

Licences under the Postal Services Act 2000:

Licensing framework in a fully open market

A decision document

August 2005

SUMMARY

- S1 In February 2005, following a consultation which began in September 2004, Postcomm announced that the postal services market would be fully open to competition from 1 January 2006. In November 2004 Postcomm issued a consultation document on how licensing should work in a fully open market¹. This sought views on the three components of Postcomm's proposed new licensing framework: the application process, the content of the licence, and monitoring of licensees. In March 2005, separate consultations were published on Codes of Practice for integrity of mail and for common operational procedures. The results of these consultations are discussed in separate decision documents².
- S2 Formal responses to the first licensing framework consultation document and stakeholders' informal comments made in meetings and other fora were taken into consideration by Postcomm in making its decisions on the principles of the future licensing framework and in producing a draft licence, application form and guidance notes for applicants. In May 2005, Postcomm issued a document explaining its decisions on the principles of the licensing framework and consulting on whether the draft documents accurately and effectively implemented the decisions it had made on the framework. Responses to this document and to the consultations on the two Codes of Practice have been taken into consideration in establishing the finalised licensing framework which is set out in this document.
- S3 The finalised application form, guidance notes and licence are attached as annexes to this document. The main change to the licences, as a result of the consultation on the licensing framework, is an extension of the duration of the licence to a period which is co-terminous with that of Royal Mail. The licence has also changed as a result of the consultations on the two Codes of Practice, but these changes are not discussed in this document. Postcomm believes that this licensing framework for operators other than Royal Mail will encourage entry to the market, while providing sufficient safeguards to protect customers' interests. It will be necessary for customers to make their own judgements as to the standards they expect from licensees and their own choices about which licensees to use, based on the customer experience and other information available to them.

¹ The decision had not, at that time, been taken to fully open the market on 1 January 2006, but such a proposal had been made

² Protecting the Integrity of Mail – A Code of Practice. A decision document. August 2005 and Postal Code of Practice for Common Operational Procedures – A decision document. August 2005

- S4 While taking account of its duties in the round, Postcomm's primary focus in its licensing framework will be to ensure that the integrity of mail is respected. This is both an 'essential requirement' of the European Directive on Postal Services and a key point in maintaining customer confidence in the postal sector as a whole.
- S5 It is intended that all existing licences will be brought into line with the new standard licence from 1 January 2006. Postcomm will consult informally with licensees on the proposed changes to existing licence in order to establish whether consent to the changes will be forthcoming. Since these changes involve revocation of licences, this action will not be taken until the modifications to introduce the Codes of Practice for Mail Integrity and Common Operational Procedures have been made. If consent is not forthcoming from all licensees, Postcomm will consider whether the proposed modifications should be referred to the Competition Commission (in accordance with the process for licence modification set out in the Postal Services Act 2000). The introduction of this new framework, together with the Common Operational Procedures Code and the Mail Integrity Code, paves the way for full market opening.
- S6 Applications for a licence to begin operations on or after 1 January 2006 may be made at any time. Postcomm remains alert to the possibility that the arrangements it is proposing may present a barrier to entry to smaller operators. Following a review focussing on the needs of, and constraints on, the smaller operator, Postcomm will later this year conduct a further consultation about an appropriately tailored licensing regime.
- S6 Postcomm will review the licensing framework in its entirety in 2008, taking into account developments in the market since it was put in place.

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1. INTRODUCTION

What is Postcomm?

- 1.1 The Postal Services Act 2000 (“the Act”) established the Postal Services Commission (“Postcomm”) as the regulatory body for the postal services industry in the United Kingdom. Postcomm’s business plan, which can be found on its website www.psc.gov.uk, gives details of its duties, functions, objectives and work programme.

Postcomm’s statutory duties

- 1.2 Postcomm’s universal service duty is to exercise its functions in a manner which it considers is best calculated to ensure the provision of a “universal postal service”. The universal postal service comprises, amongst other things, the delivery and collection of mail items up to 20 kilograms in weight at least once every working day and the provision of a registered postal service, all at affordable prices that are geographically uniform throughout the UK.
- 1.3 Subject to this, Postcomm is also charged with furthering the interests of users of postal services, where appropriate by promoting effective competition between postal operators. In doing so, Postcomm must have particular regard to the interests of those who are disabled or chronically sick, are of pensionable age, are on low incomes and who reside in rural areas.
- 1.4 Subject to both the duties above, Postcomm has a further duty to exercise its functions in a manner which it considers is best calculated to promote efficiency and economy on the part of postal operators.
- 1.5 Finally, in performing all its functions, Postcomm must have regard to the need to ensure that licensees are able to finance the activities authorised or required by their licences.

Background

- 1.6 Postcomm’s vision for the postal services market in the discharge of its duties is: *“a range of reliable, efficient, and innovative postal services, including a universal service, valued by customers, and delivered through a competitive postal market”*.
- 1.7 Postcomm’s regulatory strategy recognises that regulation will need to evolve over time. Postcomm believes that its duties will best be discharged by encouraging a dynamic and competitive market that stimulates innovation and customer focus on the part of operators. In the short term, when competition is not sufficiently developed to protect postal users’ interests, Postcomm recognises that it will need to regulate the activities of Royal Mail and others. This document sets out how it will regulate the activities of postal operators other than Royal Mail.

- 1.8 Under the Act, operators generally require a licence to provide postal services for items weighing less than 350 grams and costing less than £1. This requirement applies to the carrying out of activities within the scope of the universal service which do not benefit from a relevant exemption from the need to have a licence. Postcomm is responsible for issuing licences. In May 2002 Postcomm set out its strategy for promoting effective competition in UK postal services. This included a statement of Postcomm’s licensing policy which gave effect to its then market opening strategy. In December 2002, Postcomm began issuing standard licences and stopped issuing interim licences. In February 2005, Postcomm announced its decision to bring forward the date of full market opening to 1 January 2006³. This will authorise licensed operators to offer any lawful service within the UK postal services market.
- 1.9 In November 2004, Postcomm published its views on how licensing should work in a fully open market⁴, seeking views on three elements of the licensing framework:
- the application process,
 - the licence, and
 - the monitoring of licensees.
- 1.10 In May 2005, Postcomm published a document⁵ which considered the responses to that consultation and set out for further consultation the detail of the proposed licensing framework, primarily the application form and the licence. Consultees were invited to comment on these documents and on whether they effectively translated the principles decided upon as a result of the November 2004 consultation.
- 1.11 Postcomm received five written responses to its May consultation on the licensing framework. The responses were from the Communication Workers’ Union, the Mail Competition Forum, The Mail Users’ Association, Royal Mail and Postwatch. These responses were not confidential and can be seen on Postcomm’s website.
- 1.12 If you would like to discuss any points relating to the licensing framework please contact Claire Mehegan (020 7593 2124) or Ros Poulson (020 7593 2119) by telephone or e-mail (Claire.Mehegan@psc.gov.uk or Ros.Poulson@psc.gov.uk).

³ “Giving Customers Choice: A Fully Open Postal Services Market” A decision document. 18 February 2005

⁴ “Licences Under the Postal Services Act 2000: Licensing Framework In A Fully Open Market”. A consultation document. November 2004.

⁵ “Licences Under the Postal Services Act 2000: Licensing Framework In A Fully Open Market”. A proposals document. May 2005

1.13 Note that all Postcomm publications referred to in this document are available on its website www.psc.gov.uk or hard copies can be requested from Sarah Benson (Sarah.Benson@psc.gov.uk or 020 7593 2197).

Structure of this document

1.14 The remainder of this document describes the licensing framework which will be implemented from 1 January 2006. It is structured as follows:

- Chapter 2 considers the aims and principles of the licensing framework,
- Chapter 3 describes the licence application process for new licensees,
- Chapter 4 describes the content of the new standard licence, and
- Chapter 5 describes how licensees will be monitored by Postcomm.

1.15 Included in the annexes are the application form and guidance to applicants and the licence.

2. LICENSING IN AN OPEN MARKET

Chapter Outline

2.1 This chapter outlines the key aims and principles of the framework and considers the representations Postcomm received about these during the second consultation. The three separate areas of the framework (the application, the licence and the monitoring programme) are covered in more detail in Chapters 3, 4 and 5 respectively.

Postcomm's licensing powers

2.2 The arrangements set out in this document for the licensing of postal services apply only to those operators providing a service within the scope of the universal service for the conveyance of "letters" (as defined in section 125 of the Act) which weigh less than 350g and which cost less than £1, and subject to the other exemptions from the licensing requirement set out in section 7 of the Act.

2.3 Since publishing its original market opening strategy⁶, Postcomm has had cause to review its licensing powers in respect of consolidation services, or downstream access. In particular, it is considering whether the exemption set out in section 7(2)(h) of the Act (covering pre-paid letters which are conveyed to a licence holder for onward conveyance to the addressee) means that certain forms of downstream access are not activities which are subject to licensing. Further work is still necessary on this topic. Postcomm, therefore, intends to issue a statement later this year once the position is clearer. Pending the issuance of this statement, a potential applicant wishing to provide only consolidation services should apply for a licence.==

Licensing in an open market

2.4 Postcomm has decided that the letters market in the UK should be fully open to competition from 1 January 2006. It took the view that the means of achieving this should be by licensing rather than, for example, a registration scheme. Licensing offers the opportunity both to control entry to the market and to take action against operators in the market who are not acting in accordance with their licences. There were no respondents to the initial consultation who suggested that Postcomm should not operate a licensing system.

2.5 Postcomm set out its licensing objectives for the implementation of full market opening in the November proposals document. These are to:

⁶ "Promoting Effective Competition in UK Postal Services", Postcomm, May 2002

- balance freedom of entry to, and exit from, the market, with
- provision of sufficient safeguards to prevent the system being abused to the detriment of customers, while
- providing some assurance for customers who use new licensees, and
- ensuring provision of sufficient information for the market to function properly.

2.6 In establishing the requirements set out in this document, Postcomm has had regard to the administrative burden imposed on licensees. Its view is that any burden should be proportionate to the positive impetus towards achieving the objectives set out above. Postcomm has sought to build on processes or information which applicants and/or licensees could reasonably be expected to have available in the normal course of business.

2.7 Postcomm's view is that for competition to develop, customers must have confidence in the market. Consequently, it is concerned about the potential impact on market confidence of any well-founded adverse publicity in the early period while competition is still developing. Postcomm has sought, in the exercise of its functions, both to address the concerns already expressed to it by customers and other stakeholders and to anticipate and seek to resolve issues which might arise and which would damage consumer confidence.

2.8 Postcomm recognises that what may be appropriate in the early stages of market opening, when establishing and maintaining confidence is crucial, may not remain appropriate as competition develops. For this reason, Postcomm will conduct a full review of its licensing framework in 2008. This will take into account developments in the market in the intervening period. This review will consider all aspects of the licensing framework and look at whether they continue to be appropriate and fit for purpose. The planned review has been welcomed by operators and by customer representatives.

2.9 In the November consultation document, Postcomm questioned whether the same licensing arrangements were appropriate for all licensees. Subsequent to the publication of the initial proposals, Postcomm considered this issue further and concluded that it warranted further consideration. In the May proposals Postcomm announced that there would be a further consultation on licensing for the smaller business. Four of the five respondents to the May proposals commented on the application of the framework to small businesses. The Communication Workers Union (CWU) expressed 'serious concerns' about the approach taken by Postcomm and suggested that any relaxation of requirements would risk significant damage to the

reputation of the sector from businesses which were 'not competent'. Royal Mail emphasised the importance it placed on the application of all standard licence conditions to all licensees. They stressed that, although some criteria would have to be applied differently, they believed that differences should not be allowed to become too significant if they were not to reduce safeguards on mail integrity and thus confidence in the market. Both the CWU and Royal Mail also suggested that the requirements of small licensees under the draft standard licence would be proportionate to the scale of their operations. The Mail Users' Association (MUA) recognised that there was to be a review and pointed out that its members would consider any concessions relating to mail integrity standards as being inappropriate. The Mail Competition Forum (MCF), representing licensed operators, expressed disappointment at the proposed consultation on small operators and suggested that if a 'lighter touch' system were decided upon, it should apply for all licensees.

- 2.10 Postcomm has emphasised in its consultations and decision documents relating to the framework and the Code of Practice for Mail Integrity that the security of mail will be the primary focus of licensing and monitoring. It has no intention of relaxing standards in a way which would threaten the security of mail. The arrangements for small operators will be considered in the separate consultation, and consequently are not discussed further here. Points raised here will, however, be taken into account.
- 2.11 It is, of course, open to any business of whatever size to apply for a licence under the arrangements set out here. However, unless and until Postcomm determines that different arrangements should apply for any class of business, the arrangements described in the remainder of this document will be deemed to apply to all applicants and licensees regardless of the size of their business.

Licence applications

- 2.12 Postcomm is happy to accept licence applications under the new licensing framework laid out in this document at any time. It is possible to issue a licence prior to 1 January 2006, but the licence will not be effective until 1 January 2006. Postcomm will cease to accept licence applications under the existing arrangements from 30 August 2005.

The position of existing licensees

- 2.13 The new licensing framework as set out in this document will involve changes to the conditions of existing licences, for which a statutory modification procedure applies. However, it also involves changes to the terms of the current licence. These terms cannot be modified in accordance with

the Act. Therefore, existing licences will have to be revoked and reissued on the new terms and conditions to take effect also from 1 January 2006. Postcomm is discussing with licensees a procedure which will put the necessary changes in place for 1 January 2006.

- 2.14 The MCF expressed in its response to the May document concern at the proposals for transferring existing licensees to the new licence, which it described as ‘threatening and heavy-handed’. It expressed a hope that Postcomm would consider the concerns of existing licensees ‘rather than seek to stifle competition as the penalty for refusing to agree to a change in its licence conditions’. Postcomm recognises these concerns. If any licensee were not to agree to a change to the conditions of its licence, the proposed modification would be referred to the Competition Commission, which would rule as to whether the modification should be made.

3. THE LICENCE APPLICATION PROCESS

Chapter outline

3.1 This chapter sets out the representations Postcomm received about the process for applying for a licence and the requirements that Postcomm intends to establish for operators wishing to enter the market.

