

Postal licence applications – guidance for applicants

January 2008

Summary

- S.1 This document explains the regulatory framework within which Postcomm considers applications for licences. It also explains the licensing application process, gives guidance on filling out the application form, and sets out the non-discriminatory criteria applicable to licence procedures that Postcomm applies when assessing applications for postal licences.
- S.2 The document also sets out the procedures Postcomm will follow when it proposes to refuse an application for a licence.
- S.3 Although the Guidance covers most of the points likely to be of immediate concern to applicants, this document should not be taken as a definitive interpretation of the law. It is not a substitute for the Postal Services Act 2000 (the Act), or any other statutory material. It should be read in conjunction with the Act, any licence granted by Postcomm and other relevant EC and UK law. Any person in doubt about how he or she may be affected should seek independent legal advice.
- S.4 The aim of providing the Guidance is to provide transparency to the procedures and to set out for postal operators, postal customers and other postal stakeholders the general principles and approach involved when Postcomm is considering licence applications. Some of the procedures referred to in the Guidance are required by statute, some are not. Where Postcomm is not bound to follow certain procedures, it will aim to apply the approach set out in the Guidance on a consistent basis and, in the event that Postcomm decides to depart from the Guidance, it will explain its reasons for doing so.

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1. Introduction

Purpose of this document

- 1.1 This document provides guidance to those who are applying for or considering applying for a licence to convey mail. It:
- explains the legal framework, including the circumstances in which a licence is required and the main exceptions to the need for a licence
 - explains the criteria Postcomm will apply in processing applications and the process Postcomm will follow when refusing an application for a licence, and
 - gives guidance about data protection, mail integrity, common operational procedures and reporting requirements which are important for licensees.
- 1.2 This document should be read in conjunction with the application form, a copy of which is included at Appendix 1. The application form is accompanied by notes which will help applicants complete and submit the form at Appendix 2. Copies of the application form and guidance notes can be downloaded from Postcomm's website www.psc.gov.uk.

Structure of this document

- 1.3 The rest of this document is structured in the following way:
- Chapter 2 explains the legal framework relevant to the licensing process
 - Chapter 3 explains the licensing application process
 - Chapter 4 sets out the objective and non-discriminatory criteria applicable to licence applications
 - Chapter 5 sets out the refusal and appeals procedure
 - Chapter 6 provides general guidance on data protection, mail integrity, common operational procedures and reporting requirements

- Chapter 7 explains other issues which may be of interest to licensees and applicants
 - Appendix 1 sets out the application form
 - Appendix 2 provides notes on completion of the application form.
- 1.4 If applicants have any questions about the licensing or legal framework, applying for a postal services licence or wish to arrange a meeting to discuss an application, please contact:

Licensing Team

Postcomm

Hercules House

Hercules Road

London

SE1 DB

Tel. 0207 593 2184

E.mail: Licensing@psc.gov.uk

Website: www.psc.gov.uk

2. Legal Framework

Licences

- 2.1 The Postal Services Act 2000 (“the Act”) makes it an offence for a person to convey a letter from one place to another unless that person is licensed, is an agent or employee of a licensee, or is excepted from the requirement for a licence¹. A postal services licence permits the holder to convey letters from any address to any other in the United Kingdom.
- 2.2 The Act established the Postal Services Commission (Postcomm) as the independent regulator for postal services in the United Kingdom. Postcomm has a statutory duty to exercise its functions in the manner which it considers is best calculated to ensure the provision of a universal postal service². Royal Mail’s licence includes a universal service requirement.
- 2.3 The Act also places upon Postcomm a duty to ‘further the interests of users of postal services, wherever appropriate by promoting effective competition between postal operators’³. Postcomm is able to grant postal services licences to other operators subject to such conditions as it considers appropriate.

Exceptions to the need for a licence

- 2.4 The Act sets out exceptions to the need for a licence⁴. If an activity does not benefit from an exception then the person carrying on that activity should apply for a licence. Some important exceptions from the requirement for a licence are for the conveyance of a letter:
- which is conveyed in consideration of a payment of not less than £1 made by or on behalf of the person for whom it is conveyed, or
 - which weighs not less than 350 grams, or

¹ Section 6(2) Postal Services Act 2000.

² Section 3 (1) Postal Services Act 2000.

³ Section 5(1) Postal Services Act 2000.

