



# Postal Services Act 2000

## 2000 CHAPTER 26

### PART II

#### LICENCES FOR POSTAL SERVICES

##### *Modification of licences*

#### **14 Modification of licences by agreement.**

- (1) The Commission may modify the conditions of a licence if its holder consents to the modifications.
- (2) Before making modifications under this section the Commission shall—
  - (a) give notice of the modifications, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (3) The notice shall state—
  - (a) that the Commission proposes to make the modifications,
  - (b) the effect of the modifications,
  - (c) the reasons for the modifications, and
  - (d) the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modifications.
- (4) A notice under subsection (2) shall be given by—
  - (a) serving a copy of the notice on the licence holder, the Council and the Secretary of State, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

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- (5) The Secretary of State may, within the period stated under subsection (3)(d), direct the Commission not to make any proposed modification if he considers that the modification should be made, if at all, under section 17.
- (6) As soon as practicable after making modifications under this section the Commission shall send a copy of the modifications to the licence holder, the Council and the Secretary of State.

## **15 References to the Competition Commission.**

- (1) The Commission may make to the Competition Commission a reference requiring the Competition Commission to investigate and report on—
  - (a) whether any matters, which are specified in the reference and which relate to the provision of postal services whose provision is authorised or required by a licence, operate against the public interest or may be expected to do so,
  - (b) if so, whether the effects adverse to the public interest which the matters have or may be expected to have could be remedied or prevented by modifying the conditions of the licence.
- (2) The Commission may at any time by notice given to the Competition Commission vary a reference by adding to the matters specified in it or by excluding from it one or more of those matters; and on receiving a notice the Competition Commission shall give effect to the variation.
- (3) The Commission may, for the purpose of assisting the Competition Commission in its investigation on the reference or the reference as varied, specify in the reference or a variation of it—
  - (a) any effects adverse to the public interest which it considers that the matters specified in the reference or variation have or may be expected to have,
  - (b) any modifications of the conditions of the licence by which it considers that those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference or variation the Commission shall give notice of it by—
  - (a) serving a copy of the reference or variation on the licence holder and the Secretary of State, and
  - (b) publishing particulars of the reference or variation in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (5) The Secretary of State may, before the end of the period of 28 days starting with the day on which he receives the copy, direct the Competition Commission not to proceed with the reference or not to give effect to the variation.
- (6) The Commission shall, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this section, give to the Competition Commission—
  - (a) any information the Commission has which relates to matters within the scope of the investigation and which the Competition Commission requests,
  - (b) any information the Commission has which relates to matters within the scope of the investigation and which the Commission considers that it would be appropriate for it to give without a request,

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- (c) any other assistance which the Commission is able to give in relation to matters within the scope of the investigation and which the Competition Commission requests.
- (7) In carrying out the investigation concerned the Competition Commission shall have regard to any information given under subsection (6).
- (8) In deciding under this section whether a matter operates, or may be expected to operate, against the public interest the Competition Commission shall have regard to the matters as respects which duties are imposed on the Commission by sections 3 and 5.

### [<sup>F1</sup>15A References under section 15: time limits

- (1) Every reference under section 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 15 shall not have effect (and no action shall be taken in relation to it under section 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Commission under subsection (3).
- (3) The Commission may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The Commission shall, in the case of an extension made by it under subsection (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) to the licence holder and the Secretary of State.]

#### Textual Amendments

- F1** Ss. 15A, 15B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(2\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

### 15B <sup>F2</sup>References under section 15: application of Enterprise Act 2002

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes of references under section 15 as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);

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- (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 15 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F3</sup>“the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4), have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.

#### Textual Amendments

- F2** Ss. 15A and 15B inserted (20.06.2003) by [2002 c. 40, ss. 278\(1\), 279, Sch. 25 para. 42\(2\)](#)
- F3** Words in [s. 15B\(4\)](#) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 16 para. 6\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## 16 Reports on references.

- (1) In making a report on a reference under section 15 the Competition Commission—
- (a) shall include definite conclusions on the questions contained in the reference and such an account of its reasons for the conclusions as it considers facilitates a proper understanding of the questions and of the conclusions,
  - (b) if it concludes that any of the matters specified in the reference operate against the public interest or may be expected to do so, shall specify the effects adverse to the public interest which the matters have or may be expected to have,
  - (c) if it concludes that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify modifications by which the effects could be remedied or prevented.
- (2) A report of the Competition Commission on a reference under section 15 shall be made to the Commission.

