications made by the Competition Commission in connection with the reference concerned or, if no direction has been given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and

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- (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
  - (“) if earlier, the day on which a copy of the modifications made by the Competition Commission in connection with the reference concerned is sent to the Secretary of State under section 19(11) of the Postal Services Act 2000 or, if no direction is given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 18 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT ,” and “or the Secretary of State” were omitted.
- (10) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) or (9), have effect in relation to those sections as applied by virtue of those subsections.
- (11) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

#### Textual Amendments

- F6** S. 19A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(4\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

## 20 Application of competition legislation to references etc.

- (1) The provisions listed in subsection (2) shall apply to references under section 15 as if—
  - (a) the functions of the Competition Commission in relation to those references were functions under the <sup>M6</sup>Fair Trading Act 1973 (in this section and section 21 referred to as “the 1973 Act”),
  - (b) the expression “merger reference” included a reference under section 15 above,
  - (c) in section 70 of the 1973 Act references to the Secretary of State were to the Commission and the reference to three months were to six months,
  - (d) in section 93B(1) of the 1973 Act for paragraphs (a) and (b) there were substituted a reference to the Competition Commission in connection with any of its functions in relation to a reference under section 15 above.
- (2) The provisions are—
  - (a) sections 70, 85 and 93B of the 1973 Act (time limit for report; witnesses and documents; and penalties for false or misleading information),

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- (b) section 24 of the <sup>M7</sup>Competition Act 1980 (modification of provisions about the Competition Commission's general functions),
  - (c) Part II of Schedule 7 to the <sup>M8</sup>Competition Act 1998 (the Competition Commission's general functions).
- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply to reports of the Competition Commission on references under section 15 above as it applies to reports of the Competition Commission under that Act.
- (4) The provisions listed in subsection (5) shall apply to the exercise by the Competition Commission of its functions under section 18 above as if—
- (a) in section 85 of the 1973 Act references to any investigation on a reference made to the Competition Commission under that Act were references to any investigation for the purposes of section 18 above,
  - (b) in section 93B(1) of the 1973 Act for paragraphs (a) and (b) there were substituted a reference to the Competition Commission in connection with any of its functions under section 18 above.
- (5) The provisions are—
- (a) sections 85 and 93B of the 1973 Act (witnesses and documents and penalties for false or misleading information),
  - (b) section 24 of the <sup>M9</sup>Competition Act 1980 (modification of provisions about the Competition Commission's general functions),
  - (c) Part II of Schedule 7 to the <sup>M10</sup>Competition Act 1998 (the Competition Commission's general functions).
- (6) Section 82(1) and (2) of the 1973 Act (prejudicial information and absolute privilege) shall apply to notices given by the Competition Commission under section 19(6) or (8) above as it applies to reports made by the Competition Commission under that Act.

#### Marginal Citations

- M6** 1973 c. 41.
- M7** 1980 c. 21.
- M8** 1998 c. 41.
- M9** 1980 c. 21.
- M10** 1998 c. 41.

## 21 Modification by order under other enactments.

- (1) This section applies if—
- (a) the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the 1973 Act, and
  - (b) the first or second requirement (set out below) is satisfied.
- (2) The first requirement is that—
- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference), and
  - (b) the monopoly situation exists in relation to the provision of postal services.
- (3) The second requirement is that the circumstances are as mentioned in section 73(1) of the 1973 Act (order on report on merger reference) and—

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- (a) at least one of the two or more enterprises which ceased to be distinct enterprises was engaged in the provision of postal services, or
  - (b) at least one of the two or more enterprises which would cease to be distinct enterprises (in the application of section 73(1) of the 1973 Act by virtue of section 75(4)(e) of that Act) is engaged in the provision of postal services.
- (4) The order mentioned in subsection (1) may also provide for the modification of the conditions of a licence to such extent as the Secretary of State considers necessary or expedient to give effect to or take account of any provision made by the order.
- (5) As soon as practicable after making modifications under this section the Secretary of State shall send a copy of the modifications to the licence holder, the Commission and the Council.
- (6) Expressions used in this section and the 1973 Act have the same meanings in this section as in that Act.

#### *Enforcement orders*

## **22 Final orders.**

- (1) If the Commission is satisfied that a licence holder—
  - (a) is contravening any condition of his licence, or
  - (b) is likely to contravene any such condition,the Commission shall by order make such provision as is needed for the purpose of securing compliance with the condition.
- (2) An order under subsection (1)—
  - (a) shall require the licence holder to do, or not to do, such things as are specified in the order or are of a description so specified,
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order, and
  - (c) may be revoked at any time by the Commission.
- (3) An order under subsection (1) shall have effect until such time (if any) as the Commission revokes it.
- (4) This section is subject to section 25.
- (5) In this Act “final order” means an order under this section.