Legal requirements

3.2 Section 12 of the Act requires that an application for a licence be made in writing. Postcomm can determine a reasonable fee that should accompany any licence application. Before granting a licence Postcomm must publish a notice outlining its proposal to issue a licence and must bring the notice to the attention of those likely to be affected by the grant. A period of not less than 28 days must be set during which time representations about the proposed grant can be made to Postcomm. If Postcomm decides not to issue a licence it must notify the applicant and provide a written statement of the reasons for refusing to issue the licence.

Establishing minimum standards for entry to the market

3.3 A licence must contain certain basic details about the entity to which the licence has been granted. As a minimum, the application process is used to secure this information. Over and above this, Postcomm can use the application process to require information which will enable it to make an initial assessment of the operator's fitness and capability to meet the requirements of the licence. A failure to satisfy minimum standards would mean that the application did not proceed to the next stage.

3.4 Postcomm will continue to require minimum standards for applicants which act as controls on market entry, in pursuit of its duty to promote the interests of customers. Its view is that customer assurance can better be provided by the imposition of such minimum standards at the licensing stage than by enabling open access to the market and then seeking to establish, monitor and enforce such standards for licensees once they are operating.

3.5 Responses to both the initial and the second stage of consultation showed widespread support for the use of the application process to establish minimum standards for market entry. This proposal was supported by both existing and potential licensees, and by representatives of mail users. Postcomm will address three main considerations at the application stage:

- the mail security measures put in place by an operator,

- the fitness and propriety of an operator, and
- the financial position of an operator.

These are considered in more detail below.

Mail security measures

- 3.6 Postcomm has developed a Mail Integrity Code, to reflect its strongly held view that the integrity of mail is key to customer protection and confidence in the market. It will review each applicant's proposals for how to achieve compliance with the Mail Integrity Code and will take those steps it judges necessary to satisfy itself that an applicant can reasonably be expected to comply. Respondents to both licensing framework consultations and to the separate consultation on the Mail Integrity Code generally agreed that there should be a Code and that capability to comply with it should be assessed during the application stage. More detail on the responses to the consultation on the Mail Integrity Code can be seen in the separate decision document⁷.
- 3.7 Views on the appropriate form of assessment varied. Some respondents to the initial consultation suggested that all applicants should be subject to a site visit during the application stage. However, this is not possible where an applicant is a start-up business with no operation to see. Others – representing both operators and mail users - suggested either self-certification, or some other means during the application stage of obtaining a level of assurance that applicants understood the requirements and were able to comply with them, followed by a visit at a later date.
- 3.8 In the joint decision and consultation document published in May 2005, Postcomm expressed its intention to make an assessment at the application stage, including a review of written proposals and procedures and, in some cases, a site visit. Where a site visit is not made during the application stage a visit will be made a later date.

Fitness and propriety of an operator

- 3.9 The licence application process will enable Postcomm to assess an applicant's fitness and propriety, by continuing to consider whether an applicant (or any 'controlling person' of an applicant) had any significant shortcomings that might cast doubt on its ability to respect the integrity of the mail that would be handled. Postcomm will consider convictions involving

⁷ Protecting the Integrity of Mail – A Code of Practice. A decision document. August 2005

dishonesty, or like conduct, or convictions under the Postal Services Act that are not spent under the terms of the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978. Postcomm will also consider whether any ‘controlling person’ is disqualified from acting as a director by order or undertaking under the Company Directors Disqualification Act 1986. The definition of ‘controlling person’ is discussed further in Chapter 4.

- 3.10 In responses to the initial consultation, two respondents, CWU and Royal Mail, suggested that all unspent criminal convictions be taken into account. However, Postcomm’s belief was that it would be inappropriate to consider offences which were not related to an applicant’s ability to respect the integrity of the mail. The CWU revisited its suggestion in its response to the second consultation, expressing a belief that the decision not to consider all unspent convictions of whatever type would unnecessarily limit the information on which Postcomm would make decisions on the grant of licences. Postcomm does not think that it is appropriate for it to require information on convictions which do not relate to the applicant’s ability to respect the integrity of the mail, and so does not consider that there is any unnecessary limitation on the information it will require from applicants.
- 3.11 Postcomm will consider the types of conviction or disqualification described in paragraph 3.10, above. However, Postcomm will not make any particular offence or type of offence an automatic bar to the grant of a licence. This is consistent with the revocation provisions in the licence which provide only that the licence may be revoked in the event such offences are committed. While such convictions may reduce the probability of a licence being granted, Postcomm does not wish to establish an absolute bar to an applicant who could make a convincing case for the ability to respect and protect the integrity of the mail that would be handled, despite such a prior conviction. Consequently, Postcomm will consider such circumstances on a case by case basis.

The financial position of an operator

- 3.12 Postcomm will not in future carry out any financial assessment of applicants as these are considered to be of limited value and start-up businesses would have no financial history. It will rely instead on a financial guarantee, or the option for a licensee to provide security by means of a contract with another licensee to ensure the delivery of mail in the event of its financial failure. Postcomm will, in line with its current practice, retain the right to require further information from applicants during the application period where it deems this appropriate.

- 3.13 Two of the five respondents to the second consultation returned to this issue. The MCF urged Postcomm to retain this reduced assessment requirement and thus reduce the regulatory burden on applicants. The CWU again expressed concern about ending the routine assessment and suggested that there would be instances where specific issues relating to financial background would require investigation.
- 3.14 In assessing capability to comply with the Codes of Practice on Integrity of Mail and on Common Operational Procedures, Postcomm will take into account any proposals which appear to it to be unsustainable, either on a financial or any other basis. It retains the right to require further financial information in such cases. However, with the exception of such cases, Postcomm considers that its attention at the application stage is best focussed on the issues of mail integrity and fitness and propriety, rather than on work which is likely in any event to be carried out by another party, for example by a bank.

The financial guarantee and alternative options

- 3.15 There was general agreement among respondents to the initial consultation that there should be protection for customers and that the most important financial consideration was ensuring provision for the delivery of mail in the event of a licensee going out of business. Postcomm noted in particular that all the consumer representatives supported the need for a guarantee or fallback arrangement of some kind. Postcomm will retain this requirement, and will continue to treat the ability to provide some form of guarantee or similar, or a contract with another operator, as a pre-requisite for issuing of a licence. There are various options, but the overall requirement is a simple process for dealing with the mail on hand which enables all the mail to be delivered speedily, without the need for customer action.

Guarantee options

- 3.16 Postcomm commissioned independent research on the types of guarantees available and the availability of those guarantees to all businesses, taking into account the size of the business and the fact that some would be start-up businesses. The conclusion of the research was that the existing arrangements do not present significant obstacles or costs to substantial or established companies becoming licensees. They do, however, present obstacles to smaller companies and

start-up ventures, not so much in terms of cost as in the difficulties of providing security or demonstrating financial condition. The main options identified were:

- Bank guarantee under usual guarantee arrangements,
- Contract with Royal Mail or another licensee,
- Bank guarantee with bespoke arrangements,
- Performance bond, or
- The establishment of an independently managed fund.

3.17 Postcomm understands that it is possible that once the market has been fully opened one or more banks will develop specialist financial packages, including guarantees, for applicants. One major clearing bank has indicated that it will consider such a scheme for the postal industry along the lines of existing arrangements it has in place for franchisees.

3.18 An alternative form of guarantee, used in other industrial sectors, is the use of a Performance Bond. These would be provided by insurance companies and, like bank guarantees, would have to reflect the specific wording required by Postcomm. The insurer would base the provision of cover on the financial condition of the organisation insured.

3.19 Another possibility examined was of the establishment of a Trust Fund, funded by an annual levy, administered by independent Trustees and used to pay other licensees to deliver mail in the event of a cessation of business. Due to the anticipated costs of implementation and operation, the change in approach to sharing of risk which would be required in the industry as a whole and the lack of response relating to this possibility in the initial consultation, Postcomm is not considering this option further at present.

3.20 A final possibility was a 'mix and match' approach to meet the particular circumstances of individual applicants, which may change as their businesses develop. The new licence is worded in such a way as to allow, for example, a combination of a contract with Royal Mail or another licensee and a specialist financial package. This would probably represent a realistic option for smaller operators and start-up ventures.

Consultation responses

- 3.21 Three of the five respondents to the May consultation commented further on the guarantee requirement. The CWU and Royal Mail both welcomed Postcomm's decision not to reduce the guarantee sum required from two weeks' volumes at 50p to one week's volume at 50p. This is discussed further in Chapter 4.
- 3.22 Royal Mail also suggested that it was 'inevitable' that at some point a licensee would fail leaving more than two weeks' undelivered mail and that Postcomm should publish in advance of full market opening its contingency plans and detail how they would be funded. As Royal Mail notes, the framework cannot cater for every eventuality and, with no history of licensee failure, this is an area on which Postcomm will continue to develop its thinking in the light of market developments. Postcomm does not, at present, intend to establish an 'operator of last resort' arrangement.
- 3.23 The MCF expressed concern about the 'remaining uncertainty' and particularly about Postcomm ceasing to accept parent company guarantees. However, it did not comment on the problem that led to this decision; namely, that such guarantees required Postcomm to take a view on, and rely on, the financial position of the licensees' parent companies. The problems experienced by other regulators in enforcing parent company guarantees, for example when parent and subsidiary fail simultaneously, have led Postcomm to believe that relying on such guarantees is not in customers' best interests.
- 3.24 The MCF urged Postcomm to accept 'simple solutions', such as accepting standard customer contracts or access agreements with Royal Mail, or standard contracts with another operator, as adequate discharge of the guarantee obligation. However, Postcomm cannot accept solutions which do not cover mail at all stages in the pipeline and it notes that standard agreements or contracts, such as the access agreements already in place, do not usually require the collection of mail from the premises of a failed licensee. As described in paragraph 3.20, above, a combination of a contract and a bank guarantee or bond is one possible solution.
- 3.25 Postcomm recognises that those operators currently using parent company guarantees remain concerned about their ability to obtain bank guarantees, but also understands that the primary difficulty in this area has in the past been the open-ended nature of the guarantee. This problem will be resolved by the use of a guarantee time period which will not be open-ended but will

'outlive' the minimum duration of the licence i.e. last until at least 26 March 2016. Postcomm will also continue to work with Royal Mail and various financial organisations on the provision of contracts or guarantees to provide the appropriate security.

- 3.26 As outlined in paragraph 3.16 above, Postcomm notes the potential of the guarantee requirement to act as a barrier to market entry for smaller business. The forthcoming review of the licensing arrangements for smaller businesses will consider carefully the need for a guarantee from such operators.

Common operational procedures

- 3.27 As proposed in a document published in March, a Code of Practice on Common Operational Procedures will be introduced⁸. Postcomm's view was that it should consider an applicant's capability to comply with this Code. Respondents to the initial licensing framework consultation and to the separate consultation on the COP Code generally agreed that there should be a Code and that capability to comply with it should be assessed during the application stage. This is discussed in more detail in the decision document on the Code⁹ and in Chapter 4, below.

Licence application fee

- 3.28 The licence application fee is a one-off payment and contributes to the running costs of the Postcomm licensing function. The majority of respondents to the initial consultation agreed that the fee should remain at £1000. No further representations on this issue were received during the second consultation. The application fee will remain at £1000, although Postcomm will keep this under review following full market opening.

Application form and guidance

- 3.29 Postcomm has produced a revised application form which takes account of the changes made to the licensing framework. This is attached at Annex A. Postcomm's experience to date has been that many of the questions raised by applicants can be answered from the guidance notes it has published. Updated guidance notes to reflect the changes in the framework and clarify some issues are also included at Annex A. Minor changes have been made to the form and the guidance notes to clarify these.

⁸ "Postal Code of Practice for Common Operational Procedures". A consultation document. March 2005

⁹ "Postal Code of Practice for Common Operational Procedures". A decision document. August 2005

Summary

3.30 This chapter has set out Postcomm's decision on the future entry requirements for applicants seeking a postal licence. These requirements can be summarised as:

- payment of an application fee of £1000,
- demonstrated ability to comply with the Mail Integrity Code,
- demonstrated ability to comply with the Code of Practice on Common Operational Procedures,
- ability to provide a financial guarantee or similar, or otherwise to ensure delivery of mail on hand in the event of licensee failure through a contractual arrangement with another licensee,
- no convictions that cast doubt on the fitness and propriety of an applicant or 'controlling person' of an applicant, and
- provision of any further information requested in the event that Postcomm has concerns about the applicant's ability to discharge its obligations under the licence.

4. LICENCE CONDITIONS IN A FULLY OPEN MARKET

Chapter outline

4.1 This chapter summarises the principles underlying the terms and conditions of the licence, as laid out in Postcomm's May proposals document, sets out the representations Postcomm has received on the draft licence published in that document and explains what view it has come to as a result. It also outlines the key changes reflected in the terms and conditions contained in the licence attached to this document at Annex B. It does this by reference to changes to the draft licence published for consultation in May and does not, therefore, cover all aspects of the licensing terms and conditions. Postcomm's original decision on the terms and conditions of the standard licence was taken in 2002¹⁰.

Length of the licence

4.2 Postcomm initially proposed that the new standard licence should, as now, last for a minimum of seven years (through a notice period of three years, which cannot be given unless four years have passed from grant). In establishing the length of the licence, Postcomm needs to provide for sufficient certainty to encourage investment. Responses to the November proposals were mixed, and Postcomm concluded in its May document that no extension of the length of the licence was necessary.

4.3 However, two respondents to the May proposals, the MCF and the MUA, re-visited this question. The MUA suggested that increasing the length of the licence to a minimum of ten (or more) years might increase confidence in the market and encourage development and use of end-to-end mail systems. It also noted that such an increase would bring other operators' licences more in line with Royal Mail's licence. The MCF stated that major uncertainties which had 'since been addressed' had previously been an influence on licensees' (non-)investment and urged Postcomm to remove this remaining 'area of future, regulatory uncertainty', and specifically to extend the length of the licence to a minimum of fifteen years, that is: a notice period of five years which could not be given unless ten years had passed since the licence was granted.