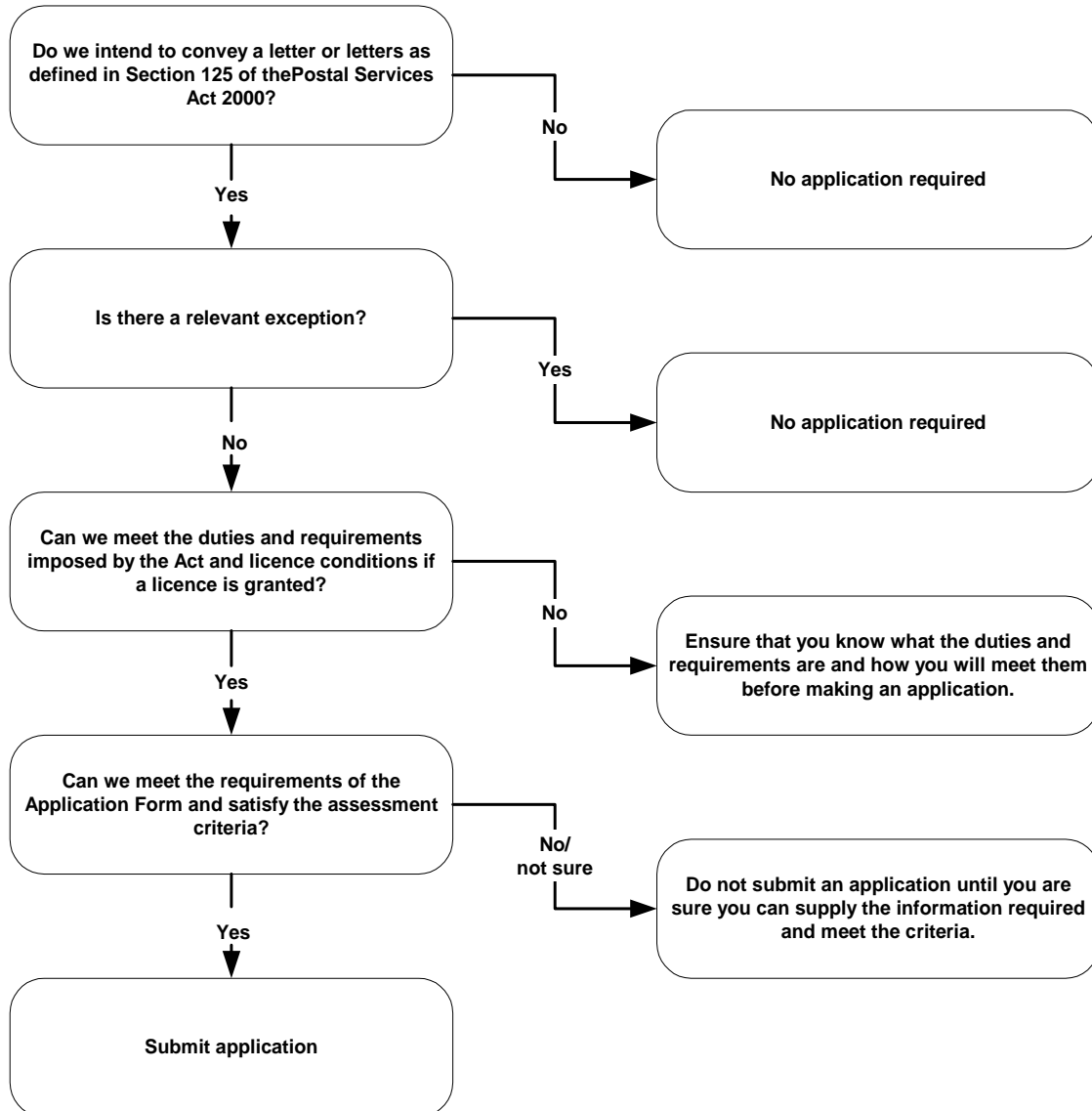
⁴ Section 7 Postal Services Act 2000

- which is for delivery outside the United Kingdom.
- 2.5 There is also an exception for certain kinds of mail which are delivered to a licensee for onward conveyance and delivery. In June 2007 Postcomm published an open letter on this exception which is available at <http://www.psc.gov.uk/policy-and-consultations/consultations/access.html>.
- 2.6 There are 15⁵ further exceptions. Furthermore, the Act's definition of "letter"⁶ excludes "any book, catalogue, newspaper or periodical", so a licence is not required to convey these media (although it should be noted that a postal packet containing, for example, a magazine and a letter is still considered to be a letter and may require a licence).
- 2.7 Postcomm's licensing section can provide further general guidance about the exceptions set out in the Act. The licensing section is not, however, able to confirm whether a proposed activity would or would not require a licence or benefit from an exception under the Act. Postcomm cannot interpret the Act on a case-by-case basis or seek to provide such advice to applicants or operators which may later fetter its discretion. Nor can Postcomm be expected to seek to understand the exact details of a business except when conducting an investigation under Section 6 of the Act where Postcomm suspects that an operator should be licensed. It is, therefore, for those who carry on the activity, or propose to do so, to make the decision themselves as to whether they need a licence and seek their own legal advice should they consider it appropriate.

