

# **Exceptions under Section 7 of the Postal Services Act 2000**

A consultation document

October 2001

## Summary

1. The Postal Services Act 2000 ("the Act") prohibits the conveyance of letters without a licence issued by the Postal Services Commission ("Postcomm"). The Act provides a number of exceptions to this prohibition; it also establishes a mechanism to provide for changes to the list of exceptions, including the introduction of new exceptions.
2. Changes may be made and new exceptions may be introduced by the Secretary of State by order. Postcomm first must have recommended the change to the Secretary of State, following consultation with the Consumer Council for Postal Services ("Postwatch"), licence holders and such persons as the Commission considers appropriate.
3. This consultation paper outlines three exceptions that Postcomm is proposing to recommend to the Secretary of State and explains Postcomm's reasons for recommending them.
4. The exceptions proposed are for:
  - o mail arising as part of the settlement system operated by CRESTCo for UK, Irish and international securities;
  - o conveyance of poll cards for elections; and
  - o conveyance of other material for Parliamentary and Assembly elections.
4. Postcomm seeks and requests the views of Postwatch, licensees and other interested parties on the exceptions which it is proposing to recommend to the Secretary of State.

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# 1. Introduction

## What is Postcomm

- 1.1 The Postal Services Act 2000 established Postcomm as the independent regulatory body for postal services in the United Kingdom.

## Postcomm's statutory duties

- 1.2 Postcomm's primary duty is to seek to ensure customers continue to enjoy a universal postal service. The universal service 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.
- 1.3 Subject to this, Postcomm is charged with furthering the interests of users of postal services wherever possible 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.
- 1.4 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.
- 1.5 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.

## Background

- 1.6 Section 6(1) of the Act sets out the prohibition against conveying letters without a licence. It is supported by both criminal and civil enforcement provisions. Section 7 of the Act sets out a number of exceptions to the need for a licence which otherwise is required under section 6. Section 7(1) excepts letters conveyed in consideration of £1 or more or weighing 350 grams and over. Section 7(2) lists a number of specific exceptions. The providers of services which fall under section 6 and are not exempt under section 7 require licences.
- 1.7 Section 8 of the Act provides that the exceptions in section 7 may be modified by order of the Secretary of State. Such orders shall only be made on the recommendation of Postcomm and Postcomm must have consulted with Postwatch, licence holders and such other persons as it considers appropriate before making a recommendation. When a recommendation is made, the Secretary of State must either modify the Act, which is done by statutory instrument, or report to both Houses of Parliament on his reasons for not making an order.

## **The purpose and scope of this consultation**

- 1.8 The purpose of this paper is to consult with a view to making recommendations to the Secretary of State on modification of the exceptions in the Act to provide three additional exceptions to the need for a licence to convey letters. These proposed exceptions are for –
- o mail arising as part of the settlement system operated by CRESTCo for UK, Irish and international securities;
  - o conveyance of poll cards for elections; and
  - o conveyance of other material for Parliamentary and Assembly elections.

## **How to respond**

- 1.9 Responses should reach Postcomm by 21 December 2001. They can be sent by post, electronically or by fax to:

Ros Poulson or Shahida Mukhtar  
Postcomm  
Hercules House  
6 Hercules Road  
London  
SE1 7DB

Tel: 020 7593 2100  
Fax: 020 7593 2142

e-mail: [rpoulson@psc.gov.uk](mailto:rpoulson@psc.gov.uk) and [smukhtar@psc.gov.uk](mailto:smukhtar@psc.gov.uk)

- 1.10 If you would like to discuss any points raised by this consultation then please contact Ros Poulson or Shahida Mukhtar.

## **Confidentiality of responses**

- 1.11 Postcomm would like to make public the responses it receives to this consultation document. If you do not want all or part of your response to be read by anyone outside Postcomm, please ensure that it clearly indicates which parts are confidential. If you are happy for the substance of your contribution to be made public, but do not want the name of the individual who signed it or of the organisation which submitted it to be revealed, please indicate this by adding "name of organisation/sender not to be published".

## 2. Background to the proposed exceptions

- 2.1 Requests for modifications to the exceptions under section 7 of the Act have been received from CRESTCo and from the Department of Transport, Local Government and the Regions (DTLR). Although the applications are separate, they are being handled together as they lead to the same measure and it will save Parliamentary and other time if they are dealt with in a single order.

