

# **Postcomm's Consultation Procedures**

Review and modification

**31 July 2003**

## Introduction

1. Postcomm and the stakeholders in the postal services market have now had over two years' experience of decision-making and consultation. During that time, Postcomm's processes have evolved, as have those of our main stakeholders. We have now dealt with a wide range of issues, each requiring very different handling. We believe we need to review our consultation process and ensure that it reflects best practice, and meets the needs of stakeholders. Our consultation processes need to be soundly based, readily understood, fair, efficient and effective. We recognise the difficulty of reconciling these objectives in the eyes of all stakeholders. We have recently been criticised on the one hand for being too slow, and on the other for not allowing sufficient time for consultation.
2. We hope that this review process will result in a clear statement of policy which will command general respect. We need to strike a balance which recognises the different needs of stakeholders and the varying nature of the matters on which we consult. In particular, we need to take account of the interests of customers, balancing their immediate concerns against their long term interest in sound economic regulation and a properly functioning postal services market.
3. In our October 2000 decision document, 'Postcomm's Consultation Procedure', we gave a commitment to review our consultation procedure after gaining experience of how it was working in practice. In the same document, a further commitment was given to review the list of those parties we would formally consult. This second undertaking will be carried out separately to this review.
4. Because of these commitments and the diverging views on the appropriate length of consultations, Postcomm has now decided to review its consultation procedures with a view to ensuring that consultations are conducted efficiently and effectively. We also need

to establish clearer and more detailed guidelines so that people know what to expect when Postcomm consults.

5. We are putting forward proposals for a new consultation policy because we believe that it will give stakeholders a framework on which to focus. The draft reflects the current Cabinet Office guidelines ([www.cabinet-office.gov.uk](http://www.cabinet-office.gov.uk)), Postcomm's experience and our views on the practices of other regulators. In particular, we would like respondents to comment upon:-
  - a) how long we should consult on different types of issues, and
  - b) how we should handle multi-stage consultations.
6. Postcomm will continue to review its consultation procedures from time to time, and will welcome comments on them at any time.
7. Postcomm would like to thank all those who have taken the time and trouble to respond to its consultation documents over the past couple of years. Over 800 people now subscribe to our email news service, whilst our formal consultee list (i.e. those who receive notice of consultation documents) stands at just under 400. However, usually less than 40 of this potential audience of 1200 actually respond to our documents. We are therefore contacting those on our list in order to determine how they would prefer to receive notice of our consultation documents and whether they want to see all of them.
8. This document accordingly sets out possible changes to our consultation procedures on which Postcomm now seeks views.
9. Representations on this consultation document should be sent to – Mark Perlstrom, Postcomm, Hercules House, 6 Hercules Road, London, SE1 7DB. Tel: 020 7593 2133, Fax: 020 7593 2142 or by e-mail: [mperlstrom@psc.gov.uk](mailto:mperlstrom@psc.gov.uk)
10. Postcomm has decided to allow 3 months for representations to be made with a closing date of 3 November 2003. Postcomm would like

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

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# 1. Background

## ***What is Postcomm?***

- 1.1 The Postal Services Act 2000 (the Act) established the Postal Services Commission (Postcomm) as the independent regulatory body for the postal services industry in the United Kingdom. Postcomm's Business Plan, which can be found on its website at [www.postcomm.gov.uk](http://www.postcomm.gov.uk), gives details of its duties, functions, objectives and work plan.

## ***Postcomm's Statutory Duties***

- 1.2 Postcomm's primary duty is to seek to ensure that customers continue to be provided with 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 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, 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.

- 1.6 Postcomm has now been conducting consultations for over two years. Consultations have covered many varied areas, including licensing, policy and competition issues. The experience generated by these consultations has already led to informal changes in procedure. As a result of these consultations and observations on how Postcomm's consultation procedures could be more efficient or effective, Postcomm proposes to revise those procedures.

### ***Purpose of this document***

- 1.7 This document sets out for comment draft revised consultation procedures.

### ***Layout of this document***

- 1.8 Chapter 2 sets out the main proposed changes to Postcomm's consultation procedures. Chapter 3 sets out the new proposals for Postcomm's consultation procedures.