4.4 Postcomm notes that although some respondents to the November proposals thought that extending the length of the licence was not necessary, none of these responses suggested any potential harm to the market from a longer licence term. Postcomm has also considered the

¹⁰ Licences under the Postal Services Act: standard conditions. A decision document, November 2002; and Licences under the Postal Services Act: A further defined activity of tracked business-to-business services. A decision document, December 2002

length of licences in the context of its duty in relation to ensuring the continued provision of the universal service and is satisfied that this will not have an adverse impact in this context. Consequently, Postcomm has decided to change the duration of the standard licence so that it is co-terminous with the licence held by Royal Mail. It will have a ten-year minimum notice period, which notice may not be given before the date at which such notice may be given to Royal Mail (25 March 2006). Licences will, therefore, run for a rolling ten year period.

- 4.5 The duration of the licence is established on the first page of the licence attached at Annex B, which is the licence itself. The term of the licence which specifies its duration can only be changed by revocation and re-issue of the licence.

Schedule 1 - Scope of the licence

- 4.6 The licence provides that the authorised area for the provision of services is the United Kingdom. The service restriction in condition 2 of the current licences is removed as any operator granted a new standard licence will have no restrictions on the services that it can provide. This also removes the obligation on licensees providing consolidation services to pass the mail to Royal Mail for delivery.

Condition 1 – Interpretation and construction

- 4.7 This condition includes a definition of ‘controlling person’. This is discussed below in the section on mail integrity.

Condition 2 – Service provision and complaint handling

- 4.8 Postcomm will not establish any specific standards of performance for licensees, but intends that information will be available on performance on a standard basis so that customers will be in a position to make informed decisions and the market can work effectively. With only one exception, the CWU, all respondents to the November consultation who commented on this question – including consumer representative bodies – agreed that performance standards were a matter for customers and operators to agree between themselves, and that it would not be appropriate for Postcomm to impose specific standards. The CWU reiterated its opposition to this position in its response to the May proposals. However, both Postwatch and the MUA reaffirmed their belief that the standards required by customers should be determined by customers rather than by Postcomm. The licence condition specifies that licensees shall use reasonable endeavours to collect mail as agreed with their customers and to ensure that it is delivered within a reasonable time, but no specific targets will be included in this condition of the licence.

- 4.9 In its response to the November proposals, Postwatch suggested that Postcomm should add to the licence a provision which would enable a receiving customer to claim compensation in the event of damage to items delivered. Postcomm's view was that the position of operators other than Royal Mail could not be compared with that of Royal Mail, where such events are covered by a scheme under section 89 of the Act covering the terms and conditions for the provision of a universal service. It considered that receiving customers wishing to seek compensation for damage or loss should approach the sender of the mail, who could pay compensation as it saw fit and had the ability to put in place arrangements with the operator to cover such issues.
- 4.10 Postwatch returned to this question in its response to the May proposals, suggesting that recourse to the sending customer would not be appropriate, for example, where mail had been inappropriately left on a receiving customer's doorstep, and that receiving customers 'should not be left without a means of redress'. Postcomm's view is that if a piece of mail is lost or damaged due to being left on a doorstep, it remains entirely appropriate for the receiving customer to raise this issue with the sending customer, who can then raise it with the licensee in question. The question of there being no means of redress does not arise. Postcomm does, however, strongly agree with Postwatch's comment that the long term success of the competitive market rests on the satisfaction of both sending and receiving customers, and it joins Postwatch in encouraging licensees to consider the interests of all customers in the event of complaints arising.
- 4.11 In order to ensure that customers can be informed about the performance of licensees, licensees will be obliged to establish systems to measure performance and to handle complaints. Postwatch suggested in its response to the November proposals that the word 'adequate' be added to the wording of the existing licence condition. Postcomm did not believe that this made any change to the requirement, but since this was a non-controversial change, this change was made to the draft licence issued in the May proposals. No objections were received to the addition of the word 'adequate'.
- 4.12 Postcomm also proposed that licensees should make information on their performance available, on a standard basis, to anyone requesting it, but should not be required to publish the information. Responses to the November proposals were generally in favour of recording and availability of information. However, the MCF, Postwatch and various operators raised concerns about how information on very different services could be standardised without it being potentially confusing

for customers or distorting the market. Postcomm recognised these concerns and has obtained further input from the licensees, Postwatch and the MUA since the initial proposals were made.

- 4.13 In responses to the May proposals, the CWU and Royal Mail welcomed the continued proposal to ensure provision of information to customers. The MCF expressed a firm belief that licensees should be free, 'but not obliged' to provide information on quality of service and urged Postcomm to reconsider its proposals, suggesting that there was a risk of this requirement becoming 'regulation for regulation's sake' and that the proposals would be 'time consuming and have a cost' but provide data which would be 'of little assistance to customers'. It stated that it would be willing to work with Postwatch and Postcomm to develop a 'voluntary code for service performance measurement'.
- 4.14 Postcomm continues to believe that availability of information to customers and potential customers will be essential to the development of effective competition. Both the MUA and Postwatch, although acknowledging the potential difficulties, commented on the need for such information in their responses to the May proposals. Postcomm does not believe that a licence requirement to provide such information need be any more time-consuming or costly than a voluntary code and notes that a voluntary code would risk allowing poorly performing licensees, who would be unlikely to sign up to such a code, to conceal service failures from potential customers. Postcomm will continue to work with licensees and Postwatch on how best to provide information which is useful to potential customers, does not damage the ability of licensees to compete in the market, does not distort the market and is not too costly to provide.
- 4.15 The licence provides that such information should be made available in a format agreed with Postwatch, and it provides the ability for Postcomm and for Postwatch to publish this information. Royal Mail suggested that there should be a firm commitment to publish the information, within a defined time frame. Postcomm understands from its response to the May proposals that Postwatch intends to publish information on performance standards and complaint handling once an appropriate format has been satisfactorily agreed.
- 4.16 Postwatch also suggested that there should be a requirement for licensees' Chief Executives (or equivalent) to submit an annual written declaration that the licensees' published performance and complaint handling information was accurate and had not been amended in any way to favour the company. Postcomm does not believe that such a requirement would be necessary or particularly

useful, as provision of false information under the licence condition on information requests might in any event be a breach of licence, from which licence enforcement action could follow.

Condition 3 – Protecting the integrity of mail

- 4.17 A Code of Practice on Integrity of Mail will be introduced. This will establish consistent standards for the postal industry and compliance with the Code will be a licence requirement. There was general support for the introduction of a Code, from both consumer representatives and from operators, and a separate consultation on the content of the Code was published in March 2005. Details of that consultation and of the finalised Code and licence condition can be found in a separate document¹¹. Note that the Code is not included in the licence attached at Annex B, but a there is a reference to show where it would be. Monitoring of licensees is covered in Chapter 5 below.
- 4.18 Licensees will be expected to notify Postcomm when there is a material change in the status of any ‘controlling person’ that would have been relevant to the licensee’s status at the time when the licence application was made. This could be, for example, a conviction for an offence under the Act or involving dishonesty, or like conduct. ‘Controlling person’ will be defined in accordance with the Consumer Credit Act 1974. The definition is included in the definitions section at the front of the licence.

Condition 4 – Common Operational Procedures

- 4.19 A Code of Practice for Common Operational Procedures (“COP Code”) will be drawn up, and compliance with this will be a licence requirement. The purpose of this Code is to establish principles which enable:
- the clear identification, through application of a “Code Identifier”, of mail carried by licensees,
 - the extraction of mail that has entered the incorrect network, typically, but not limited to, Royal Mail’s network and including “forwarded” and “gone-away” mail,
 - the smooth and swift repatriation of this mail to the correct operator,
 - the swift and accurate redirection of misplaced customer service contacts.
- 4.20 The responses made on Postcomm’s proposal to introduce a COP Code generally agreed with the principle that the issues addressed by the Code were important to the smooth running of an open

¹¹ Protecting the Integrity of Mail – A Code of Practice. A decision document. August 2005

postal market. The main issue raised by consultees was whether the Code should or should not be mandatory. In March 2005, Postcomm published a separate consultation document on the COP Code¹². Details of that consultation and of the finalised Code and licence condition can be found in a separate document¹³. Note that the Code is not included in the licence attached at Annex B, but there is a reference to show where it would be. The wording of the licence condition will need amendment for inclusion in Royal Mail's licence, only insofar as is necessary to integrate it into that licence.

Conditions 5 and 6 – Competition law and Mergers and change of control

- 4.21 The purpose of these conditions is to establish information requirements in order that Postcomm receives copies of notices and other documents relating to competition law enquiries or actions. This is in order to ensure that, in the discharge of its functions under the Act, Postcomm is informed promptly of issues that may affect the pattern of competition in the postal services industry. It also ensures that Postcomm can consider the universal service implications, if any, of any competition issue and contribute in an informed manner to the consideration of competition questions by the relevant competition authorities. These conditions are unchanged from those in current licences, save from some updating of references and to clarify the requirement for licensees to advise Postcomm when there is a change of control. Change of control for these purposes is defined by reference to the Companies Act 1985.

Conditions 7 and 8 – Provision of information to Postcomm and Postwatch

- 4.22 There is no change to the licence provisions that enable Postcomm and Postwatch to seek information from licensees either regularly or on an ad hoc basis. The conditions enable Postcomm and Postwatch to obtain the information held by licensees necessary for the discharge of their functions under the Act. These information-gathering provisions supplement the relevant provisions of the Act and enable information to be required without recourse to the criminal sanctions provided in the Act. Postcomm uses this general information gathering power to enable it to monitor competition and developments in the market and to assess compliance. In particular, it has to ensure that it has the information on which to monitor the continued provision of the

¹² "Postal Code of Practice for Common Operational Procedures". A consultation document. March 2005

¹³ "Postal Code of Practice for Common Operational Procedures". A decision document. August 2005

universal service, its primary statutory duty. The forecast information from licensees is particularly important here as it may alert Postcomm to a potential issue which it needs to address.

4.23 Postcomm expects to seek the following information from licensees:

- annual forecasts of the volume of mail expected to be handled under the licence,
- quarterly updates on the volume of mail handled under the licence,
- quarterly updates on total revenues generated by the licensed services, and
- copies of licensees' Annual Reports and Accounts, with licensees that do not have Annual Reports and Accounts providing a brief annual return containing standardised information which will be specified by Postcomm.

4.24 Royal Mail suggested in its response to the May proposals that the requirement for licensees to provide to Postcomm the information set out above should be explicitly included in the licence. Postcomm agrees that a requirement for this type of information is likely to continue while there is a need to licence postal operators. However, as stated in the May proposals, it also recognises that information requirements make demands on licensees and, although its current position is that this information is needed either on a quarterly or on an annual basis, it intends to keep reporting requirements under review. The current arrangement enables Postcomm to maintain flexibility in the information it seeks from licensees on a regular basis.

4.25 Royal Mail also suggested that Postcomm should publish volumes and revenues data for all licensees on a quarterly basis, as this information was 'important for all licensees'. Postcomm cannot see any reason to publish this information on an individual licensee basis. The annual Competitive Market Review which Postcomm publishes will continue to provide a picture of market developments without any need for publishing of individual licensees' data.

Condition 9 – Cessation of business as a postal operator

4.26 Postcomm's proposals and decision on the issue of the need for security to be provided by licensees have already been discussed in Chapter 3.

4.27 In terms of the amount of the guarantee, Postcomm's original proposal was that the current arrangements, based on 50p per item for two weeks' mail volumes (initially from forecasts, and after the first year from actual volumes), be reduced to 50p per item for one week's volumes. However, a number of respondents to the November proposals questioned this proposal and, in the light of the mixed views on this issue, and the lack of any actual experience to date in dealing with licensee failure, Postcomm decided to retain the current calculation of the guarantee amount

based on 50p per item for two weeks' mail volumes and wait to see if market developments justify any future change.

- 4.28 The licence attached at Annex B reflects these decisions. Some wording changes have been made to the licence from that in place at present to clarify the condition. For example, if a licensee did not carry any mail during the first year the licence was in place, then the existing wording may have enabled the licensee not to provide a guarantee for the following year, even if it intended to operate, as its historic mail volumes were zero.

Condition 10 – Payment of amounts to Postcomm

- 4.29 The licence provides for fees to be paid to Postcomm on the basis of a flat fee of £1000 per annum where the licensee's turnover in relation to licensed services is up to £10 million per annum. Above £10 million per annum, there is a formula which apportions fee payments (including those of Royal Mail) between licensees according to their proportion of the total turnover of the market.
- 4.30 Postcomm will require independent verification of licensed area turnover figures to be provided by licensees to ensure that Postcomm, and its auditors, can be satisfied that the correct licence fee has been paid.
- 4.31 In its initial proposals, Postcomm noted that Postwatch was considering a system whereby licensees with high levels of complaints referred to Postwatch would pay direct to Postwatch, and it was noted that this might at some later date require a change in the provisions relating to the licence fee, which covers, amongst other things, the running costs of Postwatch. Postcomm understands that any arrangements put in place relate to the refinements of costings for complaint handling by Postwatch and will not, therefore, impact on the licence fee provisions.

Condition 11 – Accounting separation

- 4.32 Postcomm will retain the requirement for accounting separation contained in the standard licence at present. This applies only to licensees that benefit from a statutory monopoly in their domestic postal market, or are part of a group that does, and requires that those licensees provide separate accounts covering their licensed activities in the UK. The purpose of these accounts is to enable Postcomm to review whether there appears to be any cross-subsidisation of postal activities in the UK by monopoly services elsewhere. This would allow Postcomm to alert the appropriate authorities if any such cross-subsidisation were thought to be contrary to EC competition law and likely to distort the development of the UK market.