### CRESTCo

- 2.2 CRESTCo operates the system for settlement in the United Kingdom for UK, Irish and international securities. Although the system is essentially paperless, the requirement under the Uncertificated Securities Regulations 1995 for system members to be able to change the form in which they hold or are to hold units of a participating security generates some mail flows. At present these are carried by the CRESTCo Courier and Sorting Service (" the CCSS") which is operated by TNT (UK) Ltd which was granted a licence for the purpose of the service earlier this year.
- 2.3 The documents conveyed and delivered by the CCSS can be characterised as documents for the transfer of securities, securities certificates and documents ancillary to the holding and transfer of securities. The ancillary documents include various forms of grant, documents relating to wills and probate, changes of name or status for securities holders, documents relating to the capacity of securities holders and letters of indemnity. These documents are only conveyed between the CREST members on the one hand and approved CREST registrars on the other hand.
- 2.4 The functions of the CCSS have been performed on CRESTCo's behalf by TNT UK Limited since 15 July 1996 when the CREST system (of which the CCSS forms an integral part) went live. It was thought when the system was established that it was permitted under the British Telecommunications Act 1981. With the revocation of the relevant provisions of that Act when the Postal Services Act came into effect it became unclear whether it was lawful for the CCSS to be provided without a licence: there was no specific exception for it and none of the exceptions provided in section 7(2) was entirely appropriate.
- 2.5 TNT UK Limited therefore applied for a licence covering its provision of the service. The grant of this licence ensures that the CCSS is being provided lawfully. However, although the CCSS involves services that fall within the ambit of postal regulation, it can be seen more as a part of an activity that is closely regulated under another regime, namely that for financial services and markets. CRESTCo wishes to simplify as far as possible the regulatory structure under which it operates and has requested an exemption from section 6(1) of the Act. CRESTCo has pointed out that the postal service required for CCSS is a specialist

dedicated service for a defined group of users who need timed guaranteed delivery not offered by the conventional postal service.

### **Department for Transport, Local Government and the Regions (DTLR)**

- 2.6 DTLR is seeking two exceptions: for the delivery of poll cards for Parliamentary and other elections and for the delivery of candidate's election addresses in Parliamentary elections.

#### Poll cards

- 2.7 Poll cards are cards which are sent to voters in elections advising them that elections are taking place and where they should go to vote. They are issued by Returning Officers for Parliamentary elections under Rule 28 of the Parliamentary Elections Rules, which are contained in Schedule 1 to the Representation of the People Act 1983. Similar regulations apply for poll cards for local government elections and for elections to regional parliaments and assemblies. These regulations provide for official poll cards to be "sent or delivered" to electors at their qualifying addresses. Normally poll cards are sent by post.
- 2.8 In the weeks before the Parliamentary election that took place in June 2001 there was significant disruption to postal services in the United Kingdom as a result of industrial action. This was the period when poll cards were being sent out and questions arose as to how they could be distributed in time before the election to enable electors to know where to go to vote. Arrangements are believed to have been made through a number of local authorities for poll cards to be distributed by hand by their staff. It is also believed that a number of local authorities have, as a matter of routine, delivered poll cards by hand. However none of the exceptions in section 7(2) of the Act clearly permits this activity. In particular there was doubt as to whether the exception for persons having a business interest in the cards applied. This doubt arose because Returning Officers, when they act as such, are discharging the functions of an official office which is distinct from the local authorities who employ, on a day to day basis, the individuals who act as Returning Officers at elections.
- 2.9 DTLR would like this doubt to be resolved. It seems sensible that it is resolved not just for Parliamentary elections, but also for local elections and elections to regional assemblies and parliaments. The simplest way to resolve the doubt is to create an exception which would make clear that a licence is not required for this distribution of poll cards.

#### Candidates' addresses in Parliamentary and Assembly elections

- 2.10 Each candidate at a Parliamentary election is entitled to send an election communication either to each elector in the constituency, or to each address in the constituency, free of charge for postage, under section 91 of the Representation of the People Act 1983.

Communications also may be sent free of charge to any person on the list of proxies for a Parliamentary election. The expectation of section 91 is that the communication will be by a universal service provider. Section 200A of that Act makes provision for a universal service provider conveying candidates' election communications to be remunerated by Government from the Consolidated Fund. Similar arrangements apply for elections to the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly under the relevant legislation.

