

SCHEDULES

SCHEDULE 7

Section 54

ENFORCEMENT OF REGULATORY REQUIREMENTS

Introduction

- 1 (1) This Schedule makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services.
- (2) “Regulatory requirement” means—
 - (a) a regulatory condition, or
 - (b) a direction under—
 - (i) section 89A or 116(2A) of the Postal Services Act 2000 (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or
 - (ii) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement of requirements to give information to the National Consumer Council).
- (3) The reference to the enforcement of a regulatory condition includes the enforcement of an access condition containing provision as a result of paragraph 6 of Schedule 3 against the person (B) who has made the arrangements with a postal operator mentioned in that paragraph.

Notification of contravention of regulatory requirements

- 2 (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a regulatory requirement.
- (2) A notification under this paragraph must—
 - (a) set out the determination made by OFCOM, and
 - (b) specify the requirement and contravention in respect of which that determination has been made.
- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
 - (a) to make representations about the notified determination,
 - (b) to comply with notified requirements of which the person remains in contravention, and
 - (c) to remedy the consequences of notified contraventions.
- (4) The specified period must be at least one month beginning with the day after the day the notification is given unless—
 - (a) OFCOM and the person notified agree a shorter period,

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- (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate, or
 - (c) OFCOM specify a shorter period under paragraph 8(3) (power to deal with urgent cases).
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
- (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same regulatory requirement, and
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 5(2) or 6(2) that the contravention to which the previous notification related did occur.
- (6) OFCOM may (on one or more occasions) extend the specified period.
- 3 (1) A notification under paragraph 2—
- (a) may be given in respect of more than one contravention, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 2 has been given to a person in respect of a contravention of a regulatory requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if—
- (a) the contravention occurs after the earlier notification is given,
 - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.
- 4 OFCOM may not give a notification under paragraph 2 in relation to a contravention if—
- (a) they decide that a more appropriate way of proceeding in relation to the contravention would be under the Competition Act 1998, and
 - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.

Enforcement notification for contravention of regulatory requirements

- 5 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 2,
 - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
 - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may give the person an enforcement notification if they are satisfied that the person—
- (a) has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2, and

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- (b) has not, during the period allowed under that paragraph, taken all such steps as they consider appropriate—
 - (i) for complying with that requirement, and
 - (ii) for remedying the consequences of the notified contravention of that requirement.
- (3) An enforcement notification is a notification which imposes one or both of the following requirements on the person—
 - (a) a requirement to take such steps for complying with the notified regulatory requirement as may be specified in the notification,
 - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.
- (4) A decision of OFCOM to give an enforcement notification to a person—
 - (a) must be notified by them to that person, together with their reasons for the decision, no later than one week after the day on which it is taken, and
 - (b) must fix a reasonable period for the taking of the steps required by the notification.
- (5) A person to whom an enforcement notification has been given has a duty to comply with it.
- (6) That duty is enforceable in civil proceedings by OFCOM—
 - (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.

Penalties for contravention of regulatory requirements

- 6 (1) This paragraph applies (in addition to paragraph 5) if—
 - (a) a person has been given a notification under paragraph 2,
 - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
 - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on a person if the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2.
- (3) If a notification under paragraph 2 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) OFCOM may also impose a penalty on a person if the person is contravening, or has contravened, a requirement of an enforcement notification given under paragraph 5.
- (6) If OFCOM impose a penalty on a person under this paragraph, they must—
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and

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- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this paragraph—
 - (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- 7 (1) The amount of a penalty imposed under paragraph 6 on a person is to be such amount as OFCOM determine to be—
 - (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (2) The amount must not be more than 10% of the turnover of the person’s postal services business for the relevant period, calculated in accordance with such rules as may be set out by order made by the Secretary of State.
- (3) For the purposes of this paragraph—
 - “the person’s postal services business” means so much of any business carried on by the person as consists in the provision of postal services, and
 - “the relevant period” means—
 - (a) except in a case within paragraph (b) or (c), the period of one year ending with the 31 March next before the time when notification of the contravention was given under paragraph 2,
 - (b) in the case of a person who at that time has been carrying on postal services business for under a year, the period, ending with that time, during which the person has been carrying it on, and
 - (c) in the case of a person who at that time has ceased to carry on postal services business, the period of one year ending with the time when the person ceased to carry it on.
- (4) In making the determination of the amount of the penalty OFCOM must have regard to—
 - (a) any representations made to them by the person,
 - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 2, and
 - (c) any steps taken by the person for remedying the consequences of those contraventions.
- (5) An order under this paragraph is subject to affirmative resolution procedure.

