



Postal Services Act 2011

2011 CHAPTER 5

PART 3

REGULATION OF POSTAL SERVICES

Universal service providers

35 Designation of universal service providers

- (1) OFCOM may designate one or more postal operators as universal service providers.
- (2) But there are only two cases in which there may be more than one postal operator designated as a universal service provider.
- (3) The first case is where—
 - (a) OFCOM have made a procurement determination under section 45 (fairness of bearing burden of universal service obligations), and
 - (b) in the light of that determination, OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one.
- (4) The second case is where—
 - (a) a postal administration order has been made under Part 4, and
 - (b) OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one for, or in connection with, achieving the objective of the postal administration.
- (5) OFCOM must publish each designation in such way as they consider appropriate for bringing it to the attention of members of the public.
- (6) The procedure to be followed for the making of a designation under this section must be provided for in regulations made by OFCOM.
- (7) OFCOM may—
 - (a) review the designations for the time being in force, and

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- (b) consider what (if any) designated USP conditions should continue to apply to each of the universal service providers.
- (8) The procedure to be followed on a review must be provided for in regulations made by OFCOM.
- (9) Regulations made by OFCOM must provide for a postal operator's designation to cease to have effect where, in any case described in the regulations, the operator is no longer subject to any universal service obligations.
- (10) Both the procedure for designations and the procedure for the conduct of review of designations provided for by regulations under this section must be one appearing to OFCOM—
 - (a) to be efficient, objective, proportionate and transparent, and
 - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.

^{F1}(11)

Textual Amendments

F1 S. 35(11) omitted (31.1.2020) by virtue of [The Postal and Parcel Services \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1417\)](#), regs. 1, **3(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

II S. 35 in force at 1.10.2011 by [S.I. 2011/2329](#), art. 3

36 Designated USP conditions

- (1) OFCOM may impose a designated USP condition on a universal service provider.
- (2) A designated USP condition is a condition requiring the provider to do one or more of the following—
 - (a) to provide a universal postal service, or part of a universal postal service, throughout the United Kingdom, or in a specified area of the United Kingdom, in accordance with the standards set out in the universal postal service order,
 - (b) to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service,
 - (c) to provide specified information (at such times and in such manner as OFCOM may direct) to other postal operators and users of postal services about the services within paragraph (a) that it is required to provide, and
 - (d) to do anything else that OFCOM consider appropriate for the purposes of, or in consequence of, the obligations imposed under any of paragraphs (a) to (c).

In this subsection “specified” means specified in the condition.

- (3) OFCOM may impose a designated USP condition only if they consider it is necessary to do so in order to secure the provision of a service of a description set out in the universal postal service order in accordance with the standards set out there.
- (4) A designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which a universal postal service, or part of a universal postal service, is provided.

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- (5) In exercising the power conferred by subsection (4), OFCOM must seek to ensure that—
 - (a) the prices are affordable,
 - (b) the prices take account of the costs of providing the service or part of a service, and
 - (c) the prices provide incentives to provide the service or part of a service efficiently.
- (6) A designated USP condition may impose performance targets.
- (7) If there are two or more universal service providers—
 - (a) OFCOM must secure that there is no overlap in the universal service obligations imposed on the providers, and
 - (b) designated USP conditions may require the providers to make arrangements for securing that a universal postal service operates uniformly and effectively throughout the United Kingdom.
- (8) In this Part “universal service obligations”, in relation to a universal service provider, means the obligations imposed on the provider by any designated USP condition.

Commencement Information

I2 S. 36 in force at 1.10.2011 by S.I. 2011/2329, art. 3

37 Publication of information about performance

- (1) A designated USP condition must include provision requiring the universal service provider concerned—
 - (a) to publish information about the extent to which it is providing specified postal services in accordance with specified standards, and
 - (b) to publish annually an independently audited performance report.
- (2) The reference here to an independently audited performance report is to a report that—
 - (a) contains information about the provider's performance in complying with specified requirements under the designated USP condition, and
 - (b) is audited by an independent person for accuracy and, if there are two or more universal service providers, for its usefulness in comparing information published by other universal service providers.
- (3) An “independent person” means a person who is independent of both OFCOM and universal service providers.
- ^{F2}(4)
- (5) A designated USP condition may require the universal service provider concerned to meet the costs of the audit required as a result of subsection (1)(b).
- (6) A designated USP condition may include other provision requiring the universal service provider concerned to publish information about its performance in complying with specified requirements under the designated USP condition.
- (7) The provision made as a result of this section—

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- (a) must include provision—
 - (i) requiring information previously published to be updated and published again, and
 - (ii) requiring the published information to satisfy requirements that OFCOM consider appropriate to secure its adequacy, and
 - (b) may include requirements as to the times at which, and the manner in which, the information is to be published.
- (8) In this section “specified” means specified in the designated USP condition.

