



Postal Services Act 2000

2000 CHAPTER 26

PART II

LICENCES FOR POSTAL SERVICES

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—

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- (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—
 - (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.

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

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- (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.
- (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.
- (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.

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- (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.