⁵ Section 7(2)(a) to (g) and (i) to (p) Postal Services Act 2000

⁶ Section 125 Postal Services Act 2000

Deciding whether an application is needed



Licensing related documents

2.8 Postcomm's website contains information about licensing which may be of use to both applicants for licences and licensees. Information about the licensing framework, details of licensed operators and electronic copies of licences which have been granted are available from the 'Postal Licences and Operators' webpage and from the 'Licensing Framework' webpage. Of particular interest for those considering applying for licences may be the:

- Application form and notes
- Factsheet – 'Applying for a licence'
- Factsheet – 'Mail Security'
- Factsheet – 'Access', and
- Postcomm standard postal services licence (including the Mail Integrity and Common Operational Procedures Codes of Practice).

2.9 The Licensing framework webpage also contains information and documents about the basis of the framework.

3. The licence application process

Application for a licence

- 3.1 The Act provides that an application for a licence shall be made in writing to Postcomm in accordance with such requirements as Postcomm may specify.

Provision of information

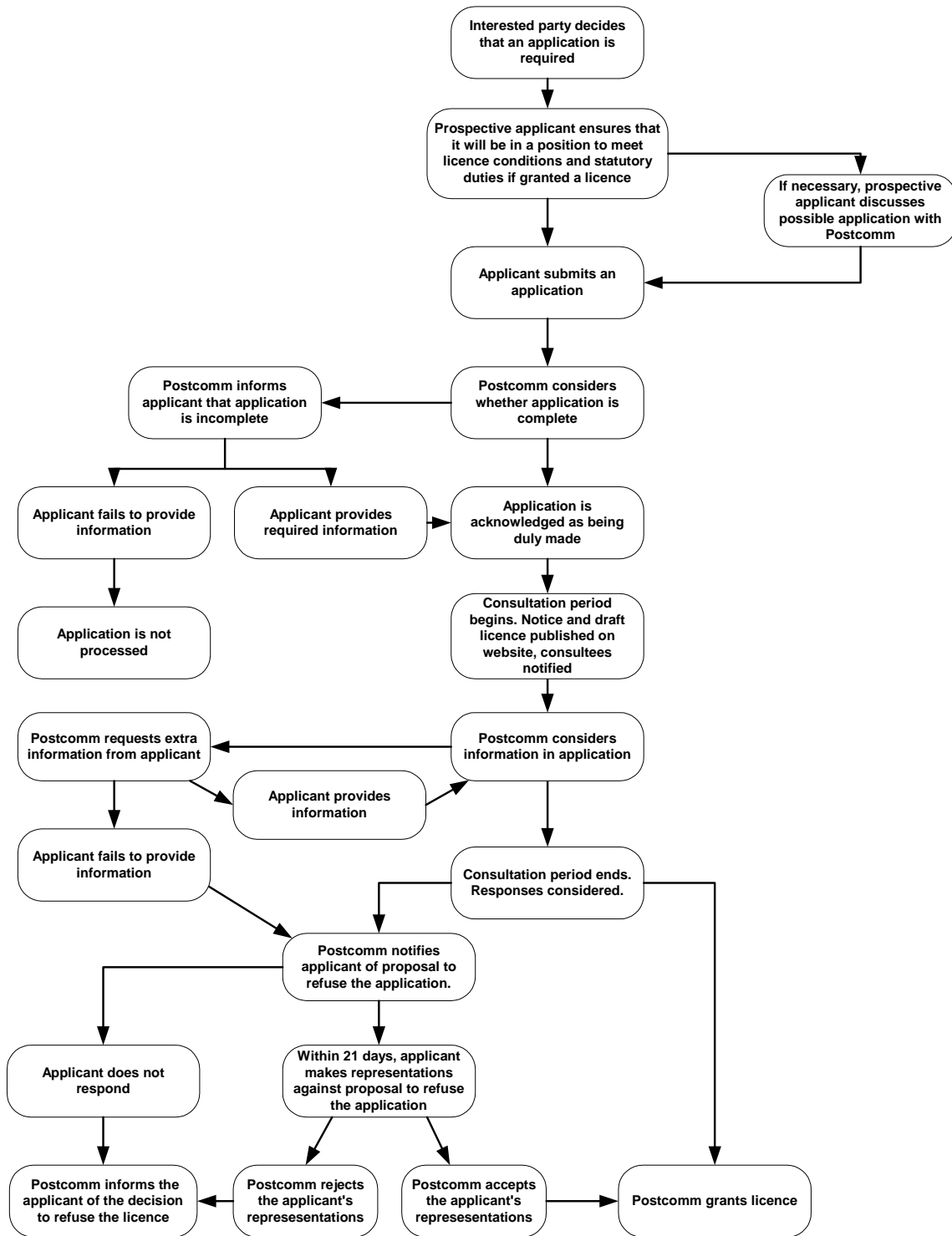
- 3.2 An applicant must complete an application form (see Appendix 1). Guidance on completing the application form is set out at Appendix 2. Copies of the Form of Application can also be downloaded from Postcomm's website. In addition, Postcomm's licensing team can provide advice and guidance about how the application form should be completed and submitted.
- 3.3 In order to assess applications efficiently, other than in exceptional circumstances, Postcomm will start to assess an application once all the information and the application fee required by the application form have been provided. In cases where insufficient information has been provided Postcomm will explain to the applicant what more is required.
- 3.4 In some cases where Postcomm requests during the processing of an application, clarification of information or additional information, applicants take a considerable time to respond. This can lead to delays in processing applications. Postcomm will attempt to agree timescales with individual applicants for the provision of further information (where this is required). Failure to meet any agreed timescales may lead to a refusal to grant a licence.