- 4.33 Responses to the November proposals varied. The MCF and one operator suggested that the requirement was of little use and would cause unnecessary difficulties for the operators to which it applied. The MCF returned to this point in its response to the May consultation, stating that the requirement would not 'have any practical effect, but the costs of compliance are significant for some of our members'. Other respondents, including Royal Mail, suggested that the proposals did not go far enough and should apply to anyone whose ultimate parent was dominant in its market. The CWU made a similar comment in its response.
- 4.34 Postcomm recognises that the provision does not directly provide a remedy in the event of illegal cross-subsidisation. Rather its aim is to be informed and in a position to respond appropriately should any such question be raised. Postcomm did consider the wider point of companies with (non-statutory) dominance in their markets when it first introduced the requirement and concluded that it was not always straightforward to determine when a company was dominant in a market and that this introduced a further level of complexity. It also concluded that its concern was the postal market and so it should focus its requirements there. It sees no reason to change this view.
- 4.35 The condition in the licence at Annex B is unchanged, other than minor clarificatory points, from that in the current standard licence.

Schedule 3 - Revocation of licence

- 4.36 Postcomm has included a new provision in the revocation provisions of the licence. This addition provides Postcomm with the ability to revoke the licence if a controlling person of a licensee is convicted of an offence under the Act, or of an offence involving dishonesty, or is disqualified from being a director under the Company Directors Disqualification Act 1986. This has been included at paragraph 1(c) of Schedule 3 to the licence.
- 4.37 The revocation provisions in relation to insolvency have been brought up to date to reflect changes introduced by the Enterprise Act 2002.
- 4.38 There were no objections to the proposal to amend the revocation provisions of the licence. In response to the May proposals, the MCF suggested that licensees which are legal entities should be permitted to remove from their position controlling persons whose actions entitle revocation, and thus to avoid revocation. As Postcomm noted in its proposal document, the revised revocation provisions give Postcomm the discretion to revoke the licence, but do not require it to do so. The removal of the controlling person whose actions entitled revocation would, of course, be considered as a positive factor in such cases, and Postcomm would not expect to take action to

revoke a licence on these grounds without first offering the licensee the opportunity to remedy the position.

Other issues

Removal of definitions

- 4.39 Postcomm has taken the opportunity to review the definitions contained in Schedule 2 of the licence and those included in the Annex which were taken from the Act. Those which define terms which are no longer used, or never were used, in the licence have been removed. Postcomm has also moved the definition of “undertaking” to Condition 6, since the word is used in several different ways in the licence, but it is only in Condition 6 that it is used as defined.

Sole proprietors

- 4.40 There would be some changes to the licence attached at Annex B if the licence were to be issued to a sole proprietor. These would be, for example, in Schedule 3 in relation to the insolvency provisions.

Sharing of redirection information

- 4.41 As noted in Chapter 9 of the consultation on the COP Code, Postcomm is planning to issue a consultation document on the sharing of redirection information between licensees. It expects such a consultation document to include draft licence conditions pertaining to the sharing of redirection information.

Public access to postal networks – dangerous materials

- 4.42 Postcomm has been considering how to deal with the possible risk of the insertion of dangerous materials (for example, anthrax spores) into publicly accessible postal networks. In this context, Postcomm notes the provisions of section 85 of the Act which establishes an offence for the sending by mail, unless the item is permitted by the postal operator, any item which might injure other postal packets or persons. Royal Mail’s licence requires it to have contingency plans in place to ensure as far as practicable the continued provision of the universal service in the event of various problems, such as an emergency, occurring. Such an obligation is not appropriate in licences which do not have a universal service obligation.
- 4.43 The opening of the postal market means that there is a need to consider the handling of any such incident in another network. This has not been an issue to date as the areas of the market which were open to competition did not lend themselves to anonymity of access to the network; this

may change in the future. It is not possible at this stage to say whether any changes to the licence will result or whether this is an issue which will be dealt with in some other manner. Postcomm is highlighting this as a matter which it will be considering.

Summary of the terms and conditions of the new standard licence

4.44 This chapter has set out Postcomm's conclusions on the terms and conditions of the standard licence applicable from 2006 in the fully open UK postal services market. The terms and conditions of the new licence are set out in Annex B. These can be summarised as:

- a standard licence,
- licences to be co-terminous with that of Royal Mail,
- complaint handling and performance measurement systems to be in place and information on the licensee's performance available,
- a Code of Practice for Mail Integrity,
- a Code of Practice on Common Operational Procedures,
- ongoing reporting supported by revocation provisions to ensure the continuing fitness and propriety of licensees,
- regular and ad hoc provision of information,
- financial guarantee or similar, or a contract with another licensee, to ensure delivery of undelivered mail in the event of the licensee's financial failure
- minimum licence fee payable annually, then increasing according to turnover (which is subject to independent verification), and
- accounting separation for licensees whose ultimate parent has a legal monopoly in another jurisdiction in the provision of postal services.

5. MONITORING OF LICENSEES

Chapter outline

- 5.1 This chapter sets out the representations Postcomm received about the monitoring of licensees and how that monitoring will be undertaken. Respondents only commented on the form of monitoring. For ease of reference, Postcomm's proposals are reproduced here.

Legal requirements

- 5.2 In making proposals to undertake monitoring of licensees, Postcomm noted that there was no explicit legal requirement for it to do so as such. However, the Act does make provision for enforcement action, in the form of provisional and final orders, to be taken by Postcomm in the event that a licensee fails to comply with the terms of its licence. Postcomm's view is that it needs to ensure that standards set for entry to the market are maintained during the term of a licence and that there should be some monitoring of licensees to ensure that they comply with their licences.

Form of monitoring

- 5.3 While continuing to act on information received that suggests and supports an allegation that a licensee may be in breach of its licence, Postcomm will also undertake more pro-active monitoring. It will establish a monitoring programme which ensures that each licensee is subject to a site visit at least once during the period of its licence, and probably more than once, particularly as licences will now be subject to a ten year notice period. Compliance with the Mail Integrity Code will be a key focus of monitoring.
- 5.4 As outlined in Chapter 3 above, during the licence application process Postcomm will assess applicants' capability to comply with the requirements of the licence, either by visiting the applicant or – for example, where the applicant is a new start-up business with no existing operation – by assessment of its proposed procedures. In their responses to the May proposals, Royal Mail and the CWU suggested that Postcomm should specify the time at which it would visit those licensees which had not received a visit during the application process: the CWU suggesting a visit 'at the earliest available opportunity' and Royal Mail suggesting a visit within the first six months of operations commencing. Postcomm believes that it must take a 'risk-based' approach to monitoring of licence compliance, and that it would be inappropriate for Postcomm to commit to a visit schedule which might reduce its capacity to more closely monitor any licensee which had given specific cause for concern.

5.5 The CWU reiterated its view on pro-active monitoring in all areas in its response to the May proposals, and expressed concern at the proposal to assess licensees for compliance at least once during the term of the licence, which it considered insufficient. The CWU suggested that 'such monitoring activity...should take place on a more regular basis'. Postcomm wishes to clarify that licensees will be subject to an assessment visit at least once during the term of their licence - more often if there is specific cause for concern - and that monitoring will not only be carried out through visits. Monitoring of compliance with licence conditions will be an ongoing process, based on information received from licensees, from Postwatch and others. For example, as noted by respondents to the November proposals, complaints figures will give an indication of performance, and mail users and competitors can be expected to alert Postcomm to known incidents of non-compliance.

Issues to be monitored

5.6 Postcomm's monitoring will focus on the issues that it has highlighted as being key to underpinning confidence in the market: mail integrity, financial guarantees and fitness and propriety of licensees. It expects that Postwatch will play a significant role in monitoring of licensees' performance and complaint handling. Postwatch will work closely with licensees in the early stages of the process to ensure that their performance measurement systems are adequately robust and, like Postcomm, would react when a problem has been identified as well as looking routinely at compliance.

Monitoring of compliance with Code of Practice on Mail Integrity

5.7 Postcomm has already set out in Chapter 3 how it will assess an applicant's capability to comply with the Mail Integrity Code during the application process. Postcomm will require annual returns on the success or otherwise of licensees' procedures in preventing mail integrity incidents, including information on losses of mail and measures taken to address such problems. A review of the annual returns is likely to show whether action by Postcomm is necessary. Initial steps might involve a letter setting out Postcomm's concerns, a meeting to discuss the issues or a visit to the licensee, without prejudice to the possibility of taking more immediate enforcement action were that required by particular circumstances.

5.8 As outlined in the decision document on the Mail Integrity Code, licensees who are not undertaking their own prosecutions will be required to set up a reporting process whereby Postcomm is informed if there are incidents which may suggest that an offence has been

committed under sections 83 or 84 of the Act. It would expect to investigate any such offences and might bring proceedings against any individual or companies concerned if it considered such an offence had been committed. It would also consider whether licensees have adequate measures in place to limit the risk of such offences occurring. The emphasis will be on encouraging licensees to take preventative action to limit the occurrence of such incidents, but Postcomm will also look to licensees to take firm and prompt action when an incident does occur.

- 5.9 Postcomm's monitoring programme will determine the licensees to be visited and the frequency of visits by reference to the size of the licensee and the level of concerns, if any, which have been raised about that licensee. It will normally make prior arrangements to visit a licensee and will carry out unannounced visits only where it has a serious concern. Such a monitoring programme should reduce the risk of problems developing unchecked.

Monitoring of financial guarantees

- 5.10 Postcomm will require licensees to have measures in place to ensure that mail on hand can be delivered should a licensee go out of business. In most cases this is likely be in the form of a financial guarantee, based on the previous year's volume of mail carried or, in the first year, the forecast. In some cases this will be in the form of a contract with another operator. This is discussed in more detail in Chapter 3, above.
- 5.11 Postcomm will review the volume of mail carried by a licensee on a yearly basis to verify that the guarantee in place is sufficient to meet the terms of the licence, or to establish that a replacement is required. If any guarantee proves to be insufficient, it will take this up with the licensee and ensure that a revised guarantee is put in place. The requirements on the provision of information by licensees, as discussed in Chapter 4, will ensure that Postcomm has the information available to it to carry out this monitoring without any additional burden on the licensee.

Monitoring of propriety of licensees

- 5.12 Postcomm will review any information supplied by licensees on mergers, changes of control or other changes in status of the licensee and any 'controlling person' in order to determine whether any action is necessary. In many cases it is likely that Postcomm will only need to note the information provided to it and that no action will be necessary. If there are concerns on a merger or change of control, Postcomm can raise these with the licensee or the Office of Fair Trading, although the OFT's powers to intervene relate only to competition concerns. If its concern is about a change in status of the 'controlling person' then Postcomm can raise this with the

licensee. Ultimately, Postcomm can consider modification or revocation of the licence where the circumstances make this appropriate. The proposals on provision of information by licensees outlined in Chapter 4 above will ensure that Postcomm has the information available to it to carry out this monitoring without any additional burden on the licensee.

Other monitoring

5.13 Postcomm will, as discussed in Chapter 4, above, require licensees to provide regular information on the volumes of licensed mail they carry and revenues from this mail, together with an annual forecast of future mail volumes. Postcomm’s monitoring of such information places no additional burdens on licensees.

5.14 Postcomm will also review the independent verification of the turnover information provided by licensees to ensure that the correct licence fee is paid. Where such independent verification is not provided, Postcomm will review a sample of the self-certified reports provided by licensees.

Summary of monitoring programme to be introduced

5.15 This chapter has set out the detail of the monitoring of licensees which will be undertaken. This can be summarised as:

- reactive monitoring in most areas
- pro-active monitoring of mail integrity, including a visit or visits to operational premises, and
- regular review of information provided by licensees with action taken where appropriate.

ANNEX A: APPLICATION FORM AND GUIDANCE FOR APPLICANTS

LICENCE APPLICATION FORM

POSTCOMM

The Postal Services Commission

Form of application for licence under section 11 of the Postal Services Act 2000

Note

Applicants should note that any incorrect or misleading information provided on this application form could lead to revocation of any licence granted, in accordance with Schedule 3 of the licence.

Please read the Guidance provided with this application form, and refer to the Codes of Practice on Mail Integrity and on Common Operational Procedures, prior to completing it. If there are any queries which are not covered in the Guidance or Codes please contact Postcomm.

Information about the applicant

1. Please provide the following details –
 - (a) name of applicant in full,
 - (b) any trading name(s),
 - (c) main business address, and
 - (d) name, address, telephone number and e-mail address (where available) of person to whom correspondence or enquiries about the application should be directed.
2. Please state whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the applicant's legal status).
3. If the applicant is a body corporate, please state –
 - (a) the jurisdiction in which it is incorporated,
 - (b) if applicable, its Company/corporate registration number,
 - (c) the address of the registered office,
 - (d) the full names and personal addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985) or, where applicable, its corresponding officers,
 - (e) the name and registered office of any holding company (within the meaning of section 736 of the Companies Act 1985) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 258 of that Act) of the applicant.
4. If the applicant is not a body corporate (e.g. it is a sole trader, partnership or other entity)

please state -

- (a) full name of each individual concerned in the management of the applicant, each partner of the applicant and/or each parent undertaking of the applicant within the meaning of section 258 of the Companies Act 1985
 - (b) address of each such individual,
 - (c) date and place of birth of each such individual, and
 - (d) date and place of registration and registration number of each such undertaking.
5. Give the name of any “controlling persons” of the applicant not named in response to questions 3 or 4 above, together with details of any such person’s date and place of birth and address.
6. Where any person (other than a person whose name is given in response to questions 3(e) and 4) holds 20 per cent or more of any class of the shares of the applicant, give the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.

The applicant’s proposed postal service business

7. State whether the applicant or any person, company or other entity referred to in response to paragraphs 1-6 above holds, has held or has previously applied for a licence under section 11 of the Postal Services Act 2000.
8. Please provide a description of the proposed postal service, with particular reference to the type or types of mail the applicant proposes to carry under this licence, and the likely geographical coverage (referring to postcodes if possible). Please include the proposed timescale for commencement of licensed operations.
9. Please provide a forecast of volume and revenue for the applicant’s licensed postal services business for at least the first year and the basis on which such forecasts have been prepared.

Protecting the integrity of mail

10. Please provide, in relation to any of the persons named in response to questions 3(d), 4(a), 5 or 6
- (a) full details of any disqualification orders or undertakings under the Company Directors Disqualification Act 1986,
 - (b) a ‘basic disclosure’ provided by the Criminal Records Bureau, and
 - (c) full details of any proceedings or investigations of which the applicant is aware which may lead to any such disqualifications, or to any convictions for dishonesty or like conduct, or to any convictions for offences under the Postal Services Act.

