

Enforcement Guidance for considering and investigating complaints in relation to licence contraventions

A consultation document

2 August 2007

SUMMARY

- S.1 The Postal Services Commission (Postcomm) has decided, with the 'Principles of Good Regulation'¹ in mind, to adopt enforcement guidance explaining the procedures that are likely to be followed by Postcomm when considering complaints, investigating and taking enforcement action, and imposing financial penalties in relation to possible licence contraventions.
- S.2 Currently Postcomm does not have a stand alone document setting out its procedures; these are set out in a number of Postcomm documents. The Enforcement Guidance proposed in this consultation document (the Enforcement Guidance) brings together and builds upon previously adopted procedures, offering postal industry stakeholders a greater understanding of Postcomm's general procedures. The proposed Enforcement Guidance 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 and other relevant EC and UK law. The aim of publishing the guidance is to provide transparency to the procedures and to set out for Postcomm, postal operators, postal customers and other postal stakeholders the general principles and approach involved when considering complaints, investigating, taking enforcement action and imposing financial penalties in relation to possible licence contraventions.
- S.3 Some of the procedures set out in the Enforcement 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 Enforcement Guidance on a consistent basis and, in the event that Postcomm decides to depart from the Enforcement Guidance, it will explain its reasons for doing so.
- S.4 This consultation document seeks the views of interested parties on the Enforcement Guidance, which is attached at Annex A to this document.

¹ See paragraph 1.3 below

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CHAPTER 1

INTRODUCTION

Background

- 1.1 Postcomm grants licences to businesses that want to operate and compete in the postal market. Those licences contain conditions that licensees must comply with – if they do not, then Postcomm can investigate potential licence contraventions and make enforcement orders and / or impose financial penalties.
- 1.2 The Postal Services Act 2000 (the Act) sets out the procedures for making an enforcement order or imposing a financial penalty. Currently, Postcomm does not have a stand alone document setting out its procedures when considering complaints, investigating, taking enforcement action and imposing financial penalties in relation to possible licence contraventions. At present, Postcomm’s procedures are detailed in a number of documents.
- 1.3 The Better Regulation Task Force² established five 'Principles of Good Regulation'. In summary, good regulation should be:
 - **Proportionate:** Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
 - **Accountable:** Regulators must be able to justify decisions, and be subject to public scrutiny.
 - **Consistent:** Government rules and standards must be joined up and implemented fairly.
 - **Transparent:** Regulators should be open, and keep regulations simple and user friendly.
 - **Targeted:** Regulation should be focused on the problem, and minimise side effects.

² The Better Regulation Task Force has since become the Better Regulation Executive which is now part of the new [Department for Business, Enterprise and Regulatory Reform](#)

- 1.4 With these principles in mind, Postcomm has decided to consolidate and clarify its enforcement guidance.
- 1.5 The Enforcement Guidance proposed in this consultation document is not a substitute for the Postal Services Act 2000, 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.
- 1.6 The aim of providing the Enforcement Guidance is to provide transparency to the procedures and to set out for Postcomm, postal operators, postal customers and other postal stakeholders the general principles and approach involved when considering complaints, investigating, taking enforcement action and imposing financial penalties in relation to possible licence contraventions.
- 1.7 Some of the procedures set out in the Enforcement 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 Enforcement Guidance on a consistent basis and in the event that Postcomm decides to depart from the Enforcement Guidance, it will explain its reasons for doing so.
- 1.8 The Act requires Postcomm to prepare and publish a 'statement of policy' in relation to imposing a penalty and the amount of the penalty. Postcomm's Statement of policy in relation to financial penalties, fulfilling this requirement, can be found on Postcomm's website.³ Postcomm will be consulting on a revised statement of policy shortly.

³ See http://www.psc.gov.uk/postcomm/live/policy-and-consultations/consultations/postcomm--financial-penalties/Financial_Penalties_Decision.pdf

Postcomm's Statutory Duties

- 1.9 Postcomm must exercise its functions in a manner it considers is best calculated to ensure the provision of a universal postal service.

- 1.10 Postcomm must also act in the way which it considers is best calculated to further 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 or chronically sick, are of pensionable age, are on low incomes and who reside in rural areas.

- 1.11 Postcomm must also exercise its functions in a manner which it considers is best calculated to promote efficiency and economy on the part of postal operators. It must also have regard to the need to ensure that licence holders are able to finance the activities authorised or required by their licences.

CHAPTER 2 CONSULTATION

Responses to the consultation

2.1 Responses should reach Postcomm by 2 November 2007. They can be sent by post, electronically or by fax to:

Michelle Koretz
Postcomm
Hercules House
Hercules Road
London
SE1 7DB

Tel: 020 7593 2160

Fax: 020 7593 2142

Email: michelle.koretz@psc.gov.uk

2.2 If you would like to discuss any points raised in this consultation document please contact Michelle Koretz.

2.3 Postcomm proposes to make public the responses it receives to this consultation document, subject to respecting any requests for confidentiality. If you do not want all or part of your response to this document to be read by anyone outside Postcomm, please ensure that your response 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 organisation or the individual who signed it to be revealed, please indicate this by adding the following: "Name of organisation/sender NOT to be published".