Consultation

- 3.5 Before granting a licence the Act requires Postcomm to consult on its proposal to grant the licence. When it is satisfied that an application is duly made, Postcomm will publish a notice which states that it proposes to grant a licence and why it proposes to do so. This must be brought to the attention of those people who may be affected by the grant of the licence and must be served on the relevant consumer organisation⁷. The minimum period for a postal licence consultation is 28 days.
- 3.6 At the end of the consultation period, Postcomm must consider any representations made in accordance with the notice and not withdrawn. It will then decide whether to grant the licence as proposed, whether any amendments are required, or whether the licence should be refused.
- 3.7 In the event that a significant period has elapsed between the publication of a proposal to grant a licence and the decision being made by Postcomm to grant a licence Postcomm will re-publish its proposal to grant a licence.

⁷ At the time of publication this is Postwatch. This is expected to change to the new National Consumer Council in October 2008.

Application process



Confidentiality

- 3.8 Postcomm recognises that some of the information it requires in the licence application may be commercially confidential. There is a prohibition in the Act⁸ on the disclosure of information obtained by virtue of the Act which relates to the affairs of individuals or businesses, without their consent, except for certain specified purposes. The prohibition does not apply to information which has already been made available to the public without breaching the prohibition.
- 3.9 Information provided to Postcomm by the applicant, including the fact that the applicant is applying for a licence, is not disclosed by Postcomm until the point at which Postcomm proposes the grant of a licence and disclosure is required⁹. At that point, the fact that an application has been made will be made public.
- 3.10 It is open to applicants to make information about their application public at any time.

⁸ Section 119 and Schedule 7 to the Act.

⁹ Schedule 7 to the Act, paragraph 3(1)(a).

4. Criteria for assessing licence applications

- 4.1 The Postal Services Directive (as amended)¹⁰ envisages licensing procedures that are transparent, non-discriminatory, proportionate and based on objective criteria.
- 4.2 This section explains the criteria that Postcomm will use to assess applications for licences. The criteria in this section are the minimum criteria that have to be met by an applicant for a licence to be granted. These take into account Postcomm's statutory duties, including:
- Postcomm's duty to exercise its functions in the manner which it considers is best calculated to ensure the provision of a universal service, and
 - its duty to further the interests of users of postal services, wherever appropriate by promoting effective competition between postal operators.
- 4.3 The criteria also take into account Postcomm's aim of minimising regulatory burdens in accordance with the principles of better regulation.
- 4.4 Postcomm recognises the need to encourage innovation and the fact that the structure of applicants' businesses will differ. The criteria therefore do not set out prescriptive standards which must be met, but indicate to applicants the nature of information that they are expected to supply and the manner in which this information will be assessed.
- 4.5 Applicants should in any event ensure that they have systems and procedures in place that will enable them to comply with all the conditions of the licence if it is granted. Failure to comply with a condition of a licence may result in formal enforcement action by Postcomm.

¹⁰ Implemented by the Postal Services (EC Directive) Regulations 2002. (SI 2002 No 3050)

4.6 If an applicant fails to provide information requested by Postcomm or is found to have knowingly provided information which is wrong or misleading Postcomm will not grant a licence. If, at a later date, Postcomm becomes aware that information provided at the time of application was incorrect or misleading, Postcomm may revoke any licence granted.