11. Please provide a copy of the applicant's registration under the Data Protection Act 1988.
12. Please provide details of how the licensee proposes to comply with the Mail Integrity Code of Practice (condition 3 of the licence).
13. As required under Condition 9 of the standard licence, please set out the arrangements the applicant proposes to implement to ensure that funds are available, or arrangements in place, to ensure that mail it has collected or received, the conveyance of which requires a licence under section 11 of the Postal Services Act 2000, is delivered in the event that the applicant ceases to be a postal operator.

Common Operational Procedures

14. Please provide details of how the licensee proposes to comply with the Common Operational Procedures Code of Practice (condition 4 of the licence)

Application of standard licence conditions

15. If the applicant believes any of the standard licence conditions should not apply to it, please indicate which these are and provide reasons in each case. (Note: Condition 11 is required only where the licence applicant is a member of a group which includes a postal operator which has a statutory monopoly in its home market).
16. Please indicate if there are any other conditions the applicant believes should be included in its licence.

I confirm that having made due enquiry the information supplied is complete and correct to the best of my knowledge and belief.

I confirm that I am willing to provide such further information as Postcomm requests in connection with its consideration of this application.

I enclose the licence application fee of £1000.

Signed

Print name

Print job title

For and on behalf of

Dated

Guidance for Applicants

1. General

- 1.1 These notes are intended as a guide for those who are considering applying for a postal services licence. They set out the legal framework surrounding the licensing system and the licence application process, and provide advice on the completion of the licence application form. This advice is for guidance only. It should not be relied upon as an exact, comprehensive and legally accurate treatment of the subject. Applicants should where appropriate seek their own legal advice.
- 1.2 All the documents referred to in these guidelines are available on Postcomm's website, www.psc.gov.uk.

2. Legal Framework

Postal Services Act 2000

- 2.1 The Postal Services Act 2000 ("the Act") established the framework for the regulation of postal services in the UK and Postcomm as the independent regulator of those services. It also established the Consumer Council for Postal Services ("Postwatch") as the representative body for the users of postal services.

Postcomm's statutory duties

- 2.2 Postcomm is required to seek to ensure that customers continue to enjoy a universal postal service. The universal service, which is currently provided by Royal Mail, consists of the delivery and collection at least once every working day of mail (not exceeding 20 kilograms in weight) and the provision of a registered postal service, all at affordable prices that are uniform throughout the UK.
- 2.3 Subject to this, Postcomm is charged with furthering the interests of users of postal services wherever appropriate by promoting effective competition between postal operators. In doing so, Postcomm must have regard to the interests of those who are disabled, chronically sick, are of

pensionable age, are on low incomes and who reside in rural areas.

- 2.4 Subject to the duties above, Postcomm has a further duty to exercise its functions in a manner which it considers is best calculated to promote efficiency and economy on the part of postal operators.
- 2.5 Lastly, in performing all its functions in relation to holders of licences granted under the Act, Postcomm must have regard to the need to ensure that they are able to finance the activities authorised or required by their licences.

Licensing

- 2.6 Until the Act came into force, the Post Office (now Royal Mail) had the exclusive privilege of delivering letters within the United Kingdom with a value of less than £1 and weighing less than 350g. Under the Act this monopoly has been replaced by a system of licensing. Licensees can convey, within the terms of their licence, letters with a value of less than £1 and weighing less than 350g. Section 6(2) of the Act makes it an offence to convey letters falling into this category without the necessary licence. The only exceptions to this rule are services exempted under section 7 of the Act and items which do not fall within the definition of a “letter” as set out in section 125 of the Act.
- 2.7 Only Postcomm has the power to grant licences. This power was conferred upon it by Section 11 of the Act. No other body or individual has the power to grant licences for postal operations.
- 2.8 The Act enables Postcomm to specify the requirements for licence applications. Postcomm has set out the information it requires from applicants in the application form which accompanies these notes.

Change of ownership

- 2.9 Section 11 of the Act provides that licences may not be transferred. Where a new legal entity wishes to take over the operation of an existing licensee, a new licence must be applied for. However, it is possible to take over a company that has a licence without making a new licence application, but the change of control must be notified to Postcomm.

Licence fees

2.10 The Act enables Postcomm to set a reasonable application fee. This has been set at £1000 per licence application. Postcomm will not process an application until this fee is received. In the event that a licence is granted there is provision for annual amounts to be paid to Postcomm. These fees are payable whether or not the licensee is operating in the area for which it is licensed. Where a licensee's annual turnover for the licensed services exceeds a threshold of £10m, annual amounts will be calculated by reference to their turnover in relation to other licensees whose turnover exceeds £10m, including Royal Mail. Where the annual turnover for licensed services is below £10m, an annual amount of £1,000 will be payable. The annual fee is payable on 30 June in the relevant year or, if later, one month after Postcomm gives notification that the fee is required. Please note that for licence fee purposes the year begins on 1 April and that the first part-year is usually considered a complete year for licence fee purposes.

Consultation

2.11 Before granting a licence the Act requires Postcomm to consult on the proposed grant and on the proposed terms of the licence which in most cases are expected to be the standard conditions. Postcomm must publish a notice which states why Postcomm proposes to grant the licence, and this must be brought to the attention of Postwatch and those people who may be affected by the grant of the licence. The minimum statutory period of a postal licence consultation is 28 days.

Modification

2.12 Once Postcomm has granted a licence its conditions may be modified if the licensee consents to the modifications. Licensees may request modifications to the conditions of their licence but only Postcomm has the power to make any modifications under Section 14 of the Act. Postcomm may refer licence modifications that it wishes to make but with which the licensee does not agree, to the Competition Commission. Before making any modification, Postcomm must publish a notice stating what the proposed modifications are, the effect of them and the reasons for making them and serve copies on the Secretary of State for Trade and Industry ("SoS"), Postwatch and the licensee. The SoS may direct Postcomm not to make the modification proposed under Section 14 if (s)he considers that the modification should not be made, or that it should be made under Section 17 of the Act. The effect of this provision is that the SoS may direct Postcomm to refer

proposed licence modifications to the Competition Commission, which will then investigate and report whether or not it is in the public interest that the modifications should be made. If the Competition Commission decides that the proposed licence modifications may be made they will be effected under Section 17, rather than Section 14, of the Act.

Enforcement and financial penalties

2.13 Postcomm has the power under sections 22 – 37 of the Act to take enforcement action against any licensee which infringes the terms of its licence. The enforcement action that may be taken against licensees includes the levying of financial penalties of up to 10% of the offender’s turnover (section 30 of the Act). More information on this subject can be found in Postcomm’s Statement of Policy in relation to Financial Penalties.

Exemptions

2.14 Some operators may feel that the services they wish to carry out should be exempted from the licensed area under Section 7 of the Act, rather than licensed under Section 6 of the Act. Section 8 of the Act allows the SoS to modify Section 7, on the recommendation of Postcomm, after Postcomm has consulted with Postwatch, licensees and such other persons as it considers appropriate. Once an activity is exempted under Section 7 of the Act any operator or individual may engage in that activity without the need for a licence. If an operator thinks that an exemption would be appropriate for the service it wishes to provide, it should approach Postcomm setting out why it believes the service should not be subject to the licensing regime established by the Act, but instead should be exempted.

2.15 Whilst Postcomm will consider each case on its merits, in deciding whether an activity should be exempted rather than licensed, Postcomm will consider two key criteria:

- Does the activity involve the conveyance of mail most or all of which would otherwise not be available to the universal service provider; and
- Is the activity carried out in such a way that explicit regulation to ensure integrity of the mail is not in practice needed or relevant?

In addition, Postcomm will also take account of two practical factors in considering the case of exemption. If any activity meets both these criteria in addition to the key criteria this is an

indication that Postcomm would be likely to recommend exemption to the SoS:

- Can the activity proposed for exemption be clearly defined; and
- Is the activity carried out by such a large number of people that it makes licensing disproportionate and impractical?

3 Licence application process

General

- 3.1 Postcomm is generally willing to discuss the licensing process and any queries potential applicants may have, although it may need to prioritise enquiries from existing applicants and licensees at times of particular pressure. Contact details are at the end of these guidance notes.
- 3.2 Applications must be made on the form provided. Advice on completion of the form is included below. Postcomm may request additional information from applicants at any stage during the process.
- 3.3 The time it takes to handle a licence application from receipt of the **fully completed** application and fee to grant of a licence is currently, on average, 3 months, including the statutory consultation period. The overall time for processing of applications varies, depending on the completeness of the application received and on its complexity, and on the number of applications being processed at any time. This timescale should be taken as a guideline only, but Postcomm can, on request, give individual applicants an estimate of timescale for processing at the time of application.
- 3.4 It should be noted that, although Postcomm staff do their best to be helpful on informal enquiries, Postcomm is not obliged to give advice or guidance on any application until the application fee has been paid and a completed application form received. If an incomplete, 'draft' application is sent, workload is increased, as Postcomm has to contact the applicant to request missing information. Delays in responding to such requests can lead to extended delays in processing applications. It should also be noted that any advice or comment on an application in no way commits Postcomm to granting a licence.

Confidentiality

3.5 Postcomm recognises that some of the information it requires in the licence application is commercially sensitive and therefore applicants would wish to keep it confidential. The Postal Services Act requires Postcomm not to disclose information relating to the affairs of individuals or businesses, except for certain specified purposes or with their consent. Information provided to Postcomm by the applicant, including the fact that the applicant is applying for a licence, is kept confidential by Postcomm until the point at which the statutory consultation begins. The single exception is that some of the information provided is shared with the relevant consumer body, Postwatch, before the consultation period begins. Postwatch is bound by the same rules on disclosure. Thereafter any licence granted will be in the public domain but the information provided in respect of the application will normally remain confidential. It is, of course, open to applicants to make information about their application public at any time.

Access to Royal Mail's postal facilities

3.6 Operators wishing to access Royal Mail's postal facilities under Condition 9 of the Royal Mail licence will need to come to an agreement with Royal Mail over the terms and conditions of access. Details of existing agreements are available on Royal Mail's website at: www.royalmail.com/portal/rm/content1?catId=400147&mediaId=9600084 and user guides and answers to general enquiries on access can be obtained by e-mailing dsa@royalmail.com. For more complex enquiries, contact Paul Bates at Royal Mail (paul.bs.bates@royalmail.com or 07702 572330) or Sophie Davidson (sophie.davidson@royalmail.com or 07715 480652). It is not necessary to have obtained a licence before beginning negotiations with Royal Mail. Nor is it necessary to have finalised an access agreement with Royal Mail before applying for a licence. However, both of these steps must be completed before operations under an access agreement can begin.

Licence terms and conditions

3.7 Postcomm's expectation is that the provisions of the standard licences will not usually be departed from other than in exceptional circumstances. In applying for a licence it is, therefore, clear to applicants what the terms and conditions of any licence granted are likely to be.

Evaluation of licence applications

- 3.8 Postcomm will assess all applications in line with its statutory duties set out above, having regard to the requirements of the European Directive. It can only license activities which, if carried out, would otherwise infringe section 6(1) of the Act.
- 3.9 In considering a licence application, Postcomm will need to satisfy itself that the applicant will be able to meet the requirements of the licence which reflect the “essential requirements” under Article 2 of the European Directive, especially those relating to confidentiality of correspondence. As part of this, Postcomm will consider the fitness and propriety of any ‘controlling person or persons’ of an applicant. The definition of “controlling person” includes a director of a company or someone who can influence either the decisions of the directors or a substantial proportion of the shareholder vote. The definition also encompasses controlling persons of partnerships and other corporate bodies¹⁴. Postcomm will take into account whether the ‘controlling person or persons’ of an applicant have convictions involving dishonesty (or similar conduct) which are not spent under the terms of the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 and which may therefore cast doubt on their ability to respect the integrity of the mail that would be handled. Similarly, checks will be made to ensure that no ‘controlling person’ is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986. Postcomm will also assess the measures that the applicant has put in place, or proposes to put in place, to ensure the security of mail and may undertake a visit to the applicant’s operational premises. If the applicant holds or has previously held a licence under the Act, regard will be had to the applicant’s compliance with that licence. If the applicant has previously had a licence application refused or a licence revoked, regard will be had to the reason for that refusal or revocation. Similarly, if the controlling person or persons of the applicant have previously held responsibilities in a licensed company, regard may be had to compliance with that licence. Finally, Postcomm will consider whether the controlling person or persons has been cautioned for or convicted of any offences under the Act.
- 3.10 Postcomm will consider with the applicant the provisions of the relevant standard licence to ensure that the applicant will be in a position to meet all of its conditions. This will include the measures which the applicant proposes to put in place to ensure that mail on hand will be

¹⁴ For the full definition of “controlling person”, see licence Condition 1 (Interpretation and construction).

delivered in the event of the licensee ceasing to trade. Postcomm will not require that such measures are in place at the application stage, but needs to be satisfied that these will be in place prior to grant of the licence. At the application stage, a letter from the relevant party confirming that it would be prepared to put in place the arrangements proposed by the applicant if a licence were to be granted would be considered suitable assurance of this fact.

Consultation process

- 3.11 Once Postcomm has completed its evaluation of the application and is satisfied that a licence should be granted, Postcomm will issue a notice which identifies the applicant and sets out the reasons why Postcomm proposes to grant the licence. A draft licence will be attached to the notice.
- 3.12 The consultation notice is publicised in line with Postcomm's obligations under the Act. Consultees have a period of at least 28 days (the statutory minimum) for interested parties to respond to the consultation notice. During that period, consultees may request additional information on the application and Postcomm will normally discuss any such requests with the applicant.
- 3.13 At the end of the consultation period, Postcomm will review any responses and decide whether to grant the licence in its existing form, or in an amended form to reflect the responses to the consultation, or to refuse to grant the licence. Postcomm expects that normally licences it issues will be in the standard form. Should it propose changes to the licence, these will be discussed with the applicant.
- 3.14 Prior to the grant of the licence, Postcomm will require the operator to provide contact details for display on Postcomm's website and to have in place arrangements to ensure the delivery of mail on hand should the licensee cease to trade as a postal operator.