### ***Other Regulators***

- 1.9 In formulating its proposed changes, Postcomm has looked at the consultation processes operated by other regulators, as well as taking account of the Cabinet Office Consultation Guidelines ([www.cabinet-office.gov.uk](http://www.cabinet-office.gov.uk)).
- 1.10 The Gas and Electricity Regulator, OFGEM, tends to adopt relatively short periods for consultation. This reflects the fact that their consultees are generally the companies they regulate, or are consumer bodies with a particular interest in utility issues, and so will often have extensive knowledge and experience of even the most complex topics.
- 1.11 In contrast, both OFWAT, who regulate water companies, and the Office of the Rail Regulator usually allow a 12 week period for consultation. The telecommunications regulator, OFTEL, generally allows a 70 day minimum period.

1.12 Postcomm has taken account of the practices of these other regulators in putting forward these proposals for revising its own consultation process.

## 2. Proposed key changes

2.1 This chapter summarises Postcomm's current consultation process and sets out the key changes to these procedures that Postcomm proposes to implement.

### ***Summary of existing formal procedures and current practice***

2.2 Briefly, Postcomm's formal procedures, set out in October 2000, were as follows:-

- Postcomm consults interested parties before taking important decisions.
- Postcomm publishes a consultation document that is free-of-charge and sent to all interested parties.
- This also goes on its website.
- On complex issues, 12 weeks is allowed for a consultation period. Otherwise eight weeks is allowed.
- On format, Postcomm aims that documents are clear and brief, jargon-free and in plain English. Data sources are given. The purpose of the consultation is outlined in the introductory chapter and a clear deadline given for responses.
- All non-confidential responses are made available.
- The process ends with the publication of a decision document.

2.3 However, experience over the past two and a half years has shown that we have had to depart from these formal procedures in order to allow proper time for consideration of difficult issues. For example, Postcomm consulted on the new price control for Royal Mail via a multi-stage process lasting 18 months. Conversely, we have also found that in some instances, for example where we are consulting on individual standard-terms licences 28 days (the minimum specified in the Act) appeared to satisfy the needs of consultees.

### ***When and how Postcomm will consult – proposed changes***

2.4 Postcomm believes its consultation processes need to be more clearly matched to the nature of the issues concerned. Consequently, the following four types of consultation issue are now proposed, each of which would have its own guidelines (discussed in Chapter 3):-

1. Regulatory policy framework issues.
2. Dominant operator product change proposals and minor licence changes
3. Routine issuing of licences, licence enforcement action and statutory issues.
4. Changes to Postcomm's operational policies and procedures.

Postcomm would expect to deal with any issues falling outside those types by reference to the framework provided for them, and to the Cabinet Office Guidelines.

2.5 Views are now requested on the following key points:-

- ***is it right to have categories?***
- ***are these the right ones?***

- ***have any significant ones been missed?***

### ***Distribution of consultation papers***

- 2.6 Postcomm's practice has been to distribute hard copies of consultation documents to all those on the Postcomm circulation list unless they have indicated, by registering on the e-mail circulation list via the Postcomm website, that they would prefer to receive only electronic copies. This has produced very little response from recipients, suggesting that they do not find it helpful. On that basis, Postcomm considers this practice inefficient in terms of time and cost, and environmentally unfriendly in terms of the amount of paper that is potentially wasted. Unless consultations are very narrowly directed, this is a practice that Postcomm proposes to discontinue. We propose instead to write to all existing consultees and ask them to indicate their interest in our work by topic and their preferred way of receiving our documents.
- 2.7 Thereafter, those who have not indicated that they would like e-mail notification will be sent a letter informing them of the release of a consultation document if it concerns a topic area in which they have expressed an interest, and will be advised how to access a copy of the document on the Internet. Any consultees who wish to see a copy of the consultation document but who do not have access to the Internet will be able to return a postcard included with the letter to Postcomm free of charge, requesting a hard copy of the consultation document.
- 2.8 For consultations that are narrowly focused, Postcomm may decide to send out the consultation document immediately rather than sending out notification first.

2.9 Consultees may indicate a preference to receive consultation documents by e-mail by registering on Postcomm's circulation list via the link on the website, [www.postcomm.gov.uk](http://www.postcomm.gov.uk). Consultees who have indicated such a preference will automatically receive e-mail notification of the release of every consultation document, including a link to the document on the website.

- **Are these proposals acceptable to consultees?**

### **Consultation documents in Welsh**

2.10 Postcomm is currently in the process of preparing its Welsh Language Scheme in accordance with the Welsh Language Act 1993 and expects to have an approved scheme in place this autumn.

