

A11. Statutory Notification: proposed Consumer Protection Condition 5

NOTIFICATION OF PROPOSALS TO IMPOSE A NEW CONSUMER PROTECTION CONDITION 5 PURSUANT TO SECTION 51 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

- (A) On 27 March 2012, following a consultation, OFCOM published a statement entitled “Securing the Universal Postal Service: Decision on the new regulatory framework”¹ (the “**2012 Statement**”) setting out various decisions, including the imposition of regulatory conditions under section 51 of the Postal Services Act 2011 (the “**Act**”) (the “**Consumer Protection Conditions**”).²
- (B) On 25 May 2016, Ofcom published a consultation document entitled “Review of the Regulation of Royal Mail”³ (the “**2016 Consultation**”), proposing to amend some of the Consumer Protection Conditions and to revoke former consumer protection condition 5.
- (C) On 1 March 2017, following that consultation, Ofcom published a statement entitled “Review of the Regulation of Royal Mail”⁴ (the “**2017 Statement**”), setting out various decisions, including the decisions to amend some of the Consumer Protection Conditions and to revoke former consumer protection condition 5 (the “**2017 Revocation**”).⁵
- (D) On the 11 March 2021, Ofcom published a call for input entitled “Review of Postal Regulation”⁶ (the “**2021 Call for Input**”), setting out the first step in Ofcom’s review of future postal regulation and inviting views on the main themes to be considered as part of that review. The 2021 Call for Input did not contain any proposals.
- (E) On the 9 December 2021, Ofcom published a consultation document entitled “Review of Postal Regulation” (the “**2021 Consultation**”) ⁷ setting out various proposals, including the proposal to impose a new consumer protection condition (the “**New Consumer Protection Condition 5**”) to make provision for the needs of disabled consumers in relation to postal services.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf

² https://www.ofcom.org.uk/data/assets/pdf_file/0027/71685/annex8.pdf

³ https://www.ofcom.org.uk/data/assets/pdf_file/0028/78184/review-of-royal-mail-regulation.pdf

⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0038/97859/Annex-12-CP5.pdf

⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0024/215664/call-for-inputs-review-of-postal-regulation.pdf

⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0028/228970/Consultation-Review-of-future-postal-regulation.pdf

PROPOSAL

1. Ofcom hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 of the Act, to impose, on postal operators of a description specified in the condition, a new consumer protection condition, to make provision for matters set out in that section 51.
2. The proposed New Consumer Protection Condition 5 is specified in the Schedule hereto.
3. The effect of, and Ofcom's reasons for making, this proposal are set out in the accompanying consultation document.
4. If implemented, the New Consumer Protection Condition 5 shall enter into force on the date specified in Ofcom's final statement in relation to this proposal.

OFCOM'S DUTIES AND LEGAL TESTS

5. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
6. In making this proposal, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

MAKING REPRESENTATIONS

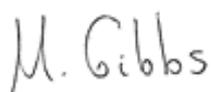
7. Representations may be made to Ofcom about the proposal set out in this Notification by no later than 5 pm on 3 March 2022.
8. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
9. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—
 - (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
 - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
10. The Schedule to this Notification shall form part of this Notification.

INTERPRETATION

11. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of the proposed new Consumer Protection 5 (as relevant).

12. In this Notification—
1. **“2012 Statement”** has the meaning given to it in recital (A) to this Notification;
 2. **“2016 Consultation”** has the meaning given to it in recital (B) to this Notification;
 3. **“2017 Statement”** has the meaning given to it in recital (C) to this Notification;
 4. **“2017 Revocation”** has the meaning given to it in recital (C) to this Notification;
 5. **“2021 Call for Input”** has the meaning given to it in recital in recital (D) to this Notification;
 6. **“2021 Consultation”** has the meaning given to it in recital (E) to this Notification;
 7. **“Act”** means the Postal Services Act 2011 (c.5);
 8. **“Consumer Protection Conditions”** has the meaning given to it in recital (A) to this Notification;
 9. **“New Consumer Protection Condition 5”** has the meaning given to it in recital (E) to this Notification.
 10. **“Ofcom”** means the Office of Communications.
13. For the purpose of interpreting this Notification—
- (a) headings and titles shall be disregarded;
 - (b) expressions cognate with those referred to in this Notification shall be construed accordingly;
 - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
14. The Schedule to this Notification shall form part of this Notification.