Previous licences

4.7 Postcomm will consider the information provided by an applicant to establish whether:

- the applicant and its directors, (including shadow directors) or
- in the case of sole traders, the applicant or partners in a partnership, or
- the applicant's ultimate holding company, or
- any company related to the applicant that holds or has previously held a licence

has previously held a licence to convey mail that has been revoked (other than by mutual agreement). Postcomm will also seek to establish whether any directors, shadow directors or major shareholders of the applicant, the applicant's holding company or any other related company have previously been directors of, or major shareholders in any licensee who has had its licence revoked (other than by mutual agreement).

4.8 Postcomm will also check to establish whether a licence application from any of the persons or companies listed in paragraph 4.7 has previously been refused.

4.9 In each case the reason for the revocation or refusal will be considered to see if it is relevant to the decision to grant a licence. In making its decision, Postcomm will, for example, consider whether the reasons are such that users or the market might be placed at risk should a licence be granted.

Disqualified directors

4.10 Postcomm will check the websites of The Insolvency Service and Companies House¹¹ to ensure that:

- the directors (including shadow directors) of the applicant, or in the case of sole traders the applicant, or, in the case of partnerships, the applicants and his/her partners
- the directors of any parent/ultimate holding company of the applicant
- major shareholders in the applicant, and
- any individuals with a controlling interest in the applicant

are not disqualified. If such a person is disqualified, Postcomm may not grant a licence to the applicant.

Prohibited names

4.11 Postcomm considers that it is important that consumers are protected from any confusion which may arise from the naming of phoenix companies¹². Where it has any reason to believe that a licensee may be using a prohibited name under section 216 of the Insolvency Act 1986, Postcomm may check this.

4.12 Where Postcomm is concerned that an applicant has or is using a prohibited name Postcomm will report the matter to the Insolvency Service.

Insolvency

4.13 In all cases we will check the websites of Companies House, the Insolvency Service and the London, Edinburgh and Belfast Gazettes¹³ before granting a licence to ensure that the applicant and its ultimate holding/ parent company are not recorded by these sources as being insolvent, in administration or in liquidation.

¹¹ www.insolvency.gov.uk and www.companieshouse.gov.uk.

¹² A phoenix company is one where the business of an insolvent company is transferred to a new company with the same or similar name with the purpose of such transfer to leave the debts in the old company while taking advantage of whatever goodwill the insolvent company had built up.

¹³ www.gazettes-online.co.uk

- 4.14 We will also check the websites of the Insolvency Service and the London, Edinburgh and Belfast Gazettes to see whether any of the people named in response to questions 3, 4, 5 or 6 of the application form are recorded as bankrupts.
- 4.15 Any evidence of insolvency, bankruptcy, administration or liquidation will be considered to see if it is relevant to the decision to grant a licence. Where the holding company of an applicant is recorded as insolvent, in liquidation or in administration, Postcomm will require information from the applicant to help it consider whether the failure of the holding/parent company could lead to the imminent failure of the applicant if it is granted a licence.

Criminal or insolvency proceedings

- 4.16 Postcomm will not grant a licence where it is aware that any of the following are the subject of relevant legal or insolvency proceedings or are soon to become so:
- the applicant or any of its controlling persons (including shadow directors)
 - the applicant's ultimate holding company or any of its controlling persons
 - any company related to the applicant that holds or has previously held a licence or any of its controlling persons, or
 - major shareholders, or any individual or party with a controlling interest.

While Postcomm cannot provide a definitive list of what relevant legal proceedings may constitute, it is likely that proceedings where one or more of the above persons are being charged for an offence involving, for example, dishonest conduct, may be considered relevant. Offences referred to in the Road Traffic Offenders Act 1988 are not likely to be considered relevant.

5. The refusal and appeals procedure

5.1 This section describes the procedure that Postcomm will follow if it proposes to refuse an application for a licence.

Proposal to refuse an application

5.2 Postcomm may propose to refuse an application because, amongst other things:

- the applicant does not satisfy one or more of the objective and non-discriminatory criteria
- the applicant has failed to provide, when requested, additional information within the required time
- Postcomm is of the opinion that information supplied is false or misleading

Notification of proposed refusal

5.3 If Postcomm proposes to refuse an application the reasons will be given to the applicant in a notice which will:

- state that Postcomm proposes to refuse the application
- state the reasons why Postcomm proposes to refuse the application, and
- specify the time within which a representation may be made.

Postcomm will allow the applicant 21 days from the date of the notice to make a representation about why it disagrees with Postcomm's proposal to refuse the application. Postcomm will consider any representation which is duly made and not withdrawn.

Final decision to refuse an application

5.4 Should no representation have been made within 21 days of the notice or if a representation is unsuccessful, the applicant will be notified in writing of the decision to refuse the licence. The notification will:

- where no representation has been made, restate the reasons for the refusal of the application, and
- where an unsuccessful representation has been made, state the reasons why the representation has not persuaded Postcomm to grant a licence.