Next steps

- 2.4 Postcomm will consider the responses made to the consultation carefully, and decide whether to make revisions to the Enforcement Guidance as a result. Postcomm aims to finalise and publish the Enforcement Guidance in early 2008.

CHAPTER 3

THE SUBSTANCE OF THE ENFORCEMENT GUIDANCE

Introduction

3.1 Having decided to prepare a stand alone document setting out its procedures when considering complaints, investigating, taking enforcement action and imposing financial penalties in relation to possible licence contraventions, Postcomm considered:

- i) Postcomm's documents which set out complaint handling, investigation, enforcement and imposition of penalty procedures;
- ii) Postcomm's experience of considering complaints, conducting investigations, taking enforcement action and imposing financial penalties; and
- iii) the guidance of other regulators with similar statutory provisions.

Review of Postcomm's documents which set out complaint handling, investigation, enforcement and imposition of penalty procedures

3.2 Postcomm reviewed the following documents:

- The Postal Services Act 2000;
- Postcomm's Statement of Policy in relation to Financial Penalties, February 2002;
- Postcomm's Code of Practice governing the discharge of its functions, May 2002;
- Competitive Market Review, November 2005;
- Memorandum of Understanding between Postcomm and the Office of Fair Trading;
- Postcomm's factsheet "How to complain about your postal service";
- Postcomm's factsheet "Regulation of Royal Mail".

- 3.3 Postcomm also considered the five 'Principles of Good Regulation' established by The Better Regulation Task Force, namely Proportionality, Accountability, Consistency, Transparency and Targeting.
- 3.4 Postcomm found that, generally, all existing guidance in its published documents regarding procedures either set out the statutory requirements, or contained additional procedures adopted by Postcomm that were sensible and should continue to be used by Postcomm. The Enforcement Guidance therefore includes the procedures set out in these documents.

Review of Postcomm's experience of considering complaints, conducting investigations, taking enforcement action and imposing financial penalties in relation to possible licence contraventions

- 3.5 Postcomm has considered the experience it has gained from considering complaints, conducting investigations, taking enforcement action and imposing financial penalties. A selection of recent cases was reviewed and this exercise highlighted a number of additional procedures that Postcomm has been following. Where appropriate, these procedures have also been included in the Enforcement Guidance.

Review of the guidance of other regulators with similar statutory provisions

- 3.6 Postcomm has also considered the policies of other regulators, including the Office of Rail Regulation (ORR), the Water Services Regulation Authority (Ofwat), the Office of Gas and Electricity (Ofgem), the Office of Communications (Ofcom) and the Office of Fair Trading (OFT), and the guidance they offer to their industries in relation to complaint handling, investigations and taking enforcement action. Postcomm recognised comparable issues and looked at where these may be incorporated into Postcomm's own guidance. Postcomm has, where appropriate, reflected what it considers to be 'best practice' in the Enforcement Guidance.

CHAPTER 4

QUESTIONS FOR CONSULTATION

4.1 Postcomm would welcome views generally on the proposed Enforcement Guidance.

4.2 In addition, Postcomm would welcome views in response to the following specific questions:

- i) Is the Enforcement Guidance clear and easy to follow?**
- ii) Are there any issues that you feel are not covered in the Enforcement Guidance, or areas where further elaboration may help?**
- iii) Do you disagree with any of the Enforcement Guidance proposed?**
- iv) Has the Enforcement Guidance enhanced your understanding of the procedures that Postcomm will follow?**
- v) Do you believe that the Enforcement Guidance (or any particular aspect of it) is transparent and aids Postcomm in meeting the five 'Principles of Good Regulation' (see paragraph 1.3 above)?**
- vi) Do you believe that the Enforcement Guidance (or any particular aspect of it) will aid or hinder the timely completion of complaint handling, the conducting of investigations, the taking of enforcement actions and / or the imposing of financial penalties?**

ANNEX A

Proposed Enforcement Guidance for considering and investigating complaints in relation to licence contraventions

INTRODUCTION

1. The Postal Services Commission (Postcomm) has various statutory duties under the Postal Services Act 2000 (the Act). Under the Act, Postcomm has the power to grant licences to allow the conveyance of letters from one place to another. It is also required to ensure that licensees comply with their licences in that, if Postcomm is satisfied that a licence holder is contravening any condition of its licence or is likely to contravene any such condition, Postcomm must take steps to ensure that compliance is secured, except in specified circumstances. When non-compliance is suspected, Postcomm may choose to investigate.
2. Postcomm's work is steered by its commissioners. Between them, they have many years' experience of business, competition, consumer issues, regional matters, mail operations, trade union work, regulation and policy-making, as well as working with government. A description of Postcomm's current commissioners can be found on Postcomm's website.⁴ A number of the decisions described in this Guidance must be made by Postcomm's commissioners, others may be made by Postcomm's staff.⁵ However, for convenience, this Guidance only refers to Postcomm when indicating that a decision will be made.
3. This Guidance describes the enforcement procedures involved for Postcomm when considering complaints, conducting investigations, taking enforcement action and imposing financial penalties in relation to suspected licence contraventions.⁶ In particular, it sets out:
 - what happens before the full investigation procedure;
 - the full investigation and information gathering procedure;
 - the decision making and enforcement action procedure; and
 - what happens after the enforcement procedure
4. The aim of this document is to ensure that all postal industry stakeholders and others understand Postcomm's enforcement procedures when considering complaints, investigating, taking enforcement action and imposing financial penalties in relation to possible licence contraventions. Postcomm believes that published guidance facilitates transparency and consistency.
5. Where enforcement action is necessary and / or Postcomm decides to impose a financial penalty, Postcomm will act in accordance with the requirements set out in the