### **Regional Meetings**

2.11 Postcomm has made a practice of holding public regional meetings in order to be as inclusive as possible and to take the opportunity to hear a wide range of opinions. Postcomm proposes to continue this practice. Regional meetings are advertised in the local press and, in order to ensure as good an attendance as possible, consultees in the relevant area will be informed.

2.12 Postcomm has found that holding public meetings in the evening appears to be convenient for more people than holding such meetings during the day, but that in many areas the number of members of the public (as opposed to stakeholders) choosing to attend is very limited.

- **Are regional public meetings valued by Postcomm's consultees?**

### ***Further Discussion with Consultees***

2.13 In the past, further discussion with consultees has sometimes been found to be beneficial to the consultation process. Where appropriate, Postcomm proposes to continue to arrange meetings and workshops with interested parties. This will normally be the case for consultations in category 1 (regulatory framework), and will be considered for issues in category 2 (dominant operator proposals) and category 4 (operational policies and procedures) as appropriate. For category 1 consultations, Postcomm proposes to increase the emphasis it places on meetings and workshops. Postcomm does not believe such meetings would be appropriate for consultations in category 3 (routine licence and enforcement action).

- ***Do consultees agree that this is sensible?***

### ***Responses to comments from consultees***

2.14 Currently responses to points made in consultations are given in the decision document on the issue. In order that consultees are aware of how Postcomm has responded to them, Postcomm intends in future to send a hard copy of the decision document to every consultee who provides a substantive response. Postcomm cannot, however, respond individually to all consultees. Consultees are welcome to raise a query with Postcomm if they are concerned that any points they have made do not seem to be addressed in the decision document, and Postcomm will take all reasonable steps to ensure that such queries are answered.

### 3. Proposals for a revised Postcomm consultation procedure

#### *When Postcomm will consult*

- 3.1 Postcomm wishes to consult interested parties before taking important decisions. In some cases, such as new licences and determinations, Postcomm is required to consult. Sometimes consultations will be stand-alone, one-off, exercises. On other occasions the decision making process may be best served by two or more consultation stages.
- 3.2 In deciding what consultation process might be appropriate for a given issue, Postcomm needs to consider both the economic importance of the issue and its significance to customer groups, including vulnerable groups. The aim of a consultation exercise is to gain the considered views of all interested parties. If insufficient time is allowed for interested parties to prepare their contributions this will not be achieved. However, Postcomm needs to ensure it handles decision-making processes in a timely and efficient manner and that the process is proportionate to the issue. All this has to be borne in mind in determining how any individual consultation process is managed.
- 3.3 Postcomm will endeavour to consult those stakeholders with a key interest when it is preparing any public consultation process, and will take account of their views in reaching its decision on how it will proceed.
- 3.4 Postcomm proposes to divide the main classes of issue on which it consults into four categories:-

**Type 1** - Regulatory policy framework issues - such as decisions on market opening, Royal Mail's price control, and Royal Mail's customer compensation scheme.

**Type 2** - Dominant operator product change proposals and minor licence changes - to cover proposed changes to individual Royal Mail

products and minor changes to licences.

**Type 3** - Routine issuing of licences, licence enforcement action and issues covered by statute.

**Type 4** - Changes to Postcomm's operational policies and procedures - such as this current exercise.

3.5 Postcomm needs to establish parameters for the scope of consultations on issues in each of these categories. In each case, Postcomm will make clear how it proposes to proceed at the beginning of the consultation process.

- ***Are there other ways in which Postcomm could give more guidance on how it will treat individual issues?***

3.6 Postcomm will need to maintain sufficient flexibility around its guidelines to modify the proposed consultation process if needed (eg. to allow longer if essential to take account of new developments or major changes, or shorter if necessary to meet a statutory deadline or imperative commercial constraint). However, we propose to set benchmarks as follows:

**Type 1 - Regulatory policy framework issues**

3.7 First, Postcomm will endeavour to allow key stakeholders at least one month to give preliminary views on its draft consultation paper before going out to formal consultation. These discussions would then be followed by a three stage public consultation. Postcomm would generally expect to handle those as follows -

- A first direction-setting consultation setting out issues and possible approaches and the timetable it suggests should be followed (two to three months, depending on complexity)
- A consultation on Postcomm's proposals (two to three months, depending on complexity). At this stage, Postcomm would consult on how it proposes to address the issue, taking account

of the representations made during the first consultation.