Refusal to grant a licence

- 3.15 Where the Commission determines not to grant a licence it will, as soon as practicable after making that determination, notify the applicant and provide a written statement of its reasons for its decision.

4. Completion of the application form

Question 1

- 4.1. Applicants should include the full name of the body corporate, partnership, sole trader or other joint venture, together with any names under which the applicant trades, and contact details for the person who should be contacted in relation to the application.

Question 2

- 4.2. Postcomm requires information on the status of the applicant as this will, in some cases, affect the precise form of the licence.

Questions 3 to 6

- 4.3. This information is required to establish precisely who the licensee would be and will also be used to make enquiries for the purposes of establishing that the applicant will be able to meet the requirements of the licence, especially in relation to protecting the integrity of mail. Protection of the integrity of mail is one of the “essential requirements” in Article 2 of the European Postal Services Directive (“the European Directive”). The definition of ‘controlling person’ can be found in condition 1 of the licence, but it should be noted that as well as sole proprietors, partners, directors or corresponding officers and shareholders, this includes any person in accordance with whose instructions or directions, directors or corresponding officers are accustomed to act.

Question 7

- 4.4. This information will help Postcomm in its handling and assessment of the application.

Question 8

- 4.5. As a minimum, this question requires a brief description of the type (or types) of service the applicant proposes to provide. For example, an applicant might propose to provide a three-day business-to-consumer mail service over the whole of the UK by means of an access agreement with Royal Mail, or to carry overnight business-to-business or consumer-to-consumer mail in a specified area or areas - or to provide two or more different services. Postcomm will use this information to verify that a licence is required for the services that the applicant proposes to

provide. For example, couriers (£1 or over per item) parcel services (over 350g) and unaddressed mail do not require a licence. The licensing team is able on request to advise applicants as to whether other proposed services are exempt under section 7 of the Postal Services Act. The information about proposed services and geographical coverage of the applicant may also be used in Postcomm's monitoring of the development of the postal market.

Question 9

- 4.6 This information will be used to calculate the licence fee and required guarantee sum, should this be how the applicant is proposing to provide the necessary security. It may also be used in Postcomm's monitoring of the development of the postal market.

Question 10

- 4.7 This information is required to ensure that the applicant can be relied upon to protect the integrity of the mail they handle. 'Basic disclosure' is a service provided by the Criminal Records Bureau ("CRB"). Details of how to apply for 'Basic disclosure' and the associated cost can be found on their website www.crb.gov.uk. A certificate, which excludes any spent convictions, will be provided. Applicants should include the **originals** of such certificates with their application form. Once certified copies of the certificates have been made, these certificates will be returned to applicants.
- 4.8 At the time of issuing this updated Guidance, introduction of the basic disclosure service by the CRB has been delayed, and the CRB is unable to confirm a date when it will be in a position to offer this service. Pending its introduction, Postcomm is prepared to accept subject access disclosures obtained under Section 7 of the Data Protection Act 1998 from the relevant police force(s). These can be obtained by Directors contacting their local police stations and asking for a record of information which may be held about them, on computers, in the category 'Person Record: Prosecution/ conviction'.
- 4.9. If one of the individuals listed in response to questions 3(d), 4(a), 5 or 6 is resident overseas, then a Certificate of Good Conduct, or equivalent document, should be obtained from the relevant Police or other authority. The Criminal Records Bureau can provide advice on obtaining these. Please contact Postcomm if there is any difficulty in obtaining such a Certificate.

- 4.10. Postcomm will not usually proceed to consultation before seeing the required Certificates, (or subject access disclosures, pending the introduction of the Basic Disclosure service).

Question 11

- 4.11. A copy of the Data Protection registration is required, as Postcomm needs to be satisfied that the applicant has the necessary registration to support the gathering of evidence which may be used in evidence for a prosecution under Sections 83 - 88 of the Act (interference with the mail). Please note that becoming a licensed postal operator automatically makes any previously exempt data holder subject to the registration requirement. In the registration, 'the prevention and detection of crime' should be listed as a 'purpose', 'Postcomm' and 'Postwatch' should be shown as specific 'sources' and 'disclosures' under all purposes, and, if the applicant is a global organisation, 'worldwide' should be shown under 'transfers'.

Question 12

- 4.12. In providing this information, applicants should refer to the Mail Integrity Code of Practice and ensure that they have considered the following areas:
- Recruitment
 - Training
 - Disciplinary procedures
 - Security of mail
 - Information and reporting requirements
 - Agents and Sub-contractors

Question 13

- 4.13. The applicant should refer to the formula in condition 9 of the standard licence which sets out the means of calculating the amount of the guarantee that Postcomm requires. In answering this question, the applicant should explain how it proposes to provide security to this level. This may be provided in the form of a bank guarantee or similar, or a contract with Royal Mail or another

operator. The security will not be required until the licence is granted but Postcomm will need to be satisfied prior to issuing the licence for consultation that the necessary security will be put in place. A letter from the provider confirming that it is willing to provide this security should a licence be granted is considered satisfactory at the application stage.

- 4.14. For applicants' and their banks'/insurers' information, the standard wording for the guarantee is as follows:

'We [name and address of bank/insurance company] hereby guarantee to Postcomm that in the event that [licensee] ceases to carry on business as a postal operator, we will, on receipt of a written demand from Postcomm, pay to a postal operator or postal operators nominated by Postcomm such sum or sums as Postcomm may require for the purpose of ensuring that postal packets in the licensee's care at the time of such cessation will be delivered to the places to which they are addressed. This guarantee shall continue until [a date no earlier than the date 26 March 2016] or until an earlier date if Postcomm confirms in writing that it is no longer required after that date. The maximum aggregate sum payable under the guarantee shall be £[figure to be inserted in accordance with Condition 9 of the licence].'

Question 14

- 4.15. In providing this information, applicants should refer to the Common Operational Procedures Code of Practice and explain how they will ensure that miscollected and misdirected postal packets which enter their network are delivered to the intended user; or otherwise handled in either case in an efficient, economic and timely manner and how they will handle misdirected contacts from customers. Applicants should also explain how they propose to apply the identifier to letters they will be carrying, required so that it can be determined who carried the mail.

Questions 15 and 16

- 4.16. Postcomm expects that licences granted may not differ from the standard licence unless there is good reason. The assumption therefore is that all conditions apply unless the applicant makes a reasonable case otherwise. Please note, however, that Condition 11, relating to separation of accounts, currently applies only where the licence applicant is a member of a group which includes a postal operator which has a statutory monopoly in its home state.

Signature

4.17. In the case of a company, the application should be signed by a director (or corresponding officer) with appropriate authority or by the company secretary. In the case of a partnership, this should be a managing partner, and in the case of a sole trader, the sole trader should sign the application form.

5. Information requirements for licensees

5.1 Licensees are required to provide to Postcomm information about several aspects of their business, including:

- Details of systems used to measure and record performance in achieving contract targets, and to record, analyse and respond to complaints (Condition 2);
- Annual reports on performance against contract requirements and on complaints received (Condition 2);
- Mail integrity (Condition 3);
- Copies of any notifications, applications, or submissions under the Competition Act 1998 (Condition 5); and
- Copies of any notifications, applications, or submissions related to change of control of the licensee, mergers and takeovers (Condition 6).

The information to be provided to Postcomm under conditions 2 and 3 as listed above, is also to be provided to Postwatch. Licensees are also required to ensure that the full address and telephone number of Postwatch are included in all explanatory literature for users of their services.

5.2 Further to this, Condition 7 of the licence requires the licensee to furnish to Postcomm such information as Postcomm may require or as may be necessary for the purpose of performing the functions assigned to Postcomm by or under the Act and Condition 8 similarly requires the licensee to provide to Postwatch such information as Postwatch may reasonably require for the purpose of performing its functions under the Act.

5.3 In order that Postcomm can monitor the development of the market, licensees will, for the foreseeable future, be required to provide, on a quarterly basis:

- information on the total revenues generated by the licensed services, broken down into two categories - mail passed to Royal Mail for final delivery and mail delivered by any other operator - and
- information on the total volume of mail handled under the licence (broken down as above).

And, on an annual basis:

- a forecast of the volume of mail expected to be handled under each category of the licensed services in the forthcoming year; and
- their Annual Report and Accounts, where these are required by law to be produced.

5.4 All of this information is vital in ensuring that Postcomm can ensure that the “essential requirements” are being met and can monitor market developments and the effect of new entrants on the market, their success and what effect this is having on Royal Mail Group Plc and its ability to provide the UK’s universal service.

5.5 Applicants will need to satisfy themselves that they have the resources available to comply with the requirements of the licence. Licensees may wish to consider appointing a designated person or persons with responsibility for ensuring that licence conditions are complied with and that the appropriate information is provided to Postcomm.

6. *Contact details*

6.1 If applicants have any enquiries about applying for a postal services licence or wish to arrange a meeting to discuss an application, please contact:

Licensing Section
Postcomm
Hercules House
6 Hercules Road
London
SE1 7DB

Telephone: 020 7593 2100 or e-mail: claire.mehegan@psc.gov.uk or ros.poulson@psc.gov.uk

ANNEX B: LICENCE

POSTCOMM

THE POSTAL SERVICES COMMISSION

POSTAL SERVICES ACT 2000

SECTION 11

LICENCE

GRANTED TO

MAIL OPERATORS

ON

Dd Mm yyyy

POSTCOMM

THE POSTAL SERVICES COMMISSION

POSTAL SERVICES ACT 2000

SECTION 11

LICENCE

1. The **Postal Services Commission** (“Postcomm”), in the exercise of its functions under section 11 of the Postal Services Act 2000 (c.26) (“the Act”), hereby grants to **an Operator** registered in England and Wales as company number xxxxxxxx and having its registered office at yyyyyyy yyyyyyyyy (“the Licensee”)¹ a licence authorising the Licensee to convey letters from one place to another within the area specified in Schedule 1 subject to –
 - (a) the conditions set out in Schedule 2 and
 - (b) revocation in accordance with Schedule 3.

2. This licence shall come into effect on **dd mm yyyy** and, unless revoked in accordance with Schedule 3, shall continue in force until –
 - (a) terminated by not less than ten years notice in writing given so as to take effect not earlier than 25 March 2016, or
 - (b) if earlier, section 6(1) of the Act ceasing permanently to have effect, or
 - (c) the grant of another licence to the Licensee under which the activities authorised by this Licence may be conducted.

¹ In the event that the Licensee is not registered as a company registered in England and Wales, paragraph 1 may be amended accordingly.

Licence

3. Condition 1 of Schedule 2 shall apply to the interpretation of terms and expressions used in this Licence.

The common seal of Postcomm
hereunto affixed is
authenticated by –

Authorised for that purpose by
Postcomm

Date: Dd Mm yyyy

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Licence

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SCHEDULE 1
AUTHORISED AREA

It is a condition of this Licence that the area within which the Licensee may convey letters from one place to another is the area comprising the United Kingdom.

SCHEDULE 2
CONDITIONS OF LICENCE
PART 1 – INTERPRETATION

Condition 1: Interpretation and construction

1. The terms and expressions in the left hand column in the table below shall, unless the context otherwise requires, be interpreted in the manner set out next to them in the right hand column in that table –

“associate”	has the same meaning as in the Consumer Credit Act 1974
“controller”	has the same meaning as in the Consumer Credit Act 1974
“controlling person”	<p>means a partner of a limited liability partnership or of a partnership, a sole proprietor, and in relation to a body corporate, a director or other officer and a person</p> <p>(a) in accordance with whose directions or instructions the directors of the body corporate or of another corporate which is its controller (or any of them) is or are accustomed to act, or</p> <p>(b) who, either alone or with any associate or associates, is entitled to exercise or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.</p>
“financial year”	means the period of twelve months ending on 31 March in any year;
“information”	<p>includes –</p> <p style="padding-left: 20px;">(a) information recorded in any form, and</p>

Schedule 2 – Condition 1: Interpretation and construction

	(b) forecasts and estimates;
“parent undertaking”	has the meaning given by section 258 of the Companies Act 1985;
“Postwatch”	means the Consumer Council for Postal Services established under section 2 of the Act and known at the date of grant of this Licence as Postwatch;
“subsidiary undertaking”	has the meaning given by section 258 of the Companies Act 1985;
“terms”	in relation to the conveyance of postal packets and the provision of any other services means all the terms on which the conveyance of postal packets or the provision of any other services is undertaken or offered or relevant to their evaluation, whether as respects charges, methods of payment or otherwise;
“undertaking”	has the meaning given by section 259 of the Companies Act 1985.

2. Unless the context otherwise requires, in this Licence words and expressions that are defined in Parts I, II and VII of the Act shall have the same meanings as in those Parts, notwithstanding that a definition in either of those Parts may be framed so as to apply only for the purposes of certain sections of those Parts¹.
3. Any reference in a condition of this Licence to the purposes of that condition generally is a reference to the purposes of that condition as incorporated in this Licence and to the purposes of any condition in identical terms incorporated and having effect in any other licence under the Act whenever that licence may have been granted.
4. Unless otherwise specified any reference to a numbered condition or schedule is a reference to the condition or schedule bearing that number in this Licence and any reference to a numbered paragraph is a reference to the paragraph bearing that

¹ The definitions of the terms that are defined in the Act and used in the Licence are reproduced for convenience in the Annex to this Licence.

Schedule 2 – Condition 1: Interpretation and construction

number in the condition, schedule or paragraph in which the reference occurs.

5. In construing this Licence the heading or title of any condition or paragraph shall be disregarded.
6. Where any obligation under or pursuant to this Licence is required to be performed by a specified date or within a specified period and where the Licensee has failed so to perform by such date or within such period, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period, but without prejudice to all the rights and remedies available against the Licensee by reason of the Licensee's failure to perform by that date or within that period.
7. Subject to paragraph 8 the provisions of section 121 of the Act shall apply for the purposes of the delivery or service of any documents, directions or notices to be delivered or served pursuant to any condition of this Licence.
8. Anything required by or under this Licence to be done in writing may be done by transmission of the instrument in question by facsimile or by other electronic means and, in such case –
 - (a) the original instrument or other confirmation in writing shall be delivered or sent by pre-paid post as soon as is reasonably practicable, and
 - (b) where the means of transmission had been agreed in advance between the parties concerned, in the absence of and pending such confirmation, there shall be a rebuttable presumption that what was received duly represented the original instrument.