## **23 Provisional orders.**

- (1) If—
  - (a) the Commission is not satisfied that a licence holder is contravening any condition of his licence or is likely to contravene any such condition, but
  - (b) the requirements in subsection (2) are met,the Commission shall by order make such provision as it considers is needed for the purpose of securing compliance with the licence condition.
- (2) The requirements are that it appears to the Commission—

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- (a) that the licence holder is contravening any condition of his licence or is likely to contravene any such condition, and
  - (b) that an order under subsection (1) is needed.
- (3) In deciding whether an order under subsection (1) is needed the Commission shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage as a result of anything likely to be done or omitted in contravention of the licence condition before a final order may be made.
- (4) An order under subsection (1)—
  - (a) shall require the licence holder to do, or not to do, such things as are specified in the order or are of a description so specified,
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order, and
  - (c) may be revoked at any time by the Commission.
- (5) An order under subsection (1) shall, subject to any earlier revocation by the Commission, have effect for such period not exceeding three months as is determined by or under the order and which starts when the order takes effect.
- (6) An order under subsection (1) shall not be made in any case where a previous such order has been made in respect of the same contravention or apprehended contravention by the licence holder.
- (7) This section is subject to section 25.
- (8) In this Act “provisional order” means an order under this section.

## **24 Confirmation of provisional orders.**

- (1) The Commission shall confirm a provisional order (with or without modifications) if—
  - (a) it is satisfied that the licence holder is contravening any condition of his licence or is likely to contravene any such condition, and
  - (b) it considers that confirmation of the order (with any modifications) is needed for the purpose of securing compliance with the condition.
- (2) Where the Commission confirms a provisional order under subsection (1), the order continues to have effect until such time (if any) as the Commission revokes it.
- (3) This section is subject to section 25.

## **25 Exceptions from duty to make or confirm enforcement orders.**

The Commission shall not make a final order or make or confirm a provisional order if it is satisfied that—

- (a) the duties imposed on it by sections 3 and 5 preclude it from doing so,
- (b) the licence holder has agreed to take and is taking all the steps that the Commission considers appropriate to secure or facilitate compliance with the condition concerned, or
- (c) the contraventions or apprehended contraventions are trivial.

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## **26 Enforcement orders: main procedural requirements.**

- (1) Before making a final order or confirming a provisional order, the Commission shall—
  - (a) give notice of the proposed order or confirmation, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) The notice shall state—
  - (a) that the Commission proposes to make or confirm the order,
  - (b) the effect of the order,
  - (c) the condition for the purpose of securing compliance with which the order is to be made or confirmed,
  - (d) the acts or omissions which the Commission considers constitute or would constitute contraventions of that condition,
  - (e) any other facts which the Commission considers justify the making or confirmation of the order, and
  - (f) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed order or confirmation.
- (3) A notice under subsection (1) shall be given by—
  - (a) serving on the licence holder and the Council a copy of the notice and a copy of the order proposed (or proposed to be confirmed), and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (4) As soon as practicable after making a final order, or making or confirming a provisional order, the Commission shall—
  - (a) serve a copy of the order on the licence holder and the Council, and
  - (b) publish the order in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (5) This section has effect subject to section 27.

## **27 Enforcement orders: further procedural requirements.**

- (1) The Commission shall not make a final order with modifications, or confirm a provisional order with modifications, unless—
  - (a) the licence holder consents to the modifications and the Commission complies with the requirements of subsection (2), or
  - (b) the Commission complies with the requirements of subsection (3).
- (2) The requirements of this subsection are that the Commission shall—
  - (a) give notice of the proposed modifications to the Council, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (3) The requirements of this subsection are that the Commission shall—
  - (a) give notice of the proposed modifications, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.