- consultation on Postcomm's proposed decision, to pick up any detailed points, or previously unidentified issues (30 days). At this point, Postcomm will issue a final proposals document summarising its emerging conclusions and inviting comments. This third document in the series would:

- summarise the contributions received by Postcomm;
- set out Postcomm's conclusions and decisions;
- set out the text of any licence modification and the documents required to give effect to its decisions; and
- indicate what supporting information Postcomm found to be decisive in reaching its views as set out in the document.

**Type 2 – Dominant operator product change proposals and minor licence changes.**

3.8 First, Postcomm will endeavour to allow key stakeholders at least one a month to give preliminary views on its draft consultation paper before going out to formal consultation. Postcomm believes that for most of these changes a two-stage consultation process will then be appropriate, encompassing a general consultation, followed by the statutory notice period on its proposed decision. The first consultation will vary in length depending on Postcomm's assessment of:-

- the economic importance of the product
- the number and types of customers who would be affected by the proposed changes, and
- whether they would have a particular effect on vulnerable groups.

3.9 In this context, Postcomm recognises that there may be a tension between Royal Mail's legitimate need to respond in a timely way to market pressures, and the need for Postcomm (and Postwatch) to consider the impact of proposed changes on customers and other operators. Postcomm will take account of the extent to which the affected customers have a real choice of provider in the market, and of the extent to which competition is established, in weighing up these factors in each instance.

3.10 Postcomm believes that the time range for this stage of consultation should be one to three months, but also that there may be some issues requiring licence changes which are so trivial as not to require a two-stage consultation, although Postcomm would still give 30 days' notice of its intended decision. These may include such things as:

- a) minor amendments to some of the definitions used within the licence;
- b) consequential changes to the numbering of licence conditions;  
or
- c) cross referencing within the licence to reflect requirements of or changes to other legislation (e.g. the Postal Services Act).

3.11 However, in doing this Postcomm would want to assure itself that Postwatch was content that such changes were indeed trivial, and was in agreement with the changes. It may be possible to agree some examples in advance with Royal Mail Group and Postwatch in order to give a sense of the scale the importance of proposed changes.

On some narrowly focused issues, particularly those falling within Type 2 and impacting mainly on large business customers or organisations with considerable resources, Postcomm may be prepared to undertake a **fast track** consultation process, if all interested parties (including Postwatch) agree.

- ***Would the fast track proposal enhance Postcomm's procedures?***

### **Type 3 – Routine issuing of licences, and licence enforcement action (covered by statute)**

3.12 We propose to continue our current practice and allow 30 days (just over the 28 day statutory minimum) for routine licence consultations, as the format of licences is standardised and has already been consulted on. Because of the time constraints for taking effective action, we also propose to keep to the statutory consultation period (21days) for licence enforcement action, and to follow the requirements of the Act and our policy on financial penalties in imposing any penalty.

### **Type 4 – Changes to Postcomm's operational policies and procedures**

3.13 As in this consultation itself, where Postcomm proposes changes to its operational policies and procedures, we propose normally to allow three months for stakeholders to comment on our proposals.

- ***Do the proposed guidelines for the time to be allowed for each type of consultation seem reasonable in each case?***
- ***Should there be specific benchmarks (such as affected customer numbers or product turnover) to assess the importance of changes for Type 2 issues? If so, what should they be?***

### **Overall Timescales**

3.14 Postcomm is aware that there is a benefit to stakeholders in giving them an indication of the likely total timescale of any project, including any consultation periods. However, Postcomm is aware that in doing so in advance it can only do its best to ensure the timescales are realistic, and that it must maintain sufficient flexibility to make changes if they later turn out to be needed.

3.15 With those provisos, Postcomm proposes to undertake to give stakeholders:

- an indication of the expected total timescales and starting date for major projects within the Forward Work Programme, with a commitment to update it at regular intervals; and
- an estimated total timescale for individual projects involving consultation, at the outset of the project.
- ***Would consultees find this approach helpful?***

3.16 All consultation processes will end with the publication of a decision document, which will set out all the main points raised, and Postcomm's views on them, to the extent that this has not been done in earlier papers on the issues concerned.

3.17 Requests for deadline extensions will be carefully considered. Postcomm will consider both requests for extensions for individual submissions and general extensions of the consultation period. The granting of an extension to a deadline should not be taken for granted. However, Postcomm will do its best to reconcile and meet the needs of stakeholders and to take account of the views of all interested parties, whenever received.