Textual Amendments

F2 S. 37(4) omitted (31.1.2020) by virtue of *The Postal and Parcel Services (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1417)*, regs. 1, **3(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I3 S. 37 in force at 1.10.2011 by *S.I. 2011/2329*, art. 3

38 USP access conditions

- (1) OFCOM may impose a USP access condition on a universal service provider.
- (2) A USP access condition is a condition requiring the provider to do either or both of the following—
 - (a) to give access to its postal network to other postal operators or users of postal services, and
 - (b) to maintain a separation for accounting purposes between such different matters relating to access (including proposed or potential access) to its postal network as OFCOM may direct.
- (3) The provider's “postal network” means the systems and all the resources used by the provider for the purpose of complying with its universal service obligations (and, accordingly, includes arrangements made with others for the provision of any service).
- (4) OFCOM may not impose a USP access condition unless it appears to them that the condition is appropriate for each of the following purposes—
 - (a) promoting efficiency,
 - (b) promoting effective competition, and
 - (c) conferring significant benefits on the users of postal services.
- (5) In addition, OFCOM may not impose any price controls on a universal service provider in a USP access condition unless it appears to them that the provider concerned—
 - (a) might otherwise fix and maintain some or all of its prices at an excessively high level with adverse consequences for users of postal services, or
 - (b) might otherwise impose a price squeeze with adverse consequences for users of postal services.
- (6) In imposing price controls in a USP access condition in connection with the giving of access to a universal service provider's postal network or to part of that network, OFCOM must have regard to such of the costs incurred in the provision of that network, or part of that network, as OFCOM consider appropriate.

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- (7) In imposing price controls in a USP access condition OFCOM may—
- (a) have regard to the prices at which services are available in comparable competitive markets, and
 - (b) determine what they consider to represent efficiency by using cost accounting methods.
- (8) In deciding what obligations to impose in a USP access condition 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 universal service provider concerned 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.
- (9) For the purposes of this section references to giving a person access to a provider's postal network include giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the postal network.
- (10) In Schedule 3—
- (a) Part 1 makes provision about the kind of matters that may be included in a USP access condition, and
 - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.

Commencement Information

I4 S. 38 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

39 USP accounting conditions

- (1) OFCOM may impose a USP accounting condition on a universal service provider.
- (2) A USP accounting condition is a condition requiring the provider to do one or more of the following—
 - (a) to maintain a separation for accounting purposes between such different matters as OFCOM may direct for such purposes as they may direct,
 - (b) to comply with rules made by OFCOM in relation to those matters about the identification of costs and cost orientation,
 - (c) to comply with rules made by OFCOM about the use of cost accounting systems in relation to those matters, and
 - (d) to secure that its compliance with those systems is audited annually by a qualified independent auditor.
- (3) An obligation within subsection (2)(a)—

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- (a) may require the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
 - (b) may impose requirements about the accounting methods to be used in maintaining the separation.
- (4) An obligation within subsection (2)(b) or (c)—
- (a) may include conditions requiring the application of presumptions in the fixing and determination of costs and charges for any purpose, and
 - (b) may require the universal service provider concerned to publish such accounts and other information relating to anything required to be done as a result of those provisions as OFCOM consider appropriate.
- (5) An obligation within subsection (2)(d) may require the universal service provider concerned to meet the costs of the audit.
- (6) If a USP accounting condition imposes rules on a universal service provider about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the provider to make arrangements for a description to be made available to the public of the cost accounting system used.
- (7) If OFCOM impose an obligation under subsection (6), the description of information to be made available must include details of—
- (a) the main categories under which costs are brought into account for the purposes of that system, and
 - (b) the rules applied for the purposes of that system with respect to the allocation of costs.
- (8) In this section “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
 - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

Commencement Information

I5 S. 39 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

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