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- (4) A notice under subsection (2) or (3) shall state—
  - (a) the proposed modifications,
  - (b) the reasons for them, and
  - (c) the period (not less than 7 days starting with the date of the giving of the notice under subsection (2) or (as the case may be) the publication of the notice under subsection (3)) within which representations may be made in relation to the proposed modifications.
- (5) Before revoking a final order or a provisional order which has been confirmed, the Commission shall—
  - (a) give notice of the proposed revocation, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (6) The notice shall state—
  - (a) that the Commission proposes to revoke the order,
  - (b) the effect of the proposed revocation, and
  - (c) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed revocation.
- (7) As soon as practicable after revoking a final order or a provisional order which has been confirmed, the Commission shall give notice of the revocation.
- (8) If, after giving notice under section 26(1) or subsection (3) or (5) of this section, the Commission decides not to make a final order or confirm a provisional order or (as the case may be) revoke the order, it shall give notice of that decision.
- (9) If, after giving notice under subsection (2), the Commission decides not to make a final order or confirm a provisional order, it shall give notice of that decision to the licence holder concerned and the Council.
- (10) A notice under subsection (2) shall be given by serving a copy of the notice on the Council and a notice under subsection (9) shall be given by serving a copy of the notice on the licence holder and the Council.
- (11) Any other notice under this section shall be given by—
  - (a) serving a copy of the notice on the licence holder and the Council, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

## **28      Validity of enforcement orders.**

- (1) This section applies if a licence holder to whom a final or provisional order relates is aggrieved by the order and wants to question its validity on the ground that—
  - (a) its making or confirmation was not within the powers conferred by section 22, 23 or (as the case may be) 24, or
  - (b) any of the requirements of sections 26 and 27 have not been complied with in relation to the making or confirmation of the order.
- (2) The licence holder may apply to the court.



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- (3) If a copy of the order as made or confirmed was served on the licence holder the application to the court shall be made within the period of 42 days starting with the day on which the copy was served on the licence holder.
- (4) On an application under this section the court may quash the order or any provision of it if the court considers it appropriate to do so and is satisfied that—
  - (a) the making or confirmation of the order was not within the powers conferred by section 22, 23 or (as the case may be) 24, or
  - (b) any of the requirements of sections 26 and 27 have not been complied with in relation to the making or confirmation of the order and the interests of the licence holder have been substantially prejudiced by the non-compliance.
- (5) Where an application has been made under this section, the licence holder concerned shall not be required to comply with the order to which the application relates until the application has been determined, withdrawn or otherwise dealt with; and section 29 shall be construed accordingly.
- (6) Except as provided by this section, the validity of a final or provisional order shall not be questioned in any legal proceedings.
- (7) In this section “the court” means,
  - (a) in relation to England and Wales or Northern Ireland, the High Court,
  - (b) in relation to Scotland, the Court of Session.

## **29 Effect of enforcement orders.**

- (1) The licence holder to whom a final or provisional order relates shall have a duty to comply with it.
- (2) The duty shall be owed to any person who may be affected by a contravention of the order.
- (3) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (4) In any proceedings brought against a licence holder under subsection (3) it shall be a defence for the licence holder to show that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (5) Compliance with a final or provisional order shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.
- (6) Subsection (5) shall not prejudice any right that a person may have by virtue of subsection (3) to bring civil proceedings for contravention or apprehended contravention of a final or provisional order.

### *Financial penalties*

## **30 Financial penalties.**

- (1) If the Commission is satisfied that a licence holder—
  - (a) has contravened any condition of his licence, or

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- (b) is contravening any such condition,  
 the Commission may impose on the licence holder a penalty of such amount as is reasonable.
- (2) No such penalty shall exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).
- (3) The Commission may impose a penalty under this section in respect of a contravention of a licence condition irrespective of whether it has made or may make a final or provisional order in respect of that contravention.

#### Commencement Information

- I2** S. 30 wholly in force; s. 30 not in force at Royal Assent see s. 130; s. 30(2) in force at 6.11.2000 and s. 30 in force insofar as not already in force at 26.3.2001 by [S.I. 2000/2957](#), [art. 2\(1\)\(3\)](#), [Sch. 1](#), [Sch. 3](#) (with transitional provisions in [arts. 3-8](#))

### 31 Statement of policy in relation to penalties.

- (1) The Commission shall prepare and publish a statement of policy in relation to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, the Commission shall have regard to the statement of policy which was most recently published at the time when the contravention concerned occurred.
- (3) The Commission may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the Commission considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Commission shall consult the Council and such other persons as it considers appropriate when preparing or revising its statement of policy.