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- (3) The Commission—
  - (a) shall, on receiving such a report, serve a copy on the Secretary of State, and
  - (b) shall, after the end of the specified period and subject to subsection (4), publish the report in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (4) If the Secretary of State considers that the publication of any matter would be against the public interest or any person’s commercial interests, he may before the end of the specified period direct the Commission to exclude the matter from every copy of the report to be published as mentioned in subsection (3)(b).
- (5) In this section “the specified period” means the period of 14 days starting with the day on which the Secretary of State receives the copy under subsection (3)(a).

#### **[<sup>F4</sup>16A Reports on references under section 15: further provision**

- (1) For the purposes of sections 17 and 18, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (2) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 15.
- (4) In making any report on a reference under section 15 the Competition Commission must have regard to the following considerations before disclosing any information.
- (5) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest
- (6) The second consideration is the need to exclude from disclosure (so far as practicable)
  - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (7) The third consideration is the extent to which the disclosure of the information mentioned in subsection (6)(a) or (b) is necessary for the purposes of the report.]

#### **Textual Amendments**

- F4** S. 16A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(3\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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## **17 Modification following report.**

- (1) This section applies if a report of the Competition Commission on a reference under section 15—
  - (a) includes conclusions to the effect that any of the matters specified in the reference operate against the public interest or may be expected to do so,
  - (b) specifies effects adverse to the public interest which the matters have or may be expected to have,
  - (c) includes conclusions to the effect that the effects could be remedied or prevented by modifications of the conditions of the licence, and
  - (d) specifies modifications by which the effects could be remedied or prevented.
- (2) The Commission shall, subject as follows, make such modifications of the conditions of the licence as it considers are needed for the purpose of remedying or preventing the adverse effects specified in the report.
- (3) Before making any such modifications, the Commission shall—
  - (a) have regard to the modifications specified in the report,
  - (b) give notice of its proposed modifications, and
  - (c) consider any representations made in accordance with the notice and not withdrawn.
- (4) If, after considering any such representations, the Commission decides to make any modifications for the purpose of remedying or preventing the adverse effects specified in the report, the Commission shall give notice of the modifications to the Competition Commission.
- (5) If no direction is given to the Commission under section 18(2) within the period of four weeks starting with the date on which the notice under subsection (4) is given, the Commission shall make the modifications set out in the notice.
- (6) If a direction is given to the Commission under section 18(2)(b) within the period of four weeks starting with the date on which the notice under subsection (4) is given, the Commission shall make the modifications which are set out in the notice and are not specified in the direction.

## **18 Power of intervention of the Competition Commission.**

- (1) The Competition Commission may give a direction under subsection (2) if it considers that the modifications set out in a notice under section 17(4) are not the modifications which are needed for the purpose of remedying or preventing all or any of the adverse effects specified by it in the report as effects which could be remedied or prevented by modifications.
- (2) The Competition Commission may direct the Commission—
  - (a) not to make the modifications concerned, or
  - (b) not to make such of the modifications as may be specified in the direction.
- (3) Subject to subsection (4), the Competition Commission may only give a direction under subsection (2) within the period of four weeks starting with the date on which the notice under section 17(4) is given.

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- (4) The Secretary of State may, on the application of the Competition Commission and within the period mentioned in subsection (3), direct that the period (and, accordingly, the period mentioned in section 17(5) and (6)) shall be extended by 14 days.
- (5) The Competition Commission may itself make such modifications as it considers are needed for the purpose of remedying or preventing—
  - (a) if the direction was given under subsection (2)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications,
  - (b) if the direction was given under subsection (2)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Commission under section 17(6).
- (6) In exercising its functions under subsection (5), the Competition Commission shall have regard to the matters to which the Commission is required to have regard when determining the conditions of a licence.
- (7) The Commission shall, for the purpose of assisting the Competition Commission in exercising its functions under this section, give to the Competition Commission—
  - (a) any information the Commission has which relates to the exercise of the functions and which the Competition Commission requests,
  - (b) any information the Commission has which relates to the exercise of the functions and which the Commission considers that it would be appropriate for it to give without a request,
  - (c) any other assistance which the Commission is able to give in relation to the exercise of the functions and which the Competition Commission requests.
- (8) In exercising its functions under this section, the Competition Commission shall have regard to any information given under subsection (7).