⁴ See <http://www.psc.gov.uk/about-postcomm/commissioners-and-directors.html>

⁵ A separate document has been published describing the roles and responsibilities of Postcomm's commissioners, chairman, chief executive and directors. See <http://www.psc.gov.uk/postcomm/live/about-postcomm/commissioners-and-directors/Constitution.pdf>

⁶ A separate document has been published describing Postcomm's enforcement policy in relation to investigations into alleged or suspected Postal Services Act 2000 criminal offences. See <http://www.psc.gov.uk/policy-and-consultations/consultations/postcomm--enforcement-policy.html>

Act. When seeking to apply a financial penalty, Postcomm will have regard to its Statement of Policy in relation to Financial Penalties. This policy can be found on Postcomm's website.

6. Postcomm is aware of the need to complete investigations in a timely fashion and will always endeavour to do so. The time it takes to complete an investigation is dependent on the issues being considered. In addition, Postcomm has to take into account the need for due process. However, Postcomm can, when appropriate, take swift enforcement action, through the use of a provisional order if it appears to Postcomm that the licence holder is contravening or is likely to contravene any conditions of its licence and a provisional order is needed (see paragraphs 43 to 49).
7. This Guidance is not a substitute for 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.
8. The aim of providing the Enforcement Guidance is to provide transparency to the procedures and to set out for Postcomm, postal operators, postal customers and other postal stakeholders the general principles and approach involved when considering complaints, investigating, taking enforcement action and imposing financial penalties in relation to possible licence contraventions. Some of the procedures set out in the Enforcement 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 Enforcement Guidance on a consistent basis and, in the event that Postcomm decides to depart from the Enforcement Guidance, it will explain its reasons for doing so.

PRE-FULL INVESTIGATION PROCEDURE

9. There are a number of procedures Postcomm will follow before launching a full investigation into a suspected licence contravention. These are set out below.

Complaints and own-initiative enquiries

10. Postcomm will consider suspected licence contraventions either as a result of a complaint or on its own initiative. It will do so on its own initiative if it identifies a particular issue or believes that a licence holder is not operating as it should in accordance with its licence conditions.
11. Postcomm will only consider complaints that demonstrate or allege a possible contravention of a licence condition. Postcomm will be able to advance the assessment of a complaint more effectively if a complaint:
- specifically refers to the relevant licence condition(s) and provides reasoning as to why a contravention is suspected;
 - includes sufficient factual evidence backing up the allegation, including evidence of harm suffered or expected to be suffered by postal stakeholders; and
 - includes a statement setting out preferences regarding confidentiality of the complaint (see below).
12. Complaints should be sent to:
- Complaints - licence contraventions
Postal Services Commission
Hercules House
Hercules Road
London
SE1 7DB
Email: complaints@psc.gov.uk
13. Before submitting a complaint to Postcomm, complainants should consider whether their complaint relates to an actual or potential contravention or whether it is a commercial dispute (which is not a matter for Postcomm).
14. Postcomm will not necessarily progress all complaints addressed to it. For example, Postcomm will not consider a complaint it believes to be vexatious or a complaint that raises allegations or issues that Postcomm has previously made a clear decision on. Equally, Postcomm will not investigate a complaint that falls within the jurisdiction of another agency or when it is felt that another agency is better placed to handle a complaint. For example, a complaint about a lost mail item should first be directed to the operator handling the item and then, if the matter is still unresolved, to Postwatch, the postal services consumer body. Postcomm will act in accordance with its Memorandum of Understanding with the OFT when it receives a complaint regarding

anti-competitive behaviour. The Memorandum of Understanding can be found on Postcomm's website.

15. As far as financial penalties are concerned, Postcomm cannot impose a penalty unless a notice has been given within six months of a provisional order being imposed (if it is not confirmed and no final order has been made in respect of it), or within three months of a provisional order being confirmed or a final order being made. If Postcomm has not made a provisional or final order or proposed a financial penalty within twelve months from the time of the contravention, it cannot impose a penalty in respect of a licence contravention. Postcomm will consider these provisions in the Act when considering taking forward a complaint.
16. When making a complaint to Postcomm, the complainant should indicate to Postcomm whether it wishes to i) remain anonymous and / or ii) keep any part of the complaint confidential. Postcomm will, as far as possible, act to protect the identity of complainants in the event that they wish to remain anonymous. Postcomm's treatment of confidential information is discussed below.