- 2.11 As with poll cards, there is a danger that the distribution of candidates' election addresses may be disrupted if industrial action coincides with the run up to an election. In these circumstances candidates can be expected to want to make alternative arrangements for the circulation of their communications, probably through the local constituency branch of the party they belong to. None of the existing exceptions to section 6 permits such conveyance. In particular a member of a local branch of a political party distributing election communications has no business interest in the communication and may not be a personal friend of the sender. The creation of an exception would enable contingency arrangements to be put in place made if the universal service provider was unable to provide the service. It also would open up the possibility of competition for the provision of this service.

### 3. Postcomm's proposed recommendations

#### CRESTCo

- 3.1 CRESTCo provides a service of great significance to the UK economy. It is a service which is closely regulated under the Financial Services and Markets Act 1998. It appears to Postcomm that the postal service involved in CCSS is incidental to CRESTCo's regulated financial services business, rather than being a postal service that needs to be regulated as such for the benefit of consumers.
- 3.2 The CCSS has been provided other than by Consignia for the last five years without adverse effect on the provision of the universal service by Consignia. It was partly on this basis that Postcomm felt able to licence TNT UK Ltd to provide the service. Similarly it appears to Postcomm that the granting of an exception for the CCSS can be expected to have no effect on the future provision of the universal service.
- 3.3 Postcomm could ensure the continuing legality of the provision of the postal elements of the CCSS by licensing TNT UK Ltd on a long term basis and by indicating that it would be willing to licence alternative operators if necessary. But that would leave the provision of CCSS subject to two regulatory regimes one of which, the postal services regime, appears to add safeguards that are not necessary.
- 3.4 Such benefits as postal services regulation offers in this case come at a cost to CRESTCo as a user of postal services. In particular if CRESTCo needs to change the supplier of the postal services involved in CCSS in an emergency it will be limited in its choice to holders of licences issued under the Act or delayed whilst licence applications are made.
- 3.5 Postcomm accepts that it would be simpler for CRESTCo's activities to be regulated under only one statutory regime and that the regime for financial services and markets is the more appropriate regime. Postcomm sees no adverse universal service effects from making of an exception and thinks that an exception will further the interests of CRESTCo as a user of postal services. In particular CRESTCo will have a simpler regulatory framework and will be able to procure the postal services needed for CCSS in a more competitive environment. Postcomm concludes that an exemption for CRESTCo is appropriate and can be recommended in accordance with Postcomm's statutory duties.
- 3.6 Postcomm therefore is minded, subject to points made in response to this consultation paper to recommend an exception to the Secretary of State.

## DTLR

### Polling cards and election material generally

- 3.7 Postcomm thinks that ensuring that the electorate has the information it needs in order to vote is of vital importance in a democratic society. Voters will feel disenfranchised if they are not told precisely when elections are to take place and where to go to take part and cast their votes. The possibility for disruption to the democratic process arose at the time of the last general election and it needs to be minimised for the purpose of all elections, Parliamentary, regional and local. Postcomm also thinks that the practice in some areas of distributing poll cards by hand ought not to be subject of legal doubt. The creation of an exception for the conveyance of polling cards will clarify the situation.

### Candidates' election communications

- 3.8 There is a clear case for saying that the arguments set out above in relation to polling cards also apply to information provided to electors by candidates. Parliament has accepted that candidates in Parliamentary elections should be able to communicate with electors and has made provision for them to do so free of charge. The arrangements for this purpose have been extended to the elections for the National Assembly of Wales, the Scottish Parliament and the Northern Ireland Assembly. Postcomm accepts these arguments and thinks it is right both to provide for alternative arrangements to be facilitated in the event of disruption to the universal service and to open up the possibility of competition for this service.
- 3.9 Parliament has not seen fit to extend the arrangements for free distribution of candidates' election communications to local elections. Clearly there are alternative means by which candidates can communicate with electors in the period before elections. The use of local radio and newspapers are obvious examples. Noting that Parliament has not made provision for the free circulation of candidates' communications in local elections, and the nature of DTLR's request, Postcomm is not proposing that the exception for the conveyance of candidates' communications in elections should apply other than in Parliamentary elections and elections to the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly.

### Universal service and other duties

- 3.10 The creation of both the proposed exemptions should be neutral as regards their effects on the universal service. In practice the poll card exception will be used widely only if there is disruption to the universal service, and in other cases will merely formalise an existing practice. In the event of disruption to the universal service, the provider of that service will not be in a position to earn revenue from

conveying poll cards in any event. Consequently no revenue will be lost as a result of someone else conveying them. In the case where local authorities have been delivering poll cards by hand, this has taken place to date without any apparent adverse effect on the provision of the universal service by Consignia.