## **19 Procedural requirements in relation to modifications.**

- (1) A notice under section 17(3) shall state—
  - (a) that the Commission proposes to make the modifications,
  - (b) the effect of the modifications,
  - (c) the reasons for the modifications, and
  - (d) the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modifications.
- (2) Such a notice shall be given by—
  - (a) serving a copy of the notice on the licence holder, and
  - (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (3) A notice under section 17(4) shall state—
  - (a) that the Commission proposes to make the modifications,
  - (b) the effect of the modifications, and
  - (c) the reasons for the modifications.
- (4) The Commission shall include with such a notice—

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- (a) a copy of any representations made in accordance with the notice under section 17(3) and not withdrawn, and
  - (b) such information (including information about any change in circumstances since the report was made) as the Commission considers it desirable for the Competition Commission to have.
- (5) As soon as practicable after making modifications under section 17 the Commission shall send a copy of the modifications to the licence holder, the Council and the Secretary of State.
- (6) The Competition Commission shall give notice of any direction given by it under section 18(2).
- (7) The notice shall state—
- (a) the modifications proposed by the Commission,
  - (b) the terms of the direction, and
  - (c) the reasons for giving it.
- (8) Before making modifications under section 18(5) the Competition Commission shall—
- (a) give notice of the modifications, and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (9) The notice shall state—
- (a) that the Competition Commission proposes to make the modifications,
  - (b) the effect of the modifications,
  - (c) the reasons for the modifications, and
  - (d) the period (not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modifications.
- (10) A notice under subsection (6) or (8) shall be given by—
- (a) serving a copy of the notice on the licence holder, the Commission and the Secretary of State, and
  - (b) publishing the notice in such manner as the Competition Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (11) As soon as practicable after making modifications under section 18(5) the Competition Commission shall send a copy of the modifications to the licence holder, the Commission, the Council and the Secretary of State.

#### **[<sup>F5</sup>19A Sections 18 and 19: further provision**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 19(6) or (8).
- (2) In giving any notice under section 19(6) or (8), the Competition Commission must have regard to the following considerations before disclosing any information.



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- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)
  - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8), in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under section 18 as they apply for the purposes of any investigation on references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc. );
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6), have effect as if—
  - (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words from “the publication” to “reference concerned” there were substituted “the sending of a copy to the Secretary of State under section 19(11) of the Postal Services Act 2000 of the modifications made by the Competition Commission in connection with the reference concerned or, if no direction has been given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
  - (“ if earlier, the day on which a copy of the modifications made by the Competition Commission in connection with the reference concerned is sent to the Secretary of State under section 19(11) of the Postal Services Act 2000 or, if no direction is given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”

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- (9) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 18 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F6</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (10) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) or (9), have effect in relation to those sections as applied by virtue of those subsections.
- (11) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

#### Textual Amendments

- F5** S. 19A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 42\(4\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F6** Words in s. 19A(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 16 para. 6\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### <sup>F7</sup>20 Application of competition legislation to references etc.

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#### Textual Amendments

- F7** S. 20 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 42\(5\)](#), [Sch. 26](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### 21 Modification by order under other enactments.

- [<sup>F8</sup>(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “ the relevant authority ”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “ relevant order ” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of postal services; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of postal services; or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which

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prevents, restricts or distorts competition relates to the provision of postal services.]

(5) As soon as practicable after making modifications under this section the [<sup>F9</sup>relevant authority] shall send a copy of the modifications to the licence holder, the Commission and the Council.

[<sup>F10</sup>(6) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.]

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**Textual Amendments**

**F8** S. 21(1)(2) substituted for s. 21(1)-(4) (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 9 para. 14\(2\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

**F9** Words in s. 21(5) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 9 para. 14\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

**F10** S. 21(6) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 9 para. 14\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

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**Modifications etc. (not altering text)**

**C1** S. 21(2)(a) amended (20.6.2003) by [Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 1\(1\), Sch. 4 para. 16](#)

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