



Postal Services Act 2011

2011 CHAPTER 5

PART 3

REGULATION OF POSTAL SERVICES

Financial support for universal postal service

44 Review of costs of universal service obligations

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a universal service provider of complying with its universal service obligations.
- (2) In carrying out a review under this section OFCOM must consider the extent to which, in their opinion, the provider is complying with its universal service obligations in a cost-efficient manner.
- (3) If—
 - (a) regulations under section 35 require the financial burden of complying with universal service obligations (or proposed universal service obligations) to be taken into account in determining whom to designate, and
 - (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,that must be the method of calculation applied on a review under this section.
- (4) If subsection (3) does not apply, the financial burden of complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the universal service provider from—
 - (a) the provider's designation, and
 - (b) the application to the provider of universal service obligations.
- (5) After carrying out a review under this section OFCOM must either—
 - (a) ensure that the calculations made by them on the review are audited by a person who appears to them to be independent of universal service providers,
 - or

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- (b) carry out an audit of those calculations themselves.
- (6) OFCOM must ensure that a report on the audit—
 - (a) is prepared, and
 - (b) if not prepared by OFCOM, is provided to them.
- (7) OFCOM must publish—
 - (a) their conclusions on the review, and
 - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (8) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (9) The Secretary of State may at any time direct OFCOM to carry out a review under this section.
- (10) Unless directed to do so by the Secretary of State, OFCOM may not carry out a review under this section before the end of the period of 5 years beginning with the day on which this section comes into force.

45 Fairness of bearing burden of universal service obligations

- (1) This section applies if OFCOM—
 - (a) have concluded on a review under section 44 that complying with its universal service obligations imposes a financial burden on a universal service provider, and
 - (b) have published that conclusion in accordance with that section.
- (2) OFCOM must determine whether they consider it is or would be unfair for the provider to bear, or to continue to bear, the whole or a part of the burden of complying with its universal service obligations.
- (3) The determination by OFCOM of—
 - (a) whether it is or would be unfair for the provider to bear, or to continue to bear, that burden, or
 - (b) the extent (if any) to which that is or would be unfair,must be made in accordance with regulations made by OFCOM.
- (4) OFCOM must publish the determination.
- (5) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) If OFCOM determine that it is or would be unfair for the provider to bear, or to continue to bear, the whole or a part of that burden, they must submit a report to the Secretary of State setting out their recommendations as to the action (if any) that they consider ought to be taken to deal with the burden.
- (7) The report may make recommendations—
 - (a) about the order in which action ought to be taken, and
 - (b) as to whether the taking of action ought to be contingent on the success or otherwise of the taking of other action.
- (8) The recommended action may consist of one or more of the following—

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- (a) the carrying out of a review under section 34 (review of minimum requirements),
 - (b) requiring contributions to be made in accordance with section 46 for meeting some or all of that burden, and
 - (c) the making of a procurement determination.
- (9) A procurement determination is a determination by OFCOM as to whether, in their opinion, any particular postal operator or operators (which may include the provider) could provide any of the postal services required to be provided by the universal service obligations concerned in a way which would mean that—
- (a) no unfair financial burden would be imposed on any person (or persons) in complying with those obligations, or
 - (b) the financial burden imposed on any person (or persons) in complying with those obligations would be less unfair than the one mentioned in subsection (6).
- (10) A procurement determination must be made in accordance with regulations made by OFCOM.
- (11) After receiving the report under subsection (6), the Secretary of State must determine what action (if any) the Secretary of State considers ought to be taken by OFCOM to deal with the burden.
- (12) The Secretary of State may then direct OFCOM to take that action.
- (13) A direction under subsection (12) may make provision—
- (a) about the order in which specified action is to be taken, and
 - (b) for the taking of specified action to be contingent on the success or otherwise of the taking of other specified action.
- In this subsection “specified” means specified in the direction.
- (14) A direction under subsection (12) may not require OFCOM to make a procurement determination at any time in the period of 10 years beginning with the day on which this section comes into force unless the universal service provider has agreed to the making of the determination.

46 Contributions for meeting burden

- (1) This section applies where the Secretary of State has directed OFCOM to require contributions to be made for meeting some or all of the burden concerned.
- (2) The contributions are to be made by either or both of the following—
 - (a) postal operators providing services within the scope of the universal postal service,
 - (b) users of services within the scope of the universal postal service (by way of the charges paid by them).
- (3) OFCOM may determine that the contributions under this section are to be made only by a description of postal operator or user.
- (4) The assessment, collection and distribution of the contributions must be carried out in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.

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- (5) OFCOM must exercise their power to make the regulations in a way they consider will secure the operation of the scheme—
- (a) in an objective, proportionate and transparent way,
 - (b) in a way that does not involve, or tend to give rise to, any undue discrimination against particular postal operators (or a particular description of postal operators) or particular users (or a particular description of users), and
 - (c) in a way that avoids, or (if that is impracticable) minimises, any distortion of competition.
- (6) The regulations may provide for—
- (a) the scheme, and
 - (b) any fund set up for the purposes of the scheme,
- to be administered by OFCOM or some other person specified in the regulations.
- (7) A person may be specified only if OFCOM are satisfied as to the person's independence of both—
- (a) universal service providers, and
 - (b) postal operators providing postal services within the scope of the universal postal service.
- (8) The regulations may not be made unless—
- (a) the Secretary of State has consented to the making of them and
 - (b) a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

47 Report on sharing mechanism

- (1) This section applies where regulations under section 46 provide for a scheme for the assessment, collection and distribution of contributions.
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—
- (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything required to be provided by a universal service provider to meet its universal service obligations,
 - (b) the market benefits for each universal service provider that have accrued to the provider during that period from its designation and the application to it of universal service obligations, and
 - (c) the contribution made by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of 12 months beginning with the coming into force of the first regulations made under section 46.
- (4) Subsequent reports must be prepared in relation to the period of 12 months beginning with the end of the period to which the previous report applied.
- (5) A report under this section—
- (a) must be prepared as soon as practicable after the end of the period to which it is to apply, and

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- (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
- (a) to publish any matter that is confidential, or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential for this purpose—
- (a) if it relates specifically to the affairs of a particular body and publication of the matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of the body, and
 - (b) if it relates to the private affairs of an individual and publication of the matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of the individual.
- (8) A report under this section must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.