



# Postal Services Act 2000

## 2000 CHAPTER 26

### PART II

#### LICENCES FOR POSTAL SERVICES

##### *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  - (b) consider any representations made in accordance with the notice and not withdrawn.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.

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

## **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.
- (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).

## **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.
- (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,
  - (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).

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- (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.

## **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 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),
  - (b) section 24 of the Competition Act 1980 (modification of provisions about the Competition Commission’s general functions),

- (c) Part II of Schedule 7 to the 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 Competition Act 1980 (modification of provisions about the Competition Commission's general functions),
  - (c) Part II of Schedule 7 to the 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.

## **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—
  - (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.

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- (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.