Signed by



Marina Gibbs

Director of Post

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

9 December 2021

Schedule

CP 5

CONSUMER PROTECTION CONDITION 5: DISABLED CONSUMERS

5.1. Application, definitions and interpretation

CP 5.1.1	This consumer protection condition (“ CP Condition ”) shall apply to <u>relevant postal operators</u> .
CP 5.1.2	<p>In this CP Condition—</p> <p>(a) “Act” means the Postal Services Act 2011 (c.5);</p> <p>(b) “consumer” means a person who uses a <u>relevant parcels postal service</u> as a sender or an addressee;</p> <p>(c) “closed user group network” means a system providing for the conveyance of <u>postal packets</u> (and the incidental services of receiving, collecting, sorting and delivering <u>postal packets</u>) between—</p> <ul style="list-style-type: none">i. the premises of one firm and another firm;ii. a government department and a third party firm;iii. branches and/or units in the same firm; oriv. government departments, <p>where both the sender and the recipient of the <u>postal packets</u> have entered into specific arrangements with the <u>postal operator</u> for the conveyance of <u>postal packets</u> to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;</p> <p>(d) “relevant employees” means any employee or worker (within the meanings of those expressions under section 230 of the Employment Rights Act 1996);</p> <p>(e) “relevant letter” means a <u>postal packet</u> that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;</p> <p>(f) “relevant parcel” means a <u>postal packet</u> that is larger in dimensions than a <u>relevant letter</u>, and weighs no more than 31.5 kg;</p> <p>(g) “relevant postal operator” means a <u>postal operator</u> that provides a <u>relevant parcels postal service</u>;</p> <p>(h) “relevant parcels postal service” means a <u>postal service</u> of conveying <u>relevant parcels</u> from one place to another by post, and the incidental services of receiving, collecting, sorting and delivering such <u>relevant parcels</u>, excluding:</p>

	<p>(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant parcels</u>;</p> <p>(2) services consisting of the conveyance of <u>relevant parcels</u> within a <u>closed user group network</u>;</p> <p>(3) services provided in the capacity of an intermediary <u>postal operator</u>, that is to say a <u>postal operator</u> ('Operator A') who acts as an intermediary for one or more <u>postal operators</u> and intended recipients that hands over <u>relevant parcels</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) ('Operator B') for subsequent conveyance and delivery to the intended recipients of the <u>relevant parcels</u> but for which conveyance and delivery Operator A is not responsible in relation to the intended recipients; for the purposes of this exclusion, Operator A shall also be deemed not to be an intermediary where:</p> <ul style="list-style-type: none"> i. Operator A directs, controls or otherwise seeks to influence the manner in which Operator B conveys and delivers the <u>relevant parcels</u>; or ii. Operator B is employed by Operator A either as an employee or a worker (within the meanings of those expressions under section 230 of the Employment Rights Act 1996) for that conveyance and delivery; and; <p>(4) services consisting of the conveyance of <u>relevant parcels</u> provided by the <u>postal operator</u> only as part of a sales contract between the <u>postal operator</u> and a <u>user</u> under which the <u>postal operator</u> conveys and delivers such <u>relevant parcels</u> that are subject of that contract directly to the <u>user</u> without any arrangements with another <u>postal operator</u>; in this exclusion "a sales contract" refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration.</p>
<p>CP 5.1.3</p>	<p>For the purpose of interpreting this CP Condition—</p> <ul style="list-style-type: none"> (a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act; (b) headings and titles shall be disregarded; (c) expressions cognate with those referred to in this CP Condition shall be construed accordingly; and (d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament.

5.2 Obligation to establish and comply with effective policies and procedures

CP 5.2.1	A <u>relevant postal operator</u> shall establish, publish and comply with clear and effective policies and procedures for the fair and appropriate treatment of disabled <u>consumers</u> in relation to the collection, delivery and receipt of <u>relevant parcels</u> in the UK.
CP 5.2.2	Such policies and procedures must, as a minimum, describe: <ul style="list-style-type: none"> (a) how disabled <u>consumers</u> can communicate their needs to the <u>relevant postal operator</u> in relation to the delivery of a <u>relevant parcel</u> that is addressed to them; (b) how <u>relevant employees</u> of the <u>relevant postal operator</u> should meet the needs of disabled <u>consumers</u> when delivering a <u>relevant parcel</u>; (c) how the impact and effectiveness of the policies and procedures are monitored and evaluated.
CP 5.2.3	A <u>relevant postal operator</u> must ensure that its <u>relevant employees</u> are: <ul style="list-style-type: none"> (a) made aware of the policies and procedures for the fair and appropriate treatment of disabled <u>consumers</u>; and (b) are appropriately trained to comply with the policies and procedures.
CP 5.2.4	A <u>relevant postal operator</u> must retain and provide to Ofcom, on request, any information considered to be necessary to demonstrate compliance with CP 5.2.1 to 5.2.3.

Table of terms defined in the Act

This table is provided for information and does not form a part of this condition. We make no representations as to its accuracy or completeness. Please refer to the Act.

<i>Defined term</i>	<i>Section of the Act</i>
<i>OFCOM</i>	<i>s.90</i>
<i>postal operator</i>	<i>s.27(3)</i>
<i>postal packet</i>	<i>s.27(2)</i>
<i>universal service provider</i>	<i>s.65(1) and Schedule 9 paragraph 3</i>
<i>user</i>	<i>s.65(1)</i>