

## SCHEDULES

### SCHEDULE 4

Section 43

#### RECOVERY OF ADMINISTRATIVE CHARGES INCURRED BY OFCOM

##### *Fixing of charges*

- 1 (1) If, at any time in a charging year, a postal operator provides a service within the scope of the universal postal service, the operator must, in respect of the service, pay to OFCOM the administrative charge (if any) that is fixed by OFCOM as applicable to the operator.
- (2) OFCOM may fix the administrative charge for a charging year only if—
  - (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that they are proposing to apply in fixing charges under this paragraph for that year, and
  - (b) the charge is fixed in accordance with those principles.
- (3) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make, that—
  - (a) on a year-by-year basis the total amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their postal services functions,
  - (b) the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed, and
  - (c) the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent.
- (4) OFCOM's power to fix charges for a particular case includes—
  - (a) power to provide that the charges are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them,
  - (b) power to provide for different charges to be imposed on different descriptions of persons,
  - (c) power to provide for particular descriptions of persons to be excluded from the liability to pay charges.
- (5) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement (a "financial statement") setting out for that year—
  - (a) the total amount of the charges for that year that they have received,
  - (b) the total amount of the charges for that year that remain outstanding but are likely to be paid or recovered, and
  - (c) the cost to OFCOM of carrying out their postal services functions.
- (6) Any deficit or surplus shown (after applying this sub-paragraph for previous years) by a financial statement is to be carried forward and taken into account in determining

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what is required to satisfy the requirement imposed by virtue of sub-paragraph (3)(a) in relation to the following year.

- (7) For the purposes of this paragraph “charging year” means—
- (a) the period beginning with the commencement of this Schedule and ending with the next 31 March, or
  - (b) any subsequent period of 12 months beginning with 1 April.

*Meaning of OFCOM’s postal services functions*

- 2 (1) For the purposes of paragraph 1 OFCOM’s postal services functions are—
- (a) functions that OFCOM carry out under, or in consequence of, any enactment relating to postal services (including one contained in this Schedule),
  - (b) securing international co-operation in relation to the regulation of postal services,
  - (c) market analysis and any monitoring of the controls operating in the market for the provision of postal services,
  - (d) the carrying out for a relevant purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(6A)(b) to (e) of the Communications Act 2003 (as inserted by Schedule 12 to this Act),
  - (e) the publication under section 26 of that Act of any information or advice that appears to OFCOM to be appropriate to make available to users of postal services, and
  - (f) any incidental functions carried out in relation to any of the above functions.
- (2) In sub-paragraph (1)(d) “a relevant purpose” means the purpose of ascertaining the effectiveness of one or more of the following—
- (a) the regulation of the provision of postal services,
  - (b) the mechanisms in place for the handling by postal operators of complaints made about them by the users of postal services, and
  - (c) the mechanisms in place for resolving disputes between postal operators and the users of postal services.
- (3) In sub-paragraph (1)(f) the reference to incidental functions carried out in relation to any of the functions within sub-paragraph (1)(a) to (e) includes the taking of any steps that OFCOM consider necessary—
- (a) in preparation for the carrying out of any of those functions, or
  - (b) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.
- (4) In sub-paragraph (3) the reference to the taking of any steps includes the taking of any steps before the commencement of this Schedule.

*Procedure for fixing of charges*

- 3 (1) The way in which a charge is to be fixed under paragraph 1 is by the publication or giving of such notification as OFCOM consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it.
- (2) OFCOM may set out in that notification the time at which the charge is to become due to them.

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- (3) A charge fixed under paragraph 1 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which the service in respect of which it is fixed is not provided by the person otherwise liable to the charge.
- (4) A charge fixed under paragraph 1 for a charging year may also be fixed so that (subject to sub-paragraph (5)) it is referable, in whole or in part, to the provision of a service during a part of the year falling before the fixing of the charge.
- (5) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—
  - (a) the imposition of the charge, and
  - (b) the amount of the charge,are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
- (6) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (7) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement 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.

#### *Notification of non-payment of charges*

- 4 (1) OFCOM may bring proceedings for the recovery from a person of an administrative charge fixed for a year under paragraph 1 only if they have given that person a notification under this paragraph with respect to the amount they are seeking to recover.
- (2) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is in contravention of a requirement to pay the charge (whether the whole or part of it).
- (3) A notification under this paragraph must set out the determination made by OFCOM.
- (4) 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, and
  - (b) to pay the unpaid charge or (if applicable) the amount outstanding.
- (5) 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, or
  - (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.
- (6) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—

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- (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge, and
  - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 6(2) that the contravention to which the previous notification related did occur.
- (7) OFCOM may (on one or more occasions) extend the specified period.
- 5 (1) A notification under paragraph 4—
- (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge, 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 4 has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount only if—
- (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates, or
  - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

*Penalties for non-payment of charges*

- 6 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 4,
  - (b) OFCOM have allowed the person an opportunity of making representations about the notified determination, and
  - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on the person if the person—
- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under paragraph 1, and
  - (b) has not, during the period allowed under paragraph 4, paid the whole of the notified amount outstanding.
- (3) If a notification under paragraph 4 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) The amount of a penalty imposed under this paragraph 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.
- (6) The amount must not be more than twice the amount of the charge fixed for the year in relation to which the contravention occurred.

- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
- (a) any representations made to them by the person, and
  - (b) any steps taken by the person towards paying the amounts that the person was notified under paragraph 4 were outstanding.
- (8) 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
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) 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.
- (10) This paragraph does not affect OFCOM’s power to bring proceedings (whether before or after the imposition of a penalty under this paragraph) for the recovery of the whole or part of an amount due to them under paragraph 1.

#### *Suspending service provision for non-payment*

- 7 (1) OFCOM may give a direction under this paragraph to any postal operator who is providing one or more postal services (“the contravening operator”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening operator 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 D are met.
- (4) Condition A is that the contravening operator is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under paragraph 1 (whether in respect of the whole or a part of the charges).
- (5) Condition B is that the bringing of proceedings for the recovery of the amounts outstanding—
- (a) has failed to secure complete compliance by the contravening operator with the requirements to pay the charges, or
  - (b) has no reasonable prospect of securing such compliance.
- (6) Condition C is that an attempt, by the imposition of penalties under paragraph 6, to secure such compliance has failed.
- (7) Condition D 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.

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- 8 (1) Unless it provides otherwise, a direction under paragraph 7 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 7—
- (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 operator as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator’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 are not to give a direction under paragraph 7 unless they have—
- (a) notified the contravening operator of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
  - (b) provided the contravening operator 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 operator to take advantage of that opportunity.
- (5) That period must be at least one month beginning with the day after the day the notification is given.
- (6) OFCOM may revoke a direction under paragraph 7 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.
- (7) For the purposes of paragraph 7 there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 4, OFCOM have determined for the purposes of paragraph 6(2) that a contravention did occur, and
  - (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 the same or different failures to pay administrative charges.

#### *Enforcement of directions under paragraph 7*

- 9 (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 7, or

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- (b) in contravention of a restriction contained in a direction under that paragraph.
- (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.
- (3) The duty of a person to comply with a condition of a direction under paragraph 7 is to be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Sub-paragraphs (5) and (6) apply where a duty is owed by virtue of sub-paragraph (3) to a person.
- (5) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (6) 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.
- (7) In proceedings brought against a person as a result of sub-paragraph (5) 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 condition in question.