### 32 Imposition of penalties: main procedural requirements.

- (1) Before imposing a penalty under section 30, the Commission shall—
  - (a) give notice of the proposed penalty, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) The notice shall state—
  - (a) that the Commission proposes to impose a penalty,
  - (b) the amount of the proposed penalty,
  - (c) the condition which the Commission is satisfied has been contravened or is being contravened,
  - (d) the acts or omissions which the Commission considers constitute the contravention,

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- (e) any other facts which the Commission considers justify the imposition of a penalty and the amount of the proposed penalty,
  - (f) the manner in which, and place at which, it is proposed to require the penalty to be paid, and
  - (g) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed penalty.
- (3) As soon as practicable after imposing a penalty, the Commission shall give notice of the penalty.
- (4) The notice shall state—
  - (a) that the Commission has imposed a penalty on the licence holder,
  - (b) the amount of the penalty,
  - (c) the condition which the Commission is satisfied has been contravened or is being contravened,
  - (d) the acts or omissions which the Commission considers constitute the contravention,
  - (e) any other facts which the Commission considers justify the imposition of a penalty and the amount of the penalty,
  - (f) the manner in which, and place at which, the penalty is required to be paid, and
  - (g) the date or dates, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty or (as the case may be) different portions of it are required to be paid.
- (5) The licence holder may, within 21 days of the date of service on him of a notice under subsection (3), apply to the Commission for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.
- (6) A notice under this section shall be given by—
  - (a) serving a copy of the notice on the licence holder and the Council, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) This section has effect subject to section 33.

### **33 Penalties: further procedural requirements.**

- (1) The Commission shall not vary the proposed amount of a penalty as stated in a notice under section 32(1) unless—
  - (a) the licence holder consents to the variation, or
  - (b) the Commission complies with the requirements of subsection (2).
- (2) The requirements are that the Commission shall—
  - (a) give notice of the proposed variation, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (3) The notice shall state—
  - (a) the proposed variation,

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- (b) the reasons for it, and
  - (c) the period (not less than 7 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed variation.
- (4) If, after giving notice under section 32(1) or subsection (2) of this section, the Commission decides not to impose a penalty, it shall give notice of that decision.
- (5) A notice under this section shall be given by—
- (a) serving a copy of the notice on the licence holder and the Council, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

### **34 Time-limits on the imposition of penalties.**

- (1) No penalty shall be imposed under section 30 in respect of a contravention of a licence condition—
- (a) where a provisional order has been made but not confirmed in respect of the contravention and no final order has been made in respect of it, unless a copy of the notice under section 32(1) has been served on the licence holder no later than six months starting with the date on which the provisional order was made,
  - (b) where a provisional order has been confirmed or a final order made in respect of the contravention, unless a copy of the notice under section 32(1) has been served on the licence holder no later than three months starting with the date on which the order was confirmed or (as the case may be) made.
- (2) No penalty shall be imposed under section 30 in respect of a contravention of a licence condition for which no provisional or final order has been made unless a copy of the notice under section 32(1) has been served on the licence holder within twelve months from the time of the contravention.

### **35 Interest and payments by instalment.**

- (1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M11</sup>Judgments Act 1838.
- (2) Where an application has been made under section 32(5), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.
- (3) If a portion of a penalty has not been paid by the date required for it, the Commission may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid to be paid immediately.

#### **Marginal Citations**

**M11** 1838 c. 110.

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## 36 Appeals.

- (1) This section applies if a licence holder on whom a penalty is imposed under section 30 is aggrieved by—
  - (a) the imposition of the penalty,
  - (b) the amount of the penalty, or
  - (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
- (2) The licence holder may apply to the court.
- (3) If a copy of the notice under section 32(3) was served on the licence holder, the application to the court shall, subject to subsection (4), be made within the period of 42 days starting with the day on which the copy was served on the licence holder.
- (4) If the application relates to a decision of the Commission on an application by a licence holder under section 32(5), the application to the court shall be made within the period of 42 days starting with the day on which the licence holder is notified of the decision.
- (5) On an application under this section, the court may—
  - (a) quash the penalty,
  - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
  - (c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the Commission an alternative date or dates,if it considers it appropriate to do so and is satisfied of one or more of the grounds mentioned in subsection (6).
- (6) The grounds are—
  - (a) that the imposition of the penalty was not within the powers of the Commission under section 30,
  - (b) that any of the requirements of section 32 or 33 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance,
  - (c) that it was unreasonable of the Commission to require the penalty to be paid by the date concerned or (as the case may be) to require portions of it to be paid by the dates concerned.
- (7) Where an application has been made under this section, the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.
- (8) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers appropriate.
- (9) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.
- (10) Except as provided by this section, the validity of a penalty shall not be questioned in any legal proceedings.
- (11) In this section “the court” means—

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- (a) in relation to England and Wales or Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Court of Session.