6. General guidance on data protection, mail integrity, common operational procedures and reporting requirements

Data protection – notification to the Information Commissioner

6.1 Licensed postal operators are subject to the requirements set out in the Data Protection Act 1998 (DPA) to notify the Information Commissioner about the processing of personal information and the uses to which it is put (unless exempt). The Information Commissioner has the legal powers to ensure that organisations comply with the requirements of the DPA and it is an offence not to have completed the notification process with regard to personal information being processed. Guidance on the notification process can be found on the Information Commissioner's Office website¹⁴.

6.2 Applicants must ensure that their notifications to the Information Commissioner are sufficient to support the gathering of information which may be used in evidence for a prosecution under Section 83 – 84 (interference with the mail) of the Postal Services Act 2000. In particular, the following details need to be included:

- 'Postcomm' and 'Postwatch' should be shown as specific 'sources' and 'disclosures' under all purposes
- 'the prevention and detection of crime' should be listed as a 'purpose', and
- if the applicant is a global organisation, 'worldwide' should be shown under 'transfers'.

Mail integrity

6.3 Postcomm has developed the Mail Integrity Code of Practice (the MI Code), which sets out the minimum standards which operators are expected to meet with respect to minimising the exposure of mail to the risk of loss, theft, damage and interference. The MI Code is at Annex 1 of the standard licence.

¹⁴ www.ico.gov.uk/Home/what_we_cover/data_protection/notification.aspx

- 6.4 The MI Code generally requires licensees to do three things: to establish written policies; to set out in those policies how the licensee intends to comply with those policies, and to monitor and review the effectiveness of those policies in order to ensure that they are fit for purpose and continue to meet the mail integrity objectives.
- 6.5 Where examples are given in this guidance of how a licensee might comply with the MI Code, these are for illustrative purposes only. Simply adopting these practices does not equate to compliance with the MI Code. It is for licensees to satisfy themselves that they are compliant with the MI Code.
- 6.6 Applicants are required to provide a declaration that they have read and understood the MI Code and that they will ensure that their processes are compliant before operations commence. In providing this declaration, applicants should ensure that they have considered the following areas:
- 6.7 Recruitment of Relevant Employees: Operators intending to employ persons who will convey, receive, collect, sort or otherwise handle mail must establish, maintain and adhere to a written recruitment policy which explains the jobs, roles and types of work required of employees under that policy. The policy should also outline the steps to be taken in order to satisfy the licensee about an individual's identity and previous work history. Prospective employees are also required to declare any criminal convictions or any cautions or conditional discharges relating to postal packets or dishonest conduct generally.
- 6.8 For example, a licensee may consider it appropriate to contact some of an employee's previous employers for references in order to learn about that person's work history, and may require a potential employee to declare on an application form any criminal convictions. Similarly, it may be appropriate to check identity by requiring photographic identification, such as a passport, to be provided.

- 6.9 Training of Relevant Employees: Operators must establish, maintain and adhere to a training policy that provides for all Relevant Employees to receive initial and ongoing training that ensures they can do their jobs competently. All Relevant Employees must be informed and made aware of the seriousness of Mail Interference Offences (Sections 83 and 84 of the Act), and their obligations under the Act. The training policy should also outline the minimum levels of training required, the frequency with which training should be provided and give details of how training is to be given, recorded and monitored.
- 6.10 For example, a policy might state that training on Mail Interference Offences should be given to all new employees by way of a one hour presentation by a manager and that there should be a section in a staff handbook. Refresher training might be undertaken by all staff once each year.
- 6.11 Disciplinary procedures: Operators must establish, maintain and adhere to a disciplinary policy that ensures Relevant Employees are aware of the standards of conduct expected of them and of the consequences of failing to meet those standards.
- 6.12 Security of mail: There must be measures in place in relation to the physical security of premises, vehicles and equipment used to handle, transport and deliver mail that minimise the risk to mail in the care of a licensee.
- 6.13 For example, these measures might include a regular inspection of the locks on the doors to all vans used to transport mail and a regular check of the security of any warehouses where mail is stored.
- 6.14 Information and reporting requirements: There must be arrangements in place to ensure that all incidents of loss, damage, or interference with mail are recorded in reasonable detail and reported within the operator's organisation and to Postcomm as prescribed in Section 7 of the MI Code (and in compliance with any additional guidelines given).

6.15 Agents and sub-contractors: Operators using agents and sub-contractors are responsible for ensuring that agents and sub-contractors comply with the MI Code as if it applied directly to them.

6.16 This might, for example, be ensured by means of appropriate clauses in contracts and/or by monitoring of the standards of the agents or sub-contractors.