Preliminary assessments

17. Having received a complaint or identified an issue on its own initiative Postcomm will normally conduct a "preliminary assessment" of the suspected licence contravention. The preliminary assessment is Postcomm's opportunity to ensure that it fully understands the nature of the complaint and the issues involved. The purpose of the preliminary assessment is to decide whether or not to conduct a full investigation and, if the decision is to investigate, to establish the scope of the investigation.
18. Postcomm will normally seek the views of the licence holder in question during the preliminary assessment stage. The licence holder will either be given a non-confidential copy of the complaint or sufficient indication of the nature of the issues involved, in order for it to be able to respond to the matter. Postcomm may also seek to hold meetings with the complainant and / or the licensee that is the subject of the complaint.
19. Information may be gathered during this preliminary assessment in order to clarify the issues involved and obtain evidence relating to the issues alleged. Postcomm may request information formally (under the powers in the Act or licence conditions – see below) or informally. Decisions on whether to use formal powers to require information during the preliminary assessment stage will be taken on a case by case basis.

Full investigations

20. Postcomm may choose to open a full investigation if it can satisfy itself that it has reasonable grounds for suspecting that:
 - there is a continuing contravention of a licence condition;
 - there has been a contravention of a licence condition; or

- there is likely to be a contravention of a licence condition.
21. Whether there are reasonable grounds for suspicion will depend upon Postcomm's assessment of the information available. However, Postcomm will only open a full investigation where it would be an appropriate use of Postcomm's resources to do so. For example, Postcomm may decide not to undertake a full investigation if the issues raised are likely to be considered in a current or planned policy project or work-stream. Therefore a decision by Postcomm not to investigate should not be taken as any statement by Postcomm about the merits of a complaint or own initiative enquiry, unless it is clearly stated otherwise. Postcomm will make decisions about whether to open full investigations on a case by case basis.
 22. If the outcome of the preliminary assessment is to open a full investigation, Postcomm will normally publish on its website a document setting out the likely scope of the investigation and will inform the relevant parties (usually the complainant and the licensee that is the subject of the complaint) that it has opened a full investigation.
 23. Postcomm's ability to gather information does not change between the preliminary assessment and full investigation stages. The key distinction between the stages is that Postcomm, once satisfied that there are reasonable grounds for suspecting a licence contravention, will formally decide whether to take forward a complaint / investigate an issue.
 24. If the outcome of the preliminary assessment is that a full investigation should not be launched, Postcomm will inform the relevant parties of this decision.

INVESTIGATION AND INFORMATION GATHERING PROCEDURE

25. Postcomm will endeavour to complete investigations as soon as practicable. However complainants should be aware that investigations can be complex and generally require detailed information gathering and analysis. The procedure Postcomm will normally follow to gather and analyse information is set out below.

Gathering information

26. Postcomm needs to obtain accurate information during investigations into suspected licence contraventions. Those responding to requests for information should provide accurate information within the timescales requested.

27. Postcomm has been given statutory powers to gather information. Postcomm can serve a notice requiring the production of documents and / or information under Section 47 of the Act. In addition, licences granted by Postcomm contain a provision requiring the licensee to furnish Postcomm with such information as Postcomm may require.

28. Postcomm can informally request information from parties during the course of an investigation. However, delays in the provision of information can have a significant impact on overall timescales of an investigation. Postcomm therefore will generally use its statutory powers or the relevant provision in a postal licence to collect the information and evidence it requires. Postcomm has the power to take enforcement action against businesses that fail to respond to a formal request for information.

29. When the information to be requested is complex, Postcomm may issue the request in draft, allowing for representations to be made on the scope of the information requested and the practicality of providing the information by the deadline provided. After considering any comments, Postcomm will then issue the information requirement with or without amendments. Where the information requested is straightforward, or the information is required quickly, normally Postcomm will not send a draft information requirement for comment.

30. Postcomm will consider requests for an extension for responding to an information requirement on a case by case basis, but expects such requests to be made only in exceptional circumstances. A party seeking an extension would need to demonstrate that there are compelling reasons in order for its extension request to be granted. When an information requirement is issued under Section 47 of the Act it is an offence not to respond in time “without a reasonable excuse”. When an information requirement is issued under a licence condition and is not complied with, Postcomm could find that a contravention of a licence condition has occurred.

31. Postcomm’s powers do not allow it to require documents or information that a person would not be compelled to produce or supply in evidence in civil proceedings. This covers documents and information that are covered by legal professional privilege.

These are communications between a professional legal advisor and their client, or those which are made in connection with, or in contemplation of, legal proceedings, and for the purposes of those proceedings. An example of a privileged communication would be a letter from a person's lawyer to the person advising on licensing issues. Under UK law, the communications of in-house lawyers as well as those of lawyers in private practice can be privileged.

