

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, Part 2. (See end of Document for details)

SCHEDULES

SCHEDULE 8

INFORMATION PROVISIONS

PART 2

ENFORCEMENT

Notification of contravention of information requirements

- 5 (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 [^{F1}—
- (a) a requirement imposed under paragraph 1 or 3, or
 - ^{F2}(b)]
- (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 matters notified, and
 - (b) to comply with notified requirements of which the person remains in contravention.
- (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, 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.
- (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 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 7(2) that the contravention to which the previous notification related did occur.
- (6) OFCOM may (on one or more occasions) extend the specified period.

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Textual Amendments

- F1** Sch. 8 para. 5(1)(a)(b) substituted for words (23.11.2019) by [The Cross-border Parcel Delivery Services \(EU Information Requirements\) Regulations 2019 \(S.I. 2019/1429\)](#), regs. 1(1), **3(4)**
- F2** Sch. 8 para. 5(1)(b) omitted (31.12.2020) by virtue of [The Cross-border Parcel Delivery Services \(Amendment\) \(No.2\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1036\)](#), regs. 1(2), **4(4)**

Commencement Information

- I1** Sch. 8 para. 5 in force at 1.10.2011 by [S.I. 2011/2329](#), **art. 3**

- 6 (1) A notification under paragraph 5—
- (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 5 has been given to a person in respect of a contravention of a 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.

Commencement Information

- I2** Sch. 8 para. 6 in force at 1.10.2011 by [S.I. 2011/2329](#), **art. 3**

Penalties for contravention of information requirements

- 7 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 5,
 - (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—
- (a) they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 5,
 - (b) the person has not, during the period allowed under that paragraph, complied with the notified requirement, and
 - (c) no proceedings for an offence under paragraph 13 have been brought against the notified person in respect of the contravention.
- (3) If a notification under paragraph 5 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

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- (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 £50,000.
- (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 complying with the requirements contraventions of which have been notified to the person under paragraph 5.
- (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) The Secretary of State may by order substitute a different maximum penalty for the maximum penalty for the time being specified in sub-paragraph (6).
- (11) An order under sub-paragraph (10) is subject to affirmative resolution procedure.

Commencement Information

I3 [Sch. 8 para. 7](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

Suspending service provision for contravention of information requirements

- 8
- (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 requirements imposed under paragraph 1 or 3^{F3}....

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- (5) Condition B is that an attempt, by the imposition of penalties under paragraph 7 or the bringing of proceedings under paragraph 13, 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.

Textual Amendments

F3 Words in Sch. 8 para. 8(4) omitted (31.12.2020) by virtue of [The Cross-border Parcel Delivery Services \(Amendment\) \(No.2\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1036\)](#), regs. 1(2), **4(5)**

Commencement Information

I4 Sch. 8 para. 8 in force at 1.10.2011 by [S.I. 2011/2329](#), **art. 3**

- 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 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 may revoke a direction under paragraph 8 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 8 there are repeated contraventions by a person of requirements imposed under paragraph 1 or 3 to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 5, OFCOM have determined for the purposes of paragraph 7(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 contraventions of a requirement imposed under paragraph 1 or 3.

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- (6) For the purposes of sub-paragraph (5) it does not matter whether the notifications relate to the same contravention or to different contraventions of the same or different requirements or of requirements under different paragraphs.

Commencement Information

I5 Sch. 8 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) OFCOM are not to give a direction under paragraph 8 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 11).

Commencement Information

I6 Sch. 8 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 11 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 8, 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 10.
- (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,
 - (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.

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Commencement Information

I7 Sch. 8 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Enforcement of directions under paragraph 8

- 12 (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
 - (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.

Commencement Information

I8 Sch. 8 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Offences in connection with information requirements

- 13 (1) A person who fails to provide information in accordance with a requirement imposed under paragraph 1 or 3 commits an offence.
- (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) A person does not commit an offence under sub-paragraph (1) if—
- (a) it was not reasonably practicable to comply with the requirement within the period specified by OFCOM, and
 - (b) the person has taken all reasonable steps to provide the information after the end of that period.
- (4) A person commits an offence if—
- (a) in pursuance of a requirement under paragraph 1 or 3, the person provides any information that is false in any material particular, and
 - (b) at the time the information is provided, the person knows it to be false or is reckless as to whether or not it is false.
- (5) A person guilty of an offence under sub-paragraph (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (6) Proceedings for an offence under sub-paragraph (1) may be brought in respect of a contravention by a person of a requirement imposed under paragraph 1 or 3 only if—
- (a) OFCOM have given the person a notification under paragraph 5 in respect of the contravention,

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- (b) the period allowed under that paragraph for doing the things mentioned in sub-paragraph (3) of that paragraph has ended without the required information having been provided, and
- (c) OFCOM have not imposed a financial penalty under paragraph 7 in respect of the contravention.

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19 Sch. 8 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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