Power to deal with urgent cases

- 8 (1) This paragraph applies if OFCOM determine—
 - (a) that they are entitled to give a notification under paragraph 2 with respect to a contravention by a person (“the contravening person”) of a regulatory requirement,
 - (b) that there are reasonable grounds for suspecting that the case is urgent, and
 - (c) that the urgency of the case makes it appropriate for them to act under this paragraph.

- (2) A case is urgent for the purposes of this paragraph if the contravention has resulted in or creates an immediate risk of—
 - (a) a serious threat to the safety of the public, to public health or to national security,
 - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
 - (c) serious economic or operational problems for users of postal services.
 - (3) OFCOM may, in a notification under paragraph 2 with respect to the contravention, specify a period of less than one month for doing the things mentioned in subparagraph (3) of that paragraph.
 - (4) OFCOM may also give to the contravening person a direction that the entitlement of the contravening person to provide postal services—
 - (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
- 9
- (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
 - (2) A direction under paragraph 8—
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person's services.
 - (3) Those conditions may include a condition requiring the making of payments—
 - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
 - (4) OFCOM may revoke a direction under this paragraph or modify its conditions—
 - (a) with effect from such time as they may direct,
 - (b) subject to compliance with such requirements as they may specify, and
 - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- 10
- (1) As soon as reasonably practicable after giving a direction under paragraph 8 to a person, OFCOM must give the person—
 - (a) an opportunity of making representations to them about the grounds on which it was given, and
 - (b) an opportunity of proposing steps to remedy the situation.
 - (2) As soon as reasonably practicable after the period allowed by OFCOM for making those representations has ended, OFCOM must determine—
 - (a) whether the contravention did occur, and

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- (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) If they decide that the contravention did occur and that the direction was justified, they may confirm the direction.
- (4) If not, they must revoke the direction or modify its conditions.
- (5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify their decision to the person to whom the direction was given.
- (6) Conditions included in a direction as a result of paragraph 9(3) have effect only if the direction is confirmed.

Suspending service provision for contravention of regulatory requirements

- 11 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services—
 - (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of regulatory requirements.
- (5) Condition B is that an attempt, by the giving of enforcement notifications under paragraph 5 or the imposition of penalties under paragraph 6 (or both), to secure compliance with the contravened requirements has failed.
- (6) Condition C is that the giving of the direction is—
 - (a) appropriate, and
 - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 12 (1) Unless it provides otherwise, a direction under paragraph 11 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 11—
 - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person’s services.
- (3) Those conditions may include a condition requiring the making of payments—
 - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or

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- (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under this paragraph or modify its conditions—
 - (a) with effect from such time as they may direct,
 - (b) subject to compliance with such requirements as they may specify, and
 - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (5) For the purposes of paragraph 11 there are repeated contraventions by a person of regulatory requirements to the extent that—
 - (a) in the case of a previous notification given to that person under paragraph 2, OFCOM have determined for the purposes of paragraph 5(2) or 6(2) that a contravention did occur,
 - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a regulatory requirement, and
 - (c) the previous notification and the subsequent ones all relate to contraventions of the same regulatory requirement (whether the same contravention or different ones).
- 13 (1) OFCOM are not to give a direction under paragraph 11 unless they have—
 - (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
 - (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.
- (2) That period must be at least one month beginning with the day after the day the notification is given.
- (3) This paragraph does not apply in an urgent case (as to which, see paragraph 14).
- 14 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 11, give the contravening person—
 - (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
 - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM—
 - (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
 - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 13.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of—
 - (a) a serious threat to the safety of the public, to public health or to national security,

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- (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
- (c) serious economic or operational problems for users of postal services.

Enforcement of directions under paragraph 8 or 11

- 15 (1) A person commits an offence if the person provides any service—
- (a) while the person’s entitlement to do so is suspended by a direction under paragraph 8 or 11, or
 - (b) in contravention of a restriction contained in a direction under either of those paragraphs.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.

Civil liability for breach of regulatory requirements etc.

- 16 (1) The duty of a person to comply with—
- (a) regulatory requirements,
 - (b) requirements imposed by an enforcement notification under paragraph 5, or
 - (c) a condition of a direction under paragraph 8 or 11,
- is a duty owed to every person who may be affected by a contravention of the requirement or condition.
- (2) Sub-paragraphs (3) and (4) apply where a duty is owed by virtue of sub-paragraph (1) to a person.
- (3) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (4) An act which—
- (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (b) is done wholly or partly for achieving that result,
- is actionable at the suit or instance of that person.
- (5) In proceedings brought against a person as a result of sub-paragraph (3) it is a defence for that person to show that the person took—
- (a) all reasonable steps, and
 - (b) exercised all due diligence,
- to avoid contravening the requirement or condition in question.
- (6) The consent of OFCOM is required for the bringing of proceedings as a result of sub-paragraph (1)(a).
- (7) If OFCOM give their consent subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on except in compliance with those conditions.