PART 2 – FURTHERING THE INTERESTS OF USERS OF POSTAL SERVICES

Condition 2: Service provision and complaint handling

1. The Licensee shall use reasonable endeavours –
 - (a) to collect letters conveyed pursuant to this Licence from its customers as agreed with them, and
 - (b) appropriately to deliver or to procure the delivery of any such letter it receives in the course of its business as a postal operator within a reasonable time.
2. Within the period of three months from the commencement of conveyance of letters under this Licence the Licensee shall establish systems adequate for –
 - (a) measuring (using sampling methods if appropriate) and recording its performance in achieving its contract targets, and
 - (b) recording, analysing and responding to complaints in respect of failure to achieve the contract targets and in respect of services provided by the Licensee generally.
3. The Licensee shall provide a written description of the systems established under paragraph 2(b) to Postcomm and to Postwatch and of any modifications to those systems within one month of such systems being established or of the modifications being made.
4. No later than 3 months after the end of each financial year the Licensee shall submit to both Postcomm and Postwatch a report in relation to
 - (a) its performance in achieving its contract targets, and
 - (b) the complaints it has receivedin such financial year.
5. Reports submitted pursuant to paragraph 3 shall be in such format as-

Schedule 2 – Condition 2: Service provision and complaint handling

- (a) may have been agreed between the Licensee and Postwatch before the end of the financial year in question, or
 - (b) in the absence of such agreement, may have been specified by Postcomm by a determination in writing.
- 6. The Licensee shall consent to the publication by Postcomm and/or Postwatch of any report submitted to that body by the Licensee pursuant to paragraph 4 above, provided that the licensee has been notified of the relevant body’.
- 7. In this condition the “contract targets” means such targets for or obligations in respect of service performance as are set out in the Licensee’s contracts with its customers.
- 8. The Licensee shall ensure that the full address and telephone number of Postwatch is displayed with reasonable prominence in all literature explaining its service which it produces for users of its postal services.

Condition 3: Protecting the integrity of mail

1. In this condition –
 - (a) the “Mail Integrity Code” means the code of practice entitled Protecting the Integrity of Mail – A Code of Practice” set out in the Annex to this condition established for the purposes of facilitating achievement of the Mail Integrity Objectives, and
 - (b) the “Mail Integrity Objectives” means the objectives set out in paragraph 1.1 of the Mail Integrity Code.
2. Unless Postcomm otherwise consents, the Licensee shall comply with the Mail Integrity Code.

ANNEX

Protecting the Integrity of Mail – A Code of Practice

Condition 4: Common Operational Procedures

1. In this condition:

- (a) “Access Agreement” means an agreement other than a Royal Mail Access Agreement between Licensees which permits access to a Licensee’s postal facilities;
- (b) “Access Code” means a code relating to access to Royal Mail’s postal facilities established in accordance with Condition 9 in Schedule 2 to the licence granted to Royal Mail under section 11 of the Act;
- (c) the “Code Objectives” means the objectives set out in paragraph 1.1 of the “Postal Common Operational Procedures Code”;
- (d) “Intermediary Agreement” means an agreement other than a Royal Mail Access Agreement between a Licensee and Royal Mail under which that Licensee delivers postal packets to Royal Mail for subsequent conveyance;
- (e) “Licensees” means the holders of licences under section 11 of the Act from time to time;
- (f) the “Postal Common Operational Procedures Agreement” means the default contract designated by Postcomm by direction given for the purpose of this condition generally and published on 31 December 2005 (as modified from time to time in accordance with paragraph 3 below) established for the purpose of giving effect to the Postal Common Operational Procedures Code in the absence of alternative contractual arrangements between Licensees;
- (g) the “Postal Common Operational Procedures Code” means the code of practice entitled “Common Operational Procedures – A Code of Practice” set out in the Annex to this Condition established for the purpose of facilitating the achievement of the Code Objectives;
- (h) “Royal Mail” means Royal Mail Group plc registered in England and Wales with company number 4138203 and having its registered office at 148 Old Street London EC1V 9HQ; and

Schedule 2 – Condition 4: Common Operational Procedures

- (i) “Royal Mail Access Agreement” means an agreement between Royal Mail and the Licensee or customer entered into pursuant to Condition 9 in Schedule 2 to the licence granted to Royal Mail under section 11 of the Act which permits access to Royal Mail’s postal facilities.

Compliance with the code and adherence to the agreement

2. Unless Postcomm otherwise consents, the Licensee shall:

- (a) comply with the Postal Common Operational Procedures Code,
- (b) become and thereafter remain a party to the Postal Common Operational Procedures Agreement which shall apply insofar as
 - (i) it is consistent with, and deals with matters not provided for in, the terms and conditions of any Access Agreement, Intermediary Agreement or Royal Mail Access Agreement to which the Licensee is a party,
 - (ii) it is consistent with, and deals with matters not provided for in, the terms and conditions of any Access Code to which the Licensee is a party,
 - (iii) the Licensee has not established alternative arrangements with other Licensees relating to the treatment of misdirected and miscollected mail which meet the requirements of the Code;
- (c) at all times refrain from acting in a manner which is inconsistent with the Code Objectives or which is likely to prejudice the effective functioning of the Postal Common Operational Procedures Code;
- (d) not use any information pertaining to the business or operations of another person (including information relating to that person’s customers) obtained by virtue of being a party to any agreement of the type referred to in paragraph (b) in order to secure, or in a manner that reasonably could be expected to secure, any unfair commercial advantage;
- (e) within one month of becoming a party to any agreement of the types referred to in paragraphs (i), (ii) and (iii) of

Schedule 2 – Condition 4: Common Operational Procedures

paragraph (b), provide a copy of the terms of that agreement to Postcomm and such other information in relation to that agreement as Postcomm may require, and

- (f) if nominated by Postcomm by direction in writing given for the purposes of this condition generally to the office of Secretary of the Postal Common Operational Procedures Agreement, perform the functions of that office in an efficient, timely, impartial and professional manner, subject to reimbursement by Postcomm of the costs reasonably incurred in the discharge of those functions.

3. The Postal Common Operational Procedures Agreement shall be deemed to be modified in accordance with this paragraph if:

- (a) Postcomm has received a proposal to change the Postal Common Operational Procedures Agreement from a person entitled under its provisions to make such a proposal, and
- (b) that proposal has been submitted to Postcomm in the manner, and containing the information, provided for in the Postal Common Operational Procedures Agreement, and
- (c) Postcomm:
 - (i) is of the opinion that modification of the Postal Common Operational Procedures Agreement in the manner proposed will enable the Code Objectives better to be fulfilled,
 - (ii) has given notice of the proposed modification in accordance with paragraphs 4 and 5 below,
 - (iii) has considered any representations made in accordance with that notice and not withdrawn, and
 - (iv) has directed by a direction given for the purpose of this condition generally that the proposed modification be made.

4. A notice under paragraph 3(c)(ii) shall be in accordance with this paragraph if it states:

- (a) that Postcomm proposes to make the modification,
- (b) the effect of the proposed modification,

Schedule 2 – Condition 4: Common Operational Procedures

- (c) the reasons for the proposed modification, and
 - (d) the period (of 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 modification.
5. A notice under paragraph 3(c)(ii) shall be in accordance with this paragraph if it is given by:
- (a) serving a copy of the notice on each of the parties to the Postal Common Operational Procedures Agreement as at the date of such notice and on the Council, and
 - (b) publishing the notice in such manner as Postcomm considers appropriate for the purpose of bringing the matters included in the notice to the attention of persons likely to be affected by them.

ANNEX

The Common Operational Procedures Code of Practice

**PART 3 – PROMOTION OF EFFECTIVE COMPETITION BETWEEN
POSTAL OPERATORS**

Condition 5: Competition law

1. The Licensee shall furnish to Postcomm full copies of any written submissions to the Office of Fair Trading or to the European Commission or any other National Competition Authority (within the meaning of Council Regulation (EC) 1/2003) which relate to
 - (a) the Competition Act 1998 and/or Articles 81 and 82 of the Treaty of Rome; and
 - (b) the Licensee's business as a provider of postal services in the United Kingdomwithin seven days of the making of the submission.
2. The Licensee shall furnish Postcomm with such information concerning any submissions of the kind referred to in paragraphs 1 as Postcomm may by notice in writing require.
3. Information required to be furnished under paragraph 2 shall be furnished in such manner, in such form, at such place and at such times as Postcomm may reasonably require.

Condition 6: Mergers takeovers and change of control

1. The Licensee shall furnish to Postcomm full copies of any –
 - (a) notice given to the Office of Fair Trading under section 96 of the Enterprise Act 2002, and
 - (b) any notification made to the European Commission for the purposes of Council Regulation EC 139/2004 as amended from time to time,which is relevant to the Licensee’s business as a provider of postal services in the United Kingdom within seven days of the giving of the notice or the making of the notification.
2. The Licensee shall furnish to Postcomm a copy of any informal written submission made –
 - (a) to the Office of Fair Trading in relation to proposed arrangements of the kind referred to in section 96 of the Enterprise Act 2002, or
 - (b) to the European Commission in relation to the application or possible application of Council Regulation EC 139/2004 as amended from time to time,which is relevant to the Licensee’s business as a provider of postal services in the United Kingdom within seven days of the making of the submission.
3. The Licensee shall furnish Postcomm with such information concerning any notices, notifications or submissions of the kinds referred to in paragraphs 1 or 2 as Postcomm may by notice in writing require.
4. Information required to be furnished under paragraph 3 shall be furnished in such manner, in such form, at such place and at such times as Postcomm may reasonably require.
5. The Licensee shall notify Postcomm of any change in the control of the Licensee within the meaning of paragraph 6 below as soon as practicable after the occurrence of the change.
6. For the purposes of this Condition a change in the control of the Licensee occurs whenever there is a change in the Controlling Persons:
 - (a) of the Licensee, or

Schedule 2 – Condition 6: Mergers takeovers and change of control

- (b) of any parent undertaking of the Licensee which is not itself a subsidiary undertaking of another undertaking.
- 7. For the purposes of this condition, “undertaking” has the meaning given by section 259 of the Companies Act 1985.

PART 4– PROVISION OF INFORMATION

Condition 7: Provision of information to Postcomm

1. Subject to paragraph 3, the Licensee shall furnish to Postcomm such information as Postcomm may require or as may be necessary for the purpose of performing the functions assigned to Postcomm by or under the Act.
2. Information required to be furnished under this condition shall be furnished in such manner, in such form, at such place and at such times as Postcomm may require.
3. This condition shall not require the Licensee to produce any documents or supply any information which it could not be compelled to produce or supply in evidence in civil proceedings before the Court on grounds other than that the information does not exist.
4. Subject to paragraph 3, nothing in this condition shall prejudice any right of Postcomm to require information under or pursuant to any other condition and the duty of the Licensee to furnish information pursuant to this condition shall not be affected by any obligation to furnish information under or pursuant to any other condition.

Condition 8: Provision of information to Postwatch

1. Subject to paragraph 3, the Licensee shall furnish to Postwatch such information as Postwatch may reasonably require or as may be reasonably necessary for the purpose of performing the functions assigned to Postwatch by or under the Act.
2. Information required to be furnished under this condition shall be furnished in such manner, in such form, at such place and at such times as Postwatch may require.
3. This condition shall not require the Licensee to produce any documents or supply any information which it could not be compelled to produce or supply in evidence in civil proceedings before the Court on grounds other than that the information does not exist.
4. The Licensee shall accept the determination of Postcomm in relation to any question arising under paragraph 1 or 2 as to whether any information is reasonably required or is reasonably necessary for the purpose of performing the functions assigned to Postwatch by or under the Act.

PART 5 – MISCELLANEOUS PROVISIONS

Condition 9: Cessation of business as a postal operator

1. The Licensee shall establish and shall at all times during the term of this Licence maintain in force the arrangements described in paragraph 2 for the purpose of ensuring that if the Licensee ceases to carry on business as a postal operator postal packets in its care at the time of such cessation and the conveyance of which requires a licence under the Act may be delivered to the places to which they are addressed.
2. The arrangements to be established for the purpose of paragraph 1 may comprise either –
 - (a) a contract with a postal operator that is –
 - (i) a universal service provider, or
 - (ii) an operator approved by Postcomm for the purposes of this paragraph

under which that operator agrees that it will ensure, if the Licensee ceases to carry on business as a postal operator, that postal packets in the Licensee’s care at the time of such cessation and the conveyance of which requires a licence under the Act will be delivered to the places to which they are addressed, and/or
 - (b) an irrevocable guarantee provided by a bank or other body authorised under the Financial Services and Markets Act 2000 to carry on banking or insurance business for a maximum amount not less than the amount calculated in accordance with paragraph 3 below providing that, if the Licensee ceases to carry on business as a postal operator, the bank or other body will, on receipt of a written demand from Postcomm, pay to a postal operator or postal operators nominated by Postcomm such sum or sums up to the maximum amount of such guarantee as Postcomm may require for the purpose of ensuring that postal packets in the Licensee’s care at the time of such cessation will be delivered as aforesaid.

Schedule 2 – Condition 9: Cessation of business as a postal operator

3. The maximum amount of any guarantee provided for the purpose of paragraph 2 shall at any time be not less than the sum found by –
 - (a) taking –
 - (i) until the conclusion of the first financial year occurring during the term of this Licence in which the Licensee conveys postal packets pursuant to this Licence the estimate made by the Licensee at the time of applying for this Licence of the number of postal packets it expected to convey pursuant to this licence in that financial year, and thereafter
 - (ii) the number of postal packets conveyed by the Licensee pursuant to this Licence in the previous financial year,
 - (b) dividing that number by 26,
 - (c) multiplying the number so calculated by £0.50, and
 - (d) multiplying the sum so found by the fraction –

$$\frac{Y}{X}$$

where –

Y is the level of the Index of Retail Prices at the end of the financial year which at the time of cessation of the Licensee's business as a postal operator most recently has ended, and

X is the level of the Index of Retail Prices at 31 March 2002.

