



# Postal Services Act 2011

## 2011 CHAPTER 5

### PART 3

#### REGULATION OF POSTAL SERVICES

##### *Supplementary and consequential provisions*

#### **61 Duties in relation to social and environmental matters**

- (1) The Secretary of State may from time to time give guidance about the making by OFCOM, in the carrying out of their functions in relation to postal services, of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) OFCOM must, when carrying out their functions in relation to postal services, have regard to any guidance given under subsection (1).
- (3) Before giving any such guidance, the Secretary of State must consult—
  - (a) OFCOM,
  - (b) the National Consumer Council, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (4) A draft of any guidance proposed to be given under subsection (1) must be laid before Parliament.
- (5) Guidance may not be given under subsection (1) until after the end of the period of 40 days beginning with the day on which the draft is laid before Parliament.
- (6) In calculating that 40 day period, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than four days.
- (7) If, before the end of that 40 day period, either House of Parliament resolves that the guidance should not be given, the Secretary of State must not give it.

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- (8) The Secretary of State must publish any guidance given under subsection (1) in such way as the Secretary of State considers appropriate.

## **62 UK postage stamps bearing image of Her Majesty**

- (1) The Secretary of State may give a direction to a universal service provider requiring the provider to do either or both of the following—
- (a) to issue United Kingdom postage stamps bearing the image of Her Majesty (“relevant stamps”) in cases specified in the direction, and
  - (b) to comply with provision specified in the direction in relation to any relevant stamps that the provider is required or proposes to issue.
- (2) A direction under subsection (1)(b) must include provision for relevant stamps not to be issued without the approval of Her Majesty.
- (3) The provision that may be contained in a direction under subsection (1)(b) includes—
- (a) provision in relation to the design or subject-matter of relevant stamps (including the frequency of designs in any period specified in the direction), and
  - (b) provision conferring functions on persons (or a committee of persons).
- (4) A person to whom a direction has been given has a duty to comply with it.
- (5) That duty is enforceable in civil proceedings by the Secretary of State—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

## **63 Orders, schemes and regulations made by OFCOM**

Section 403 of the Communications Act 2003 (regulations and orders made by OFCOM) applies to any power of OFCOM under this Part to make an order, a scheme or regulations.

## **64 Abolition of Postal Services Commission etc**

- (1) The Postal Services Commission is abolished.
- (2) In section 30 of, and Schedule 2 to, the Communications Act 2003 (transfers of property etc from pre-commencement regulators), each reference to a pre-commencement regulator includes the Postal Services Commission.
- (3) The following provisions apply in relation to a transfer scheme made by virtue of subsection (2).
- (4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer, by virtue of a transfer scheme, of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).
- (5) Where an employee of the Postal Services Commission becomes an employee of OFCOM by virtue of a transfer scheme—

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- (a) a period of employment with that Commission is to be treated as a period of employment with OFCOM, and
  - (b) the transfer to OFCOM is not to be treated as a break in service.
- (6) The transfer of functions, property, rights or liabilities from the Postal Services Commission to OFCOM under or by virtue of this Act is not to be treated as a merger for accounting purposes.

## **65 Interpretation of Part 3 etc**

### (1) In this Part—

“access condition” means a USP access condition or a general access condition,

“access point” has the meaning given by section 29(11),

“consumer protection condition” has the meaning given by section 51,

“contravention” has the meaning given by subsection (4)(a),

“designated USP condition” has the meaning given by section 36,

“essential condition” has the meaning given by section 49,

“general access condition” has the meaning given by section 50,

“general universal service condition” has the meaning given by section 42,

“letter”—

(a) means any communication in written form on any kind of physical medium to be conveyed to the person or address indicated on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical), and

(b) includes a postal packet containing any communication within paragraph (a),

“notification condition” has the meaning given by section 41,

“postal operator” has the meaning given by section 27,

“postal packet” has the meaning given by section 27,

“postal services” has the meaning given by section 27,

“regulatory condition” has the meaning given by section 28,

“universal postal service order” has the meaning given by section 30,

“universal service obligations” has the meaning given by section 36(8),

“universal service provider” means any postal operator for the time being designated under section 35,

“user”, in relation to a postal service, includes—

(a) addressees, and

(b) potential users,

“USP access condition” has the meaning given by section 38, and

“USP accounting condition” has the meaning given by section 39.

### (2) In this Part—

(a) references to the provision of a universal postal service are to be read in accordance with sections 30 to 33, and

(b) references to the provision of a service within the scope of the universal postal service are to be read in accordance with section 40.

### (3) In the case of a universal service provider who—

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- (a) provides part of a universal postal service, or
- (b) provides a universal postal service, or part of a universal postal service, in a specified area of the United Kingdom,

references in this Part to the provision of a universal postal service are to the provision of that part or to the provision of a universal postal service, or part of a universal postal service, in that area.

- (4) For the purposes of this Part—
- (a) “contravention” includes a failure to comply (and related expressions are to be read accordingly),
  - (b) where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, the contravention is to be taken to continue after the end of that period, or after that time, until that thing is done,
  - (c) references to remedying the consequences of a contravention include paying an amount to a person—
    - (i) by way of compensation for loss or damage suffered by the person, or
    - (ii) in respect of annoyance, inconvenience or anxiety to which the person has been put, and
  - (d) in determining whether a contravention is a repeated contravention for any purposes, a notification of a contravention under any provision is to be ignored if it has been withdrawn before the imposition of a penalty in respect of the matters notified.
- (5) Any direction given by the Secretary of State under any provision of this Part—
- (a) must be in writing, and
  - (b) may be varied or revoked by a further direction.
- (6) Nothing in any provision of this Part that authorises the inclusion of any particular kind of provision in any regulatory condition or direction is to be read as restricting the generality of the provision that may be included in the condition or direction.
- (7) Any power under this Part to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.
- (8) Any reference in this Part to OFCOM’s functions under an enactment includes their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.

## **66 Transitional provisions for Part 3**

Schedule 9 makes transitional provision in connection with the coming into force of this Part and provides for OFCOM to carry out certain functions before the provisions of this Part come into force generally.

## **67 Review of Part 3**

- (1) As soon as reasonably practicable after the end of the review period, the Secretary of State must—
- (a) carry out a review of the provisions of this Part, and
  - (b) set out the conclusions of the review in a report.

- (2) The report must, in particular—
  - (a) set out the objectives intended to be achieved by the regulatory system established by those provisions,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposed less regulation.
- (3) The review period is the period of 5 years beginning with the day on which the provisions of this Part come generally into force.
- (4) The Secretary of State must lay the report before Parliament.