3.18 Postcomm recognises that preparing consultation responses takes time and has to be fitted in with other demands. Consultation documents are, however welcome, an additional burden for the respondent. In its business plan and other documents available through its web site, Postcomm sets out its overall work plans. These will include the likely timings of its main consultation exercises, where known.

### ***How Postcomm will consult***

- 3.19 All consultations will begin with the issue of a consultation document. All consultation documents will be available free of charge and will be posted on the Postcomm web site, [www.postcomm.gov.uk](http://www.postcomm.gov.uk). Postcomm proposes that all consultees who have indicated an interest in the relevant subject area but who have not registered to receive notification via e-mail will be notified of the release of a consultation document by post. All those who have registered will continue automatically to receive notification of all consultations via e-mail.
- 3.20 Postcomm will take all reasonable steps to respond to requests from people with special needs who would like a consultation or decision document made available in a particular format (for example, in Braille, large print, or on audio tape).
- 3.21 The main vehicle for a consultation will be the consultation document. However, Postcomm recognises that individuals or groups may wish to seek clarification or gain a better understanding of why it proposes a certain course of action. Postcomm will be happy to assist this, so far as is practicable, by means of meetings, telephone, e-mail or correspondence. To enable effective communication to take place, each consultation document will give the contact details of a named individual within Postcomm. Consultees should not hesitate to contact Postcomm to discuss issues raised in consultation papers.
- 3.22 Postcomm wants its consultations to be as inclusive as possible and in major consultations will offer more meetings with interested parties to explain its proposals and, at a later stage, its emerging conclusions. We will also continue to visit regional centres, including public meetings and hold discussions with local stakeholders' representatives. Any public meetings will be advertised in the local press and elected representatives and consultees in the local area will be informed. Postcomm would also encourage those representing regional and minority interests to make direct contact so as to make most use of these meetings.

- ***Is there more Postcomm could reasonably do to gather views***

***from interested parties around the UK?***

- 3.23 In cases where Postcomm believes further discussion with consultees would be beneficial to the consultation process, meetings and workshops will continue to be arranged with appropriate parties.
- 3.24 A copy of the decision document will be sent to each consultee who sends a substantive response. Postcomm does not intend to respond individually to consultees unless a consultee has queries about the content of the decision document relating to their comments.

***Who will be consulted?***

- 3.25 Postcomm would like it to be widely known when a consultation exercise is being undertaken. To help achieve publicity, Postcomm's general practice will continue to be to accompany the release of consultation documents with a press release. In addition, the Postcomm web site will be used to highlight that a consultation is underway. Those who have registered for Postcomm's e-mail notification will automatically receive notification of, and a link to, consultation documents on the web site.
- 3.26 There are approximately 1,200 consultees on Postcomm's database. Often, however, consultees have a limited interest in Postcomm's actions. We propose to consult separately with those on Postcomm's database so that consultees who are alerted to consultations by post and who do not want to receive notification of all consultations will be able to opt, via a questionnaire, only to be included in consultations of interest to them.

- ***Do consultees think this arrangement will be helpful?***

***Format of Consultation Documents***

- 3.27 Postcomm consultation documents are intended to be clear and as brief as the issues allow. They will aim to be jargon free, in plain English with a clear format. Acronyms and abbreviations will be explained the first time they are used. The sources of data will be given. Where appropriate, specific questions will be asked to focus consultees' attention on the pertinent points.
- 3.28 The purpose of the consultation will be clearly and concisely explained in the introductory chapter. There will always be a clear deadline for responses and a named person to whom responses should be sent and from whom clarifications can be sought. Where the consultation document is part of a wider decision-making process the timetable for that process will be set out.
- 3.29 A brief and clear summary will be added to the front of complex consultation documents.

### ***Publication of Responses***

- 3.30 Postcomm will make available, through its website and library, copies of all the non-confidential responses it receives. All consultation documents will remind those responding that if they do not want anyone other than Postcomm to read their comments they should clearly mark them as '**Confidential**'. Any consultation responses marked 'confidential' **will not** be made publicly available. All consultation documents will make reference to this fact. Similarly, if a consultee would like their identity withheld but their comments made public, Postcomm will accommodate their wishes. However, Postcomm prefers not to receive anonymous responses as anonymity detracts from the force of a consultation response.

- ***Are consultees content with Postcomm's policy on confidentiality of responses?***