4. The Licensee shall use reasonable endeavours to give to Postcomm not less than three calendar months' notice in writing of any decision it may take to cease to carry on the activity of a postal operator.
5. The Licensee shall publish any notice served on Postcomm pursuant to paragraph 4 in such manner as Postcomm may direct for the purpose of bringing the notice to the attention of customers and potential customers of the Licensee.

Condition 10: Payment of amounts to Postcomm

1. The Licensee shall pay to Postcomm in any relevant year the amount determined in accordance with paragraph 2 at the times stipulated in paragraph 3.
2. (a) The amount payable under paragraph 1 in respect of a relevant year shall be –
 - (i) if the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, did not exceed £10 million, the minimum sum,
or
 - (ii) in all other cases, the minimum sum plus the additional sum.
- (b) The additional sum shall be calculated by –
 - (i) taking the total recoverable costs,
 - (ii) adding to that amount the amount (if any) determined by Postcomm (in consultation with the Competition Commission) as having been incurred by the Competition Commission in the preceding relevant year in connection with references made to it under section 15 of the Act, and
 - (iii) multiplying the amount calculated as aforesaid by the factor –

$$\frac{A}{B} ,$$

where –

“A” is the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be

Schedule 2 – Condition 10: Payment of amounts to Postcomm and Postwatch

prohibited by section 6(1) of the Act,
and

“B” is the turnover excluding access payments in that year of all holders of licences granted under the Act, from activities which apart from those licences would be prohibited by section 6(1) of the Act.

3. The amount due under paragraph 1 shall be payable on 30 June in the relevant year, or, if later, on the expiry of one month from the day on which Postcomm serves notice on the Licensee of such amount.
4. The Licensee shall maintain records and furnish Postcomm with information as to the Licensee’s turnover in any relevant year from activities which apart from this Licence would be prohibited by section 6(1) of the Act.
5. The records maintained for the purposes of paragraph 4 shall be independently audited by independent auditors, except where the Licensee is not subject to, or is exempt from, the requirement under the Companies Act 1985 to file audited accounts, in which case it shall make such records as Postcomm may direct available for verification by independent auditors.
6. In this condition –
 - “access payments” means payments made to any other holder of a Licence under the Act for the conveyance of letters conveyed by the Licensee from its customers to that other Licence holder,
 - “independent auditors” means an individual or a firm (meaning a body corporate or a partnership) eligible for appointment as a company auditor pursuant to Part II of the Companies Act 1989,
 - “minimum sum” in relation to a relevant year, means £1000,
 - “relevant year” means any year beginning on 1st April,
 - “total recoverable costs” means the aggregate of –
 - (a) the amount estimated by Postcomm as likely to be the costs incurred by it during the relevant year in the exercise of the functions assigned to it or arising by or under –
 - (i) the Act,

Schedule 2 – Condition 10: Payment of amounts to Postcomm and Postwatch

- (ii) any other Act of Parliament,
 - (iii) any subordinate legislation made under any Act of Parliament, or
 - (iv) any Community obligation,
- (b) the amount so estimated by Postcomm after consulting the Secretary of State as likely to be the amounts to be paid by the Secretary of State during the relevant year in respect of the expenses of Postwatch in accordance with paragraph 17 of Schedule 2 to the Act or in relation to the establishment of Postwatch, and
- (c) the amount of the difference, if any, between the costs mentioned in sub-paragraph (a) or (b) which Postcomm considers were actually incurred during the previous relevant year and the estimate of the costs in question made by it for the purposes of this condition, where the latter exceeds the former the amount of the difference being treated as a negative amount.

Condition 11: Accounting separation

1. The Licensee shall maintain accounting and financial records which comply with this condition.
2. Unless Postcomm has by direction in writing agreed otherwise, the records referred to in paragraph 1 shall –
 - (a) enable separate accounts to be maintained for the provision of the following groups of services –
 - (i) services provided pursuant to this licence,
 - (ii) any other service or activity comprising the conveyance of postal packets, and
 - (iii) any service or activity not comprising the conveyance of postal packets,in this condition referred to as “the service groups”,
 - (b) be such that if each of the service groups was carried on by a separate company incorporated under the Companies Act 1985 each of those companies would comply with subsections 221 (1) and (2) of that Act,
 - (c) be kept for a period of six years,
 - (d) provide for the cost and revenue data reasonably attributable to each service group to be separately identifiable, and
 - (e) be maintained using accounting systems operating on the basis of objectively justifiable cost accounting systems which allocate cost and revenue data to each of the service groups in such a manner that –
 - (i) cost and revenue data which can be directly assigned to a particular service group shall be so assigned,
 - (ii) common cost and revenue data, that is cost and revenue data which cannot be directly assigned to a particular service group, shall be allocated as follows –
 - (aa) whenever possible, common cost and revenue data shall be allocated on the basis of direct analysis of the origin of the costs and revenues themselves,

Schedule 2 – Condition 11: Accounting separation

- (bb) when direct analysis is not possible, common cost and revenue categories shall be allocated on the basis of an indirect linkage to another cost or revenue category or group of cost or revenue categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost or revenue structures, and
 - (cc) when neither direct nor indirect measures of cost or revenue allocation can be found, the cost or revenue category shall be allocated to each of the service groups on the basis of a general allocator which shall be the proportion of all the costs or revenues which can be directly or indirectly assigned or allocated which are so assigned or allocated to that service group.
- 3. Unless Postcomm agrees otherwise in writing, the Licensee shall prepare, or procure the preparation of, separate accounts from the records maintained pursuant to paragraph 1 for each of the service groups for each financial year.
- 4. The accounts to be prepared pursuant to paragraph 3 shall –
 - (a) be prepared consistently with the UK Generally Accepted Accounting Principles or the International Financial Reporting Standards in so far as those principles or standards may reasonably be applied, or with such other accounting principles as Postcomm may approve in writing, and
 - (b) comprise a profit and loss account, a balance sheet, and a cash flow statement and notes setting out the accounting policies adopted together with a reconciliation to the audited accounts prepared by the Licensee and, where appropriate its subsidiaries, pursuant to the Companies Act 1985.
- 5. The cost accounting principles used for the purpose of paragraph 2 and the accounting principles referred to in paragraph 4 shall be consistently applied and shall not be altered without the

Schedule 2 – Condition 11: Accounting separation

consent in writing of Postcomm and the Licensee shall comply with any request by Postcomm to –

- (a) demonstrate such consistency of application, or
 - (b) re-state accounts for up to 5 previous years within the period of this Licence in the event of Postcomm approving any change in such cost accounting or accounting principles.
6. The Licensee shall cause the records maintained pursuant to paragraph 1 and the accounts prepared pursuant to paragraph 3 to be audited by competent independent auditors, approved by Postcomm, who shall be required to report on –
- (a) compliance of the records maintained pursuant to paragraph 1 with the requirements of paragraph 2, and
 - (b) whether the accounts prepared pursuant to paragraph 3 fairly present the financial situation of each of the service groups for the period and at the time to which they relate and have been properly prepared in accordance with the requirements of paragraph 4(a).
7. The statements, accounts and reports described in paragraph 8 shall be furnished by the Licensee to Postcomm before the expiry of 4 months from the end of the period to which they relate.
8. The statements, accounts and reports referred to in paragraph 7 are –
- (a) a statement describing the cost accounting systems which were used in that year to allocate costs and revenues for the purposes of paragraph 2 in sufficient detail for Postcomm to be able to decide whether they have been consistently applied within the year and in comparison with the previous year,
 - (b) a copy of the accounts for the year prepared pursuant to paragraph 3, and
 - (c) a copy of the report of the auditors required by paragraph 6.

SCHEDULE 3 REVOCATION OF LICENCE

1. This Licence may be revoked at any time by Postcomm by not less than the requisite period of notice in writing given to the Licensee –
 - (a) if the Licensee in writing requests or agrees in writing with Postcomm that this Licence should be revoked,
 - (b) if the Licensee is found by Postcomm to have made any false, dishonest or misleading statement to Postcomm in connection with his application for this Licence,
 - (c) if any controlling person of the Licensee is, or is discovered by Postcomm subsequent to the grant of this Licence to have previously been convicted of or subject to:
 - (i) any offence under the Postal Services Act 2000;
 - (ii) any offence involving dishonesty; or
 - (iii) a disqualification order or undertaking under the Company Directors Disqualification Act 1986.
 - (d) if any amount payable under Condition 10 in Schedule 2 of this Licence is unpaid 30 days after it becomes due and remains unpaid for a period of 30 days after Postcomm has notified the Licensee in writing that the amount is overdue,
 - (e) if the Licensee fails to comply with a final order or a provisional order which has been confirmed under section 24 of the Act and (in either case) such failure is not rectified to the satisfaction of Postcomm after Postcomm has served notice in writing of such failure on the Licensee and before the expiry of three months from the latest of –
 - (i) the date of service of such notice, or
 - (ii) the date of expiration of the period within which an application under section 28 of the Act could be made questioning the validity of the final or provisional order, or

Schedule 3 – Revocation of licence

- (iii) if any such application is made, the date it is finally adjudicated upon,
- (f) if the Licensee fails to pay the whole or any portion of a penalty imposed by Postcomm under section 30 of the Act or any interest thereon by the date by which it is required to be paid and such failure is not rectified to the satisfaction of Postcomm after Postcomm has served notice in writing of such failure on the Licensee and before the expiry of 3 months from the latest of –
 - (i) the date of service of such notice, or
 - (ii) the date of expiration of the period within which an application under section 36 of the Act could be made in relation to the penalty, or
 - (iii) if any such application is made, the date it is finally adjudicated upon,
- (g) if the Licensee –
 - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 2 below) or any voluntary arrangement is proposed in relation to it under section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by Postcomm),
 - (ii) has a receiver (which shall include an administrative receiver within the meaning of section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed,
 - (iii) has a petition for an administration order presented in relation to it or an application for an administration order made in relation to it, or an administrator is appointed in relation to it or notice of intention to appoint an administrator is given in relation to it, or any other step is taken by any person with a view to the administration of the Licensee under the Insolvency Act 1986 including

Schedule 3 – Revocation of licence

the passing of any resolution by the directors or shareholders of the Licensee approving the presentation of any such petition, the making of any such application or appointment or the giving of any such notice;

- (iv) passes any resolution for winding-up other than a resolution previously approved in writing by Postcomm,
 - (v) becomes subject to an order by the High Court for winding-up, or
 - (vi) any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to anything listed above in (i) to (v) inclusive.
2. For the purposes of paragraph 1(g)(i) above, section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as Postcomm may from time to time by direction in writing determine and the said section 123(1)(a) shall not apply if the demand therein referred to is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if the demand is satisfied prior to the expiry of the notice to the Licensee given by Postcomm.
3. The requisite period of notice shall be –
- (a) for the purposes of sub-paragraph 1(g), 24 hours, and
 - (b) for all other purposes, 30 days.

ANNEX

List of terms and expressions defined in the Act and used in the Licence

This Annex is not part of the Licence and is included only for convenience.

Reference should be made to the Act for the authoritative definition of the terms included in this Annex.

Term or Expression	Defining Section of Act	Definition
Condition of a licence	13(5)	references to a condition of a licence are to a provision of a licence which is expressed as a condition;
Employee	125(1)	in relation to a body corporate, includes any officer or director of the body corporate and any other person taking part in its management, and “employer” and other related expressions shall be construed accordingly;
Final order	22(5)	means an order under section 22;
Letter	125(1) and (2)	<p>“letter” means any communication in written form on any kind of physical medium to be conveyed and delivered otherwise than electronically to the person or address indicated by the sender on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical); and includes a postal packet containing any such communication;</p> <p>For the purposes of this definition of “letter” the reference to a communication to be conveyed and delivered otherwise than electronically shall be construed as a reference to a communication to be conveyed and delivered otherwise than –</p> <p>(a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984), or</p> <p>(b) by other means but while in electronic form;</p>
Notice	125(1)	means notice in writing;
Postal operator	125(1)	means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets;
Postal packet	125(1)	means a letter, parcel, packet or other article transmissible by post;

Schedule 3 – Revocation of licence

Postal services	125(1)	means the service of conveying postal packets from one place to another by post, the incidental services of receiving, collecting, sorting and delivering such packets and any other service which relates to any of those services and is provided in conjunction with any of them;
Provisional order	23(8)	means an order under section 23;
Sender	125(1)	in relation to any letter or other communication, means the person whose communication it is;
Subordinate legislation	125(1)	has the same meaning as in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation (within the meaning of section 98(1) of the Northern Ireland Act 1998);
The Commission	1(1)	a body corporate to be known as the Postal Services Commission;
The Postal Services Directive	125(1)	means the Directive of the European Parliament and the Council of the European Union of 15th December 1997 (No. 97/67/EC) on common rules for the development of the internal market of Community postal services and the implementation of quality of service;
Universal service provider	4(3) and (4)	<p>(3) References to a universal service provider shall be construed as references to any person –</p> <p>(a) whose identity is notified by the Secretary of State to the European Commission in accordance with Article 4 of the Postal Services Directive as that of a person providing a universal postal service or a part of such a service in the United Kingdom, and</p> <p>(b) on whom the Secretary of State has served a notice informing him of that fact and the fact that he will be treated as a universal service provider for the purposes of this Act.</p> <p>(4) If no-one falls within subsection (3) because there is no Community obligation to notify the European Commission of the identity of a person providing a universal postal service or a part of such a service in the United Kingdom, references in this Act to a universal service provider shall be construed as references to any person who is treated by the Secretary of State as a universal service provider for the purposes of this Act and on whom the Secretary of State has served a notice informing him of that fact.</p>

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Users	125(1)	in relation to postal services, includes users as addressees and potential users;
Vehicle	125(1)	includes a railway vehicle;