32. If a person thinks that any information he is going to submit relates to his affairs and that publication might seriously and prejudicially affect his interests (confidential information), he should:
- provide two submissions, with the first being the full submission (containing the confidential information), and the second being a non-confidential version of the submission (redacting the confidential information), and
 - give a written explanation as to why the information regarded as confidential by the person should be considered confidential by Postcomm.
33. A blanket claim of 'confidential', marking all information supplied, is unhelpful to both Postcomm and the person submitting the information. Postcomm may need to take a view on what is, and what is not, genuinely confidential and the process of checking these views with the person concerned can be a lengthy and time consuming process.
34. Postcomm will decide whether or not information needs to be published on a case by case basis. If Postcomm proposes to publish information identified as confidential by a person, Postcomm will give prior notice of the proposed action, allowing a reasonable opportunity for the person to make his or her views known. However, if Postcomm considers that the publication of a matter would be in the public interest, Postcomm will publish such information.

Analysis of information

35. Before proposing to make any decision on whether there is, has been or is likely to be a contravention of a licence condition, Postcomm will carefully examine and consider all the information it has obtained during the course of the preliminary assessment and full investigation.

DECISION-MAKING AND ENFORCEMENT ACTION PROCEDURE

A 'minded to' contravention decision

36. If Postcomm is satisfied that a licence holder is contravening or has contravened a licence condition or is likely to contravene a condition of its licence, the licence holder will be sent a 'minded to' decision document, which is, in effect, a proposal of a contravention decision. This document will notify the recipient that Postcomm is minded to decide that there is, has been or is likely to be a contravention of a licence condition. Normally a 'minded to' contravention decision will be served and representations sought and considered before a final order or confirmation of a provisional order and / or financial penalty is proposed.
37. The 'minded to' decision document may be published on Postcomm's website, within a reasonable time from the date the document was served on the licence holder.
38. The licence holder will normally be invited to make written and oral representations. The deadline for making representations will be determined on a case by case basis, taking into account factors such as the length of the 'minded to' decision document and the complexity of the issues set out in the document. As with information requirements, Postcomm will consider requests for extensions for making representations on 'minded to' decision documents on a case by case basis, but expecting only to grant extensions in exceptional circumstances.
39. The licence holder can normally request an oral hearing in order for it to present its representations in person. Oral hearings are not public hearings, only Postcomm and the licence holder will be permitted to attend the hearing.
40. Postcomm will consider any written representations from third parties, made in relation to the published 'minded to' decision document.

A contravention decision

41. Following consideration of any representations made, Postcomm will make a decision as to whether it is satisfied that the licence holder under investigation is or has contravened a licence condition or is likely to contravene a licence condition. A copy of Postcomm's decision document will be served on the licence holder and published on Postcomm's website.

Enforcement action and imposing financial penalties

42. Postcomm has the power to take enforcement action in relation to contraventions of licence conditions and is compelled to do so in some cases. Postcomm also has the discretionary power to impose a financial penalty on a licence holder. When referring to the making of representations in the following paragraphs, Postcomm will normally only allow for written representations to be made (an oral hearing will not be offered, in

contrast to the position in relation to the making of a 'minded to' decision). In addition, when referring to publishing a notice, Postcomm believes that publishing any notice on its website will ensure that it is brought to the attention of persons likely to be affected by its contents.

Making a Provisional Order

43. If Postcomm is not, or not yet, satisfied that a licence holder is contravening or is likely to contravene any conditions of its licence, but it appears to Postcomm that the licence holder is contravening or is likely to contravene any conditions of its licence and a provisional order is needed, Postcomm must make a provisional order that sets out what is needed to ensure compliance.
44. Under the Act, when deciding whether a provisional order is needed, Postcomm will have regard, in particular, to the extent to which any person is likely to sustain loss or damage as a result of the contravention of the licence condition before a final order may be made.
45. In certain circumstances, Postcomm cannot make a provisional order. The Act states that Postcomm must not make a provisional order if it is satisfied that:
 - its statutory duties preclude it from doing so;
 - the licence holder has agreed to take, and is taking, all the steps that Postcomm considers appropriate to secure or facilitate compliance with the condition concerned;
 - the contraventions or apprehended contraventions are trivial; or
 - a provisional order has already been made in respect of the same contravention or apprehended contravention on a licence holder.
46. Postcomm will not issue a 'minded to' decision document before making a provisional order.
47. The provisional order:
 - must require the licence holder to do, or not to do, certain things;
 - takes effect at the time (the earliest practicable) set out in the order; and
 - may be revoked by Postcomm at any time.
48. A provisional order (unless revoked, see below) has effect for no longer than three months. When a provisional order is confirmed, it continues in effect until such time (if any) that Postcomm revokes it.
49. Once Postcomm has made a provisional order, it will gather and analyse further information in order to decide whether it should confirm or revoke the provisional order.

