



Postal Services Act 2011

2011 CHAPTER 5

PART 3

REGULATION OF POSTAL SERVICES

Postal operators generally

48 Notification by postal operators

- (1) The Secretary of State may make regulations requiring persons to notify OFCOM before they carry on business as postal operators.
- (2) The Secretary of State must consult OFCOM before making the regulations.
- (3) The regulations may make provision corresponding, with such modifications as appear to the Secretary of State to be appropriate, to any of the provisions of sections 33 to 37 of the Communications Act 2003 (requirements to notify before carrying on a regulated activity).
- (4) The maximum penalty which may be imposed by the regulations for failure to comply with any of its provisions must not exceed the maximum penalty for the time being specified in section 37(6) of that Act.
- (5) OFCOM must establish and maintain a register which records every notification given to them under the regulations.
- (6) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (7) OFCOM must publish a notice setting out—
 - (a) the times at which the register is for the time being available for public inspection, and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.

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- (8) The notice must be published 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) OFCOM must make the register available for public inspection—
 - (a) during such hours, and
 - (b) on payment of such fees,as are set out in the notice for the time being in force under subsection (7).
- (10) Regulations under this section are subject to negative resolution procedure.

49 Essential conditions

- (1) OFCOM may impose an essential condition on—
 - (a) every postal operator, or
 - (b) every postal operator of a description specified in the condition.
- (2) An essential condition is a condition containing such obligations as OFCOM consider necessary to impose for, or in connection with, any one or more of the following purposes—
 - (a) safeguarding confidentiality in connection with the sending, conveyance and delivery of letters,
 - (b) safeguarding security where dangerous goods are transported,
 - (c) safeguarding the confidentiality of information conveyed,
 - (d) guarding against the theft or loss of or damage to postal packets, and
 - (e) securing the delivery of postal packets to the intended addressees.

50 General access conditions

- (1) OFCOM may impose a general access condition on a particular postal operator (or operators).
- (2) A general access condition is a condition requiring the operator to do either or both of the following—
 - (a) to give access to other postal operators, or users of postal services, to the operator's postal infrastructure or any service within the scope of the universal postal service which it provides, and
 - (b) to maintain a separation for accounting purposes between such different matters relating to access of a kind within paragraph (a) (including proposed or potential access of that kind) as OFCOM may direct.
- (3) An operator's "postal infrastructure" includes both physical infrastructure (such as letter boxes) and infrastructure in non-physical form (such as information relating to postcodes or addresses or arrangements made with others for the provision of any service).
- (4) OFCOM may impose a general access condition only if it appears to them that the condition is necessary for either or both of the following purposes—
 - (a) protecting the interests of the users of postal services, and
 - (b) promoting effective competition.

- (5) In deciding what obligations to impose in general access conditions in a particular case, OFCOM must (in addition to taking into account anything relevant for the purpose of performing their duty under section 29) take into account, in particular, the following factors—
- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary,
 - (b) the feasibility of giving the proposed access,
 - (c) the investment made by the postal operator in relation to the matters in respect of which access is proposed,
 - (d) the need to secure effective competition in the long term, and
 - (e) any rights to intellectual property that are relevant to the proposal.
- (6) For the purposes of this section a reference to giving a person access to an operator's postal infrastructure includes giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the infrastructure.
- (7) In Schedule 3—
- (a) Part 1 makes provision about the kind of matters that may be included in general access conditions, and
 - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.

51 Consumer protection conditions

- (1) OFCOM may impose a consumer protection condition on—
- (a) every postal operator, or
 - (b) every postal operator of a specified description.
- (2) A consumer protection condition is a condition requiring the operator to do one or more of the following—
- (a) to assume specified liability in respect of specified loss of or damage to specified postal packets,
 - (b) to establish and maintain procedures, standards and policies with respect to consumer protection matters, and
 - (c) to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading.
- (3) The reference in subsection (2)(b) to consumer protection matters is to—
- (a) the handling of complaints made to postal operators by users of their services,
 - (b) the resolution of disputes between postal operators and users of their services,
 - (c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes,
 - (d) the information that is to be made available by postal operators to users of their services about service standards and about the rights of those users, and
 - (e) anything else appearing to OFCOM to be necessary to secure effective protection for those users.
- (4) The reference in subsection (2)(c) to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading is to—

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- (a) such proportion of the expenses of the National Consumer Council as the Secretary of State considers reasonable having regard to the functions exercisable by it in relation to users of postal services, and
 - (b) such proportion of the expenses of the Office of Fair Trading incurred in connection with its support of any public consumer advice scheme as the Secretary of State considers reasonable having regard to the functions under the scheme exercisable in relation to those users.
- (5) In imposing a consumer protection condition, OFCOM must (so far as they consider appropriate) secure that—
- (a) the procedures for the handling of complaints and the resolution of disputes are easy to use, transparent and effective and otherwise facilitate the settling of disputes fairly and promptly,
 - (b) users have the right to use those procedures free of charge, and
 - (c) if a postal operator contravenes a consumer protection condition, the operator follows such procedures as may be required by the condition.
- (6) The Secretary of State may direct OFCOM to include provision within subsection (2)(c) in consumer protection conditions.
- (7) In this section and section 52 any reference, in relation to postal operators, to users of their services is to users of any of the postal services provided by the operators.
- (8) In this section “specified” means specified in the consumer protection condition.

52 Provision that may be made by consumer protection conditions

- (1) A consumer protection condition may require postal operators to be members of an approved redress scheme.
- (2) A “redress scheme” is a scheme under which complaints about postal operators by users of their services may be made to, and investigated and determined by, a person who is independent of postal operators and OFCOM.
- (3) A redress scheme is “approved” if it is approved by OFCOM in accordance with Schedule 5.
- (4) For the purposes of the law relating to defamation, proceedings under an approved redress scheme are to be treated in the same way as proceedings before a court.
- (5) A consumer protection condition may require postal operators—
 - (a) to provide information to OFCOM with respect to the levels of compliance with the standards for the handling of complaints, and
 - (b) to publish information about the number of complaints made about them (whether under an approved redress scheme or otherwise) and the way in which the complaints have been dealt with.
- (6) Requirements may be contained in the condition as to the times at which, and the manner in which, any information is to be published as a result of subsection (5)(b).
- (7) A consumer protection condition imposed on a universal service provider must include a requirement within subsection (5)(b).