### **37 Recovery of penalties.**

Where a penalty imposed under section 30, or any portion of such a penalty, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 36 during the period within which such an application may be made, or
- (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the Commission may recover from the licence holder any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the Commission.

### *Miscellaneous*

### **38 Register.**

- (1) The Commission shall compile and maintain a register for the purposes of this Part.
- (2) The register shall be kept at such premises and in such form as the Commission considers appropriate.
- (3) The Commission shall cause the following matters to be entered in the register—
  - (a) the provisions of every licence,
  - (b) every modification, revocation or surrender of a licence,
  - (c) the provisions of every direction or determination made or consent or approval given under a licence,
  - (d) the terms of every final or provisional order made or confirmed and every revocation of such an order,
  - (e) every penalty imposed under section 30 and every notice under section 32(3).
- (4) The duty in subsection (3) does not extend to anything of which the Commission is unaware.
- (5) So far as practicable the Commission shall secure the exclusion from the register of any matter relating to the affairs of a person if the Commission considers that its inclusion would or might seriously and prejudicially affect the person's interests.
- (6) Subsection (5) does not apply if—
  - (a) the person concerned consents to the matter being entered in the register, or
  - (b) the Commission considers that entering the matter in the register would be in the public interest.
- (7) If the Secretary of State considers that entry of anything in the register would be against the public interest or any person's commercial interests, he may direct the Commission not to enter it.
- (8) The Commission shall secure that the contents of the register are available for inspection by the public—

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- (a) during such hours as may be specified in an order made by the Secretary of State, and
  - (b) subject to such reasonable fees (if any) as the Commission may determine.
- (9) If requested by any person to do so and subject to such reasonable fees (if any) as the Commission may determine, the Commission shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

### **39 Recovery of costs of the Council etc.**

The Secretary of State may give directions to the Commission as to—

- (a) the inclusion in any licence of conditions requiring the payment of sums relating to the expenses of the Council, or of the Secretary of State in relation to the establishment of the Council,
- (b) the exercise of any power of the Commission to determine anything falling to be determined under such conditions.

### **40 Directors' remuneration.**

- (1) This section applies to any licence holder which is a company.
- (2) As soon as practicable after the end of each financial year of the company it shall make a statement to the Commission—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3), and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors to standards of performance—
  - (a) specified for the company in its licence, or determined for the company by or under the licence, or
  - (b) set or agreed to by the company,in relation to the provision of services authorised or required by the licence.
- (4) A description under subsection (2)(b) shall include—
  - (a) a statement of when the arrangements were made,
  - (b) a description of the standards of performance in question,
  - (c) an explanation of the means by which the standards of performance are assessed, and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) shall also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3),
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,and if there are, or it is intended that there will be, such arrangements in force the statement shall describe those arrangements.
- (6) A description under subsection (5) shall—

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- (a) include the matters mentioned in subsection (4)(a) to (c), and
  - (b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) shall be made to the Commission in such manner as may be required by the Commission.
- (8) The statement required by subsection (2)—
- (a) shall be published by the company making the statement in such manner as it considers will secure adequate publicity for the statement, and
  - (b) may be published by the Commission in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in relation to any person who has at any time been a director of the company.
- (10) In this section—
- “company” means a company within the meaning of the <sup>M12</sup>Companies Act 1985, or the <sup>M13</sup>Companies (Northern Ireland) Order 1986, which is limited by shares,
  - “remuneration” in relation to a director of a company—
- (a) means any form of payment, consideration or other benefit (including pension benefit) paid or due to or in respect of the director, and
  - (b) includes remuneration in respect of any of his services while a director of the company.

#### **Marginal Citations**

**M12** 1985 c. 6.

**M13** S.I. 1986/1032 (N.I. 6).

## **41 Free services for the blind and partially sighted.**

- (1) The Secretary of State may direct the Commission to impose, as a condition of a relevant licence, a requirement that the licence holder provide such free postal services as may be specified in the direction to such descriptions of blind or partially sighted persons as may be so specified.
- (2) The requirement shall not come into force unless—
  - (a) the Secretary of State directs the Commission to bring it into force, and
  - (b) the Commission gives notice of the direction to the licence holder.
- (3) The Secretary of State shall consult the Commission and the Council before giving any direction under this section.
- (4) In this section “relevant licence” means a licence to be granted which is to require the person holding it to provide a universal postal service or part of such a service.



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