Confirming a Provisional Order

50. Postcomm must confirm a provisional order (with or without modifications) if:
- it is satisfied that a licence holder is contravening, or is likely to contravene, any conditions of its licence; and
 - it considers that the confirmation of that order (with any modifications) is needed for the purpose of securing compliance with the licence condition concerned.
51. Before confirming a provisional order, Postcomm must give notice of the proposed confirmation by serving a notice on the licence holder and Postwatch and a copy of the order proposed to be confirmed and by publishing the notice of the proposed confirmation.
52. Postcomm will publish the notice of the proposed confirmation on Postcomm's website.
53. The notice of the proposed confirmation must state:
- that Postcomm proposes to confirm the provisional order;
 - the effect of the order;
 - which licence condition the order is dealing with;
 - the acts or omissions which Postcomm considers constitute, or would constitute, contraventions of that condition;
 - any other facts which Postcomm considers justify the making of the order; and
 - the period within which representations may be made in relation to the proposed confirmation.
54. The Act states that Postcomm must allow a period of not less than 21 days, starting with the date of publication of the notice, for representations to be made. The actual period allowed in each case for making representations will be determined on a case by case basis.
55. Postcomm will decide whether it must confirm the provisional order having considered the representations made. Postcomm will serve a notice containing the confirmation on the licence holder and Postwatch, and publish the notice on Postcomm's website as soon as practicable after making the order.
56. If, after giving notice of the proposed confirmation of the provisional order, Postcomm decides not to confirm the provisional order, it will give notice of that decision to the licence holder and Postwatch and publish the notice on Postcomm's website.
57. Under the Act, if the proposed provisional order (for confirmation) needs to be modified, there are two alternative procedures depending on whether or not the licence holder consents to the modifications. If the licence holder consents, Postcomm will only give notice of the proposed modifications to Postwatch, whereas if the licence

holder does not consent to the modifications, Postcomm must give notice of the proposed modifications to Postwatch and the licence holder, and publish the notice proposing the modifications.

58. Under the Act, a notice proposing to modify the terms of a provisional order (for confirmation) must set out:

- the proposed modifications;
- the reasons for them; and
- the period within which representations may be made.

59. The Act states that Postcomm must allow a period of not less than 7 days from giving of the notice (when consent is given), or publication of the notice (when consent is not given), for representations to be made. The actual period allowed in each case for making representations will be determined on a case by case basis.

60. Where Postcomm confirms a provisional order it shall continue to have effect until such time (if any) as Postcomm decides to revoke it.

Making a Final Order

61. If Postcomm is satisfied that a licence holder is contravening, or is likely to contravene, any condition of its licence, Postcomm must make a final order that sets out what is needed to ensure compliance.

62. In certain circumstances, Postcomm cannot make a final order. The Act states that Postcomm must not make a final order if it is satisfied that:

- its statutory duties preclude it from doing so;
- the licence holder has agreed to take, and is taking, all the steps that Postcomm considers appropriate to secure or facilitate compliance with the condition concerned; or
- the contraventions or apprehended contraventions are trivial.

63. To make a final order, Postcomm must follow a similar process to that set out above when confirming a provisional order. Before making a final order, Postcomm must serve a notice proposing the final order, together with a copy of the proposed order on the licence holder and Postwatch, and publish the notice of the proposed final order.

64. Postcomm will publish the notice proposing the final order on its website.

65. The notice of the proposed final order must state:

- that Postcomm proposes to make an order;
- the effect of the order;

- which licence condition the order is dealing with;
- the acts or omissions which Postcomm considers constitute, or would constitute, contraventions of that condition;
- any other facts which Postcomm considers justify the making of the order; and
- the period within which representations may be made in relation to the proposed order.

66. The Act states that Postcomm must allow a period of not less than 21 days starting with the date of publication of the notice for representations to be made. The actual period allowed in each will be determined on a case by case basis.

67. Postcomm will decide whether it must make the final order having considered all the representations made. Postcomm will serve a copy of the final order on the licence holder and Postwatch, and publish the notice on Postcomm's website as soon as practicable after making the order.

68. A final order has effect until the time (if any) that Postcomm revokes it.

69. If, after giving notice of the proposed final order, Postcomm decides not to make a final order, it will give notice of that decision. Postcomm will serve a notice on the licence holder and Postwatch, and publish the notice on Postcomm's website as soon as practicable after deciding not to make a final order.

70. Under the Act, if the proposed final order needs to be modified, there are two alternative procedures, depending on whether or not the licence holder consents to the modifications. If the licence holder consents, Postcomm must only give notice of the proposed modifications to Postwatch, whereas if the licence holder does not consent to the modifications, Postcomm must give notice of the proposed modifications to Postwatch and the licence holder, and publish the notice proposing the modifications. In both cases Postcomm must consider any representations made in accordance with the notice. In the interest of transparency, Postcomm however will normally give notice of the proposed modifications to Postwatch and the licence holder, and publish the notice proposing the modifications.

71. Under the Act, a notice proposing to modify a proposed final order must set out:

- the proposed modifications;
- the reasons for them; and
- the period within which representations may be made.

72. The Act requires that Postcomm allows a period of not less than 7 days from giving the notice (when consent is given), or publication of the notice (when consent is not given), for representations to be made. The actual period allowed in each case for making representations will be determined on a case by case basis.

73. If, after giving notice of the proposed modifications, Postcomm decides not to make the final order, it will give notice of that decision. Under the Act, in the case of consent, notice must be given to the licence holder and Postwatch, whereas, if there is no consent, notice must be given to the licence holder and Postwatch and the notice must be published on Postcomm's website.

Imposing a Financial Penalty

74. If Postcomm is satisfied that a licence holder has contravened or is contravening any conditions of its licence, Postcomm may impose a reasonable penalty.