- 3.11 There clearly is a strong interest on the part of users of postal services to be able to participate fully in elections. The proposed exceptions will facilitate this participation. Postcomm therefore has no doubt that to recommend that these exceptions be introduced is consistent with its duties under the Act.

### **TEXTS OF PROPOSED EXEMPTIONS**

- 3.12 Discussion draft of the texts of the proposed exemptions are set out in the Annex to this consultation paper. Postcomm wishes to emphasise that these discussion drafts are intended to give clarity to Postcomm's proposals for the purpose of consultation but that they may not be adopted exactly as they are drafted if and when the proposed exemptions are made. The precise wording of any exemption orders is for the Secretary of State to determine on the recommendation of her legal and policy advisers.

## 4. Consultation questions

### CRESTCo exception

- 4.1 Do you agree that the CCSS is a service of national importance for which it is appropriate to make provision under the Act?
- 4.2 Do you agree that it is appropriate for CCSS not to be regulated under the regimes both for financial services and markets and for postal services?
- 4.3 Do you agree with Postcomm's views on the effects on the universal service of allowing the postal services involved in CCSS to be licensed or excepted?
- 4.4 Do you agree that it is appropriate to provide for the needs of the CCSS by way of an exception, rather than by granting licences for operators seeking to provide the service for CRESTCo?
- 4.5 Have you any other views or comments on this proposed exception?

### DTLR exceptions

- 4.6 Do you agree that ensuring that the electorate has the information it needs in order to vote is of vital importance in a democratic society?
- 4.7 Do you agree that the proposed exception for polling cards in parliamentary, local and other elections is appropriate?
- 4.8 Do you agree that the proposed exception for candidates' communications in Parliamentary elections and elections to the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly is appropriate?
- 4.9 Do you agree with Postcomm's rationale for not extending this exception to local elections?
- 4.10 Do you agree with Postcomm's views on the effects on the universal service of introducing the proposed exceptions?
- 4.11 Do you have any other views or comments on these proposed exceptions?

## Discussion drafts of terms of proposed exceptions

### CRESTCo

Section 6(1) is not contravened by the conveyance, including the incidental functions of receiving collecting and delivering, through any postal service established for the purposes of the Uncertificated Securities Regulations 2001\*, by the operator of a relevant system within the meaning of those regulations, or by any person engaged to provide postal services by that operator, of any letter which is sent –

- (a) for the purposes of –
  - (i) those regulations, or
  - (ii) that operator in the capacity of a recognised clearing house within the meaning of section 285 of the Financial Services and Markets Act 2000, or
- (b) in connection with the holding or transfer of securities within the meaning of section 207 of the Companies Act 1989 or with the grant or exercise of any power or right relating to any such security.

\* It should be noted that the Uncertificated Securities Regulations 2001 have not yet been made and are not in force. Postcomm expects them to come into force during the period of this consultation.

### DTLR

Section 6(1) is not contravened by –

- ( ) the conveyance, including the incidental functions of receiving, collecting and delivering, of poll cards issued under –
  - (a) Rule 28 of the Parliamentary Elections Rules, contained in Schedule 1 to the Representation of the People Act 1983,
  - (b) Paragraph 33 of Schedule 5 to the National Assembly for Wales (Representation of the People) Order 1999<sup>1</sup>,
  - (c) Rule 28 of the Northern Ireland Assembly (Elections) Order 2001<sup>2</sup>,
  - (d) Rule 36 of the Scottish Parliament Election Rules 1986 contained in Schedule 2 to the Scottish Parliament (Elections Etc.) Order 1999<sup>3</sup>,

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<sup>1</sup> S.I 1999 No. 450.

<sup>2</sup> S.I. 2001 No. 2599.

<sup>3</sup> S.I 1999 No. 787.

- (e) Rule 22 in Schedule 2 of the Local Elections (Principal Areas) Rules 1986<sup>4</sup>,
  - (f) Rule 25 of the Local Elections (Northern Ireland) Order 1985,
  - (g) Rule 21 of the Scottish Local Elections Rules 1986, or
- ( ) the conveyance including the incidental functions of receiving collecting and delivering, of communications of the type described in section 91(1)(a) of the Representation of the People Act 1983 for the purpose of elections to –
- (a) Parliament,
  - (b) the National Assembly for Wales,
  - (c) the Scottish Parliament, and
  - (d) the Northern Ireland Assembly.

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<sup>4</sup> S.I. 1986 No 2214.