Common Operational Procedures

6.17 The Common Operational Procedures Code of Practice (the COP Code)¹⁵ is set out at Annex 2 of the standard licence and sets out the objectives and high level principles regarding issues occurring in a multi operator postal market with which all licensed operators are required to comply.

6.18 Applicants are required to provide a declaration that they have understood the COP Code's requirements and that they will be in a position to comply with the COP Code, in full, as soon as operations commence. In providing this declaration, applicants should ensure that they have considered that the COP Code requires that licensees:

- ensure Code Letters are easily identifiable and, subject to some exemptions, apply a "Code Identifier" to all Code Letters,
- promptly repatriate misdirected or miscollected Code Letters to the intended operator in an efficient, economic and timely manner, and
- redirect misdirected customer enquiries in an efficient, economic and timely manner.

6.19 The identification of Code Letters is important as it enables misdirected or miscollected mail and customer enquiries to be identified quickly and efficiently. Postcomm allocates a unique identifier to each licensee.

¹⁵ www.psc.gov.uk/postal-licences-and-operators/the-multi-operator-market/common-operating-procedures-code.html

6.20 A condition of the COP Code is that licensees must also be party to the Postal Common Operational Procedures Agreement. The purpose of the agreement is to provide a safety net in the absence of separate arrangements. New licensees will be contacted by the Code Secretary at Royal Mail with instructions on how to become a party to the Default Agreement¹⁶.

Information requirements for licensees

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

- details of their systems used to measure and record performance in achieving quality of service targets as agreed with customers, and to record, analyse and respond to complaints (Condition 2)¹⁷
- annual reports on performance against quality of service targets as agreed with their customers and on complaints received (Condition 2)
- mail integrity (Condition 3)
- common operational procedures (Condition 4)
- 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).

6.22 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 displayed in all literature explaining their services.

¹⁶ www.psc.gov.uk/postal-licences-and-operators/the-multi-operator-market/common-operating-procedures-code.html

¹⁷ Postcomm does not set quality of service targets for operators other than Royal Mail. However, Postcomm considers that information on quality of service may be useful to users of mail, and operators may wish to provide such information to their customers. Where operators agree targets with their customers, they are required to report to Postcomm on their achievement of those targets.

6.23 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.

6.24 In order that Postcomm can monitor the development of the market, licensees are 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 another licensed operator for final delivery and mail delivered by the licensee, and
- information on the volume of mail handled, both under the licence and elsewhere.

6.25 Additionally, licensees are required to provide, on an annual basis:

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

6.26 All of this information is necessary for ensuring that Postcomm can monitor market developments and the effect of new entrants on the market, their success and what effect this is having on Royal Mail and its ability to provide the UK's universal service.

6.27 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.

7. Other issues

Modification of licences

- 7.1 Once Postcomm has granted a licence, its conditions may be modified. It is likely that any modifications to standard licences will be made to all standard licences at the same time, for example as a result of legislative changes or a review of a particular condition's effectiveness.
- 7.2 Postcomm must publish a notice proposing to modify a licence and consider any representations made in accordance with that notice. If the licensee consents to the modification¹⁸, Postcomm may make the modification. While licensees may request modifications of the conditions of their licence, only Postcomm can make modifications.
- 7.3 Where a licensee does not agree to proposed licence modifications to its own licence, Postcomm may refer any public interest matters to the Competition Commission. For this to be appropriate, the matters would have to relate to the provision of postal services authorised or required by a licence, operate against the public interest, or have the potential to do so. The Competition Commission would consider whether modification would remedy or prevent the effects adverse to the public interest.
- 7.4 The Competition Commission may investigate and report on whether any matters referred to it may operate against the public interest, and whether making any licence modifications might remedy or prevent adverse effects. In making its report, the Competition Commission can specify licence modifications which could remedy or prevent the adverse effects occurring.
- 7.5 Before making any such modification, Postcomm must publish a notice stating what the proposed modifications are, the effect of them and the reasons for making them, and serve any such notice on the Secretary of State (the SoS), Postwatch, and the licensee.

¹⁸ Section 14 Postal Services Act 2000

- 7.6 The SoS may direct Postcomm not to make the modification proposed under Section 14 if the SoS considers that the modification should not be made, or that it should be made under Section 17 of the Act.
- 7.7 The effect of that provision is that the SoS may direct Postcomm to refer proposed licence modifications to the Competition Commission. The Competition Commission will then investigate and report on 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.

Change of ownership

- 7.8 Section 11 of the Act prohibits the transfer of a licence. A licence cannot be transferred (or sold) from one legal entity to another. Additionally, if, for example, a merger meant that a licensee became a new legal entity, a new application would be required.
- 7.9 However, a legal entity which possesses a licence can be bought by another legal entity and licensed operations can continue without the need for a new application as long as the licensee still exists (i.e. it has the same Company Number). Under Condition 6 of the Standard Licence, any change of control must be notified to Postcomm.