75. The Act states that Postcomm may impose a penalty in respect of a contravention of a licence condition irrespective of whether it has made or may make a final or provisional order in respect of that contravention.

76. Postcomm must prepare and publish a Statement of Policy in relation to Financial Penalties and then have regard to that Statement of Policy when deciding whether to impose a penalty and when determining the amount of the penalty. Postcomm's Statement of Policy in relation to Financial Penalties can be found on its website.

77. Before imposing a penalty, Postcomm must give notice of the proposed penalty by serving a notice on the licence holder and Postwatch and publishing the notice.

78. Postcomm will publish the notice proposing the penalty on its website.

79. The proposed penalty notice must state:

- that Postcomm proposes to impose a penalty;
- the amount of the proposed penalty;
- the condition which Postcomm is satisfied has been contravened or is being contravened;
- the acts or omissions which Postcomm considers constitute the contravention;
- any other facts which Postcomm considers justify the imposition of a penalty and the amount of the proposed penalty;
- the manner in which, and place at which, it is proposed to require the penalty to be paid; and
- the period within which representations may be made in relation to the proposed penalty.

80. The Act states that Postcomm must allow a period of not less than 21 days, starting with the date of publication of the notice for representations, to be made. The actual period allowed in each case will be determined on a case by case basis.

81. Following consideration of the representations made, if Postcomm wishes to vary the amount of the penalty set out in the notice of proposed penalty:
- the licence holder must consent; or
 - Postcomm must give notice of the proposed variation (to the licence holder and Postwatch and by publishing the notice), and consider any representations made in accordance with the notice.
82. To give notice of a proposed variation, the notice must state:
- the proposed variation;
 - the reasons for it; and
 - the period within which representations may be made in relation to the proposed variation.
83. The Act states that Postcomm must allow a period of not less than 7 days, starting with the date of publication of the notice, for representations to be made. The actual period allowed in each case will be determined on a case by case basis.
84. After giving notice of the proposed penalty, or giving notice of a proposed variation, Postcomm will give notice of its decision either to impose a penalty or not to impose a penalty by serving a notice on the licence holder and Postwatch and publishing the notice on Postcomm's website.
85. When giving notice of a decision to impose a penalty, the notice will state:
- that Postcomm has imposed a penalty on the licence holder;
 - the amount of the penalty;
 - the condition which Postcomm is satisfied has been contravened or is being contravened;
 - the acts or omissions which Postcomm considers justify the imposition of a penalty and the amount of the penalty;
 - the manner in which, and place at which, the penalty is required to be paid; and
 - the date or dates, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty or (as the case may be) different portions of it are required to be paid.
86. If the licence holder wishes to apply to Postcomm for a different deadline for payment of all or part of the penalty, it must do so within 21 days of the service of the notice.

POST-ENFORCEMENT PROCEDURE

Failure to comply with an order / penalty notice

87. If a licence holder fails to comply with an enforcement order it may be enforced by civil proceedings brought by Postcomm. It is possible for any person affected by a licence holder's failure to comply with such an order to bring an action against the licence holder if he or she has suffered loss or damage as a result of that failure.

88. If a financial penalty has been imposed and all or part of it has not been paid by the date required (and no appeal has been made or if it has, has been concluded), then Postcomm may recover from the licence holder any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to Postcomm.

Revocation of an order

89. Postcomm is also able to revoke a confirmed provisional order and a final order. Postcomm must give notice of the proposed revocation by serving a copy of the notice on the licence holder and Postwatch, and by publishing the notice. It must also consider any representations made.

90. A revocation notice must state that:

- Postcomm proposes to revoke the order;
- the effect of the proposed revocation;
- the period within which representations may be made in relation to the proposed revocation.

91. The Act states that Postcomm must allow a period of not less than 21 days, starting with the date of publication of the notice for representations to be made. The actual period allowed in each case for making representations will be determined on a case by case basis, but will not be less than the required 21 days.

Appeals

92. If a licence holder to whom a final or provisional order relates is aggrieved by the order and wants to question its validity it may apply to the court. The Act set out the grounds upon which the validity may be questioned. An application must be made within 42 days of the order being served on the licence holder. If an application has been made, the licence holder will not be required to comply with the order until the application has been determined, withdrawn or otherwise dealt with.

93. Equally, if a licence holder is aggrieved by the imposition of a penalty, the amount of a penalty, or the date by which the penalty is required to be paid, it may apply to the court. The court may quash the penalty, substitute the penalty (for a lesser amount) or

substitute the date by which the penalty must be paid if it is satisfied that it is appropriate to do so and is satisfied of certain grounds set out in the Act. An application must be made within 42 days of notification. If an application has been made, the licence holder will not be required to pay until the application has been determined, withdrawn or otherwise dealt with.

ANNEX

Sections 22 to 37 of the Postal Services Act 2000

Enforcement orders

Final orders.

22. - (1) If the Commission is satisfied that a licence holder-

- (a) is contravening any condition of his licence, or
- (b) is likely to contravene any such condition,

the Commission shall by order make such provision as is needed for the purpose of securing compliance with the condition.