Enforcement and financial penalties

- 7.10 Postcomm has the power, under Sections 22 – 37 of the Act, to take enforcement action against any licensee which contravenes the conditions of its licence. Enforcement action may include the levying of financial penalties of up to 10% of the offender's turnover (Section 30 of the Act) or the service of final or provisional enforcement orders. More information about financial penalties can be found in Postcomm's Statement of Policy in relation to Financial Penalties¹⁹ on Postcomm's website.

¹⁹ www.psc.gov.uk/policy-and-consultations/consultations/postcomm--financial-penalties.html

Appendix 1 – Licence application form

LICENCE APPLICATION FORM

POSTCOMM

The Postal Services Commission

Application form for a licence to be granted under section 11 of the Postal Services Act 2000

Please read the Guidance provided with this application form. Those applying for a licence should take time to understand the conditions of a licence and the Codes of Practice on Mail Integrity and on Common Operational Procedures. Licensees must be able to comply with the terms of their licence as soon as they commence operation. Postcomm considers that failure to comply with the conditions of a licence is a serious matter which could lead to the imposition of a fine and the revocation of any licence granted. 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 251 of the Companies Act 2006) or, where applicable, its corresponding officers,
 - (e) the name and registered office of any holding company (within the meaning of section 1159 of the Companies Act 2006) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 1162 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 1162 of the Companies Act 2006
 - (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 or a declaration that there are none
 - (b) full details of any criminal convictions of the applicant and any other person, company or other entity referred to in response to paragraphs 1-6 above (other than for offences referred to in the Road Traffic Offenders Act 1988 or convictions which are spent

under the Rehabilitation of Offenders Act 1974) or a declaration that there are none, 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 2000.

11. Please provide a signed declaration from a director or controlling person confirming that the applicant has understood the requirements of the Mail Integrity Code of Practice (condition 3 of the licence) and that the applicant (if granted a licence) will comply with the code from the time at which operations in the licensed area begin.

Common Operational Procedures

12. Please provide a signed declaration from a director or controlling person confirming that the applicant has understood the requirements of the Common Operational Procedures Code of Practice (condition 4 of the licence) and that the applicant (if granted a licence) will comply with the code from the time at which operations in the licensed area begin.

Application of standard licence conditions

13. 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).
14. 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 understand 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.

I confirm that I am willing to provide such further information as Postcomm requests in connection with its consideration of this application. *I also enclose a cheque for the sum of £50/I have arranged for an electronic transfer of funds to Postcomm for the sum of £50. * **Delete as appropriate**

Signed

Print name

Print job title

For and on behalf of

Dated

Appendix 2 – Notes on completion of the application form

Question 1²⁰

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

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

This information is required to establish precisely who the licensee would be and whether the licensee and other persons named in response to these questions meet the relevant criteria (see main document for further detail).

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

If any person(s) holds or has held a licence or has been refused a licence in the past, Postcomm will consider whether this is relevant to the decision to grant a licence now.

²⁰ Question numbers correspond to questions on the application form.

Question 8

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 check that a licence is required for the services that the applicant proposes to provide. For example, couriers (charging £1 or over per item), parcel services (over 350g) and unaddressed mail do not require a licence. 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

This information will be used in Postcomm's monitoring of the development of the postal market.

Question 10

This question will help Postcomm to determine whether there are any reasons why a licence should not be granted. Details provided in response to this question will not necessarily lead to a refusal to grant a licence.

Question 11

In providing this declaration, 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 12

In providing this declaration, applicants should refer to the Common Operational Procedures Code of Practice and ensure that they have considered the following areas:

- the easy identification of Code Letters and the application of a Code Identifier to Code Letters,
- the prompt repatriation of misdirected and miscollected Code Letters to the intended operator in an efficient, economic and timely manner, and
- the redirection of misdirected customer enquiries in an efficient, economic and timely manner.

Question 13

Postcomm expects that licences granted will 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. However, please note that Condition 11, relating to transparency of accounts, 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

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.

Payment of the Application fee

All applications must be accompanied by a payment of £50 for the application fee. The payment may be made by cheque or electronic transfer of funds.

Cheques should be made payable to the Postal Services Commission.

Applicants wishing to make electronic payments should contact the licensing team.

Submission of the application form

Applications must be sent by post or delivered to Postcomm's London offices.

Contact details

Licensing Team

Postcomm

Hercules House

Hercules Road

London SE1 7DB

Tel. 0207 593 2184

E.mail. Licensing@psc.gov.uk