(2) An order under subsection (1)-

- (a) shall require the licence holder to do, or not to do, such things as are specified in the order or are of a description so specified,
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order, and
- (c) may be revoked at any time by the Commission.

(3) An order under subsection (1) shall have effect until such time (if any) as the Commission revokes it.

(4) This section is subject to section 25.

(5) In this Act "final order" means an order under this section.

Provisional orders.

23. - (1) If-

- (a) the Commission is not satisfied that a licence holder is contravening any condition of his licence or is likely to contravene any such condition, but
- (b) the requirements in subsection (2) are met,

the Commission shall by order make such provision as it considers is needed for the purpose of securing compliance with the licence condition.

(2) The requirements are that it appears to the Commission-

- (a) that the licence holder is contravening any condition of his licence or is likely to contravene any such condition, and
- (b) that an order under subsection (1) is needed.

(3) In deciding whether an order under subsection (1) is needed the Commission shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage as a result of anything likely to be done or omitted in contravention of the licence condition before a final order may be made.

(4) An order under subsection (1)-

- (a) shall require the licence holder to do, or not to do, such things as are specified in the order or are of a description so specified,
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order, and
- (c) may be revoked at any time by the Commission.

(5) An order under subsection (1) shall, subject to any earlier revocation by the Commission, have effect for such period not exceeding three months as is determined by or under the order and which starts when the order takes effect.

(6) An order under subsection (1) shall not be made in any case where a previous such order has been made in respect of the same contravention or apprehended contravention by the licence holder.

(7) This section is subject to section 25.

(8) In this Act “provisional order” means an order under this section.

Confirmation of provisional orders.

24. - (1) The Commission shall confirm a provisional order (with or without modifications) if-

- (a) it is satisfied that the licence holder is contravening any condition of his licence or is likely to contravene any such condition, and
- (b) it considers that confirmation of the order (with any modifications) is needed for the purpose of securing compliance with the condition.

(2) Where the Commission confirms a provisional order under subsection (1), the order continues to have effect until such time (if any) as the Commission revokes it.

(3) This section is subject to section 25.

Exceptions from duty to make or confirm enforcement orders.

25. The Commission shall not make a final order or make or confirm a provisional order if it is satisfied that-

- (a) the duties imposed on it by sections 3 and 5 preclude it from doing so,
- (b) the licence holder has agreed to take and is taking all the steps that the Commission considers appropriate to secure or facilitate compliance with the condition concerned, or
- (c) the contraventions or apprehended contraventions are trivial.

Enforcement orders: main procedural requirements.

26. - (1) Before making a final order or confirming a provisional order, the Commission shall-

- (a) give notice of the proposed order or confirmation, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(2) The notice shall state-

- (a) that the Commission proposes to make or confirm the order,
- (b) the effect of the order,
- (c) the condition for the purpose of securing compliance with which the order is to be made or confirmed,
- (d) the acts or omissions which the Commission considers constitute or would constitute contraventions of that condition,
- (e) any other facts which the Commission considers justify the making or confirmation of the order, and
- (f) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed order or confirmation.

(3) A notice under subsection (1) shall be given by-

- (a) serving on the licence holder and the Council a copy of the notice and a copy of the order proposed (or proposed to be confirmed), and
- (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(4) As soon as practicable after making a final order, or making or confirming a provisional order, the Commission shall-

- (a) serve a copy of the order on the licence holder and the Council, and
- (b) publish the order in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(5) This section has effect subject to section 27.

Enforcement orders: further procedural requirements.

27. - (1) The Commission shall not make a final order with modifications, or confirm a provisional order with modifications, unless-

- (a) the licence holder consents to the modifications and the Commission complies with the requirements of subsection (2), or
- (b) the Commission complies with the requirements of subsection (3).

(2) The requirements of this subsection are that the Commission shall-

- (a) give notice of the proposed modifications to the Council, and

- (b) consider any representations made in accordance with the notice and not withdrawn.
- (3) The requirements of this subsection are that the Commission shall-
 - (a) give notice of the proposed modifications, and
 - (b) consider any representations made in accordance with the notice and not withdrawn.
- (4) A notice under subsection (2) or (3) shall state-
 - (a) the proposed modifications,
 - (b) the reasons for them, and
 - (c) the period (not less than 7 days starting with the date of the giving of the notice under subsection (2) or (as the case may be) the publication of the notice under subsection (3)) within which representations may be made in relation to the proposed modifications.
- (5) Before revoking a final order or a provisional order which has been confirmed, the Commission shall-
 - (a) give notice of the proposed revocation, and
 - (b) consider any representations made in accordance with the notice and not withdrawn.
- (6) The notice shall state-
 - (a) that the Commission proposes to revoke the order,
 - (b) the effect of the proposed revocation, and
 - (c) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed revocation.
- (7) As soon as practicable after revoking a final order or a provisional order which has been confirmed, the Commission shall give notice of the revocation.
- (8) If, after giving notice under section 26(1) or subsection (3) or (5) of this section, the Commission decides not to make a final order or confirm a provisional order or (as the case may be) revoke the order, it shall give notice of that decision.
- (9) If, after giving notice under subsection (2), the Commission decides not to make a final order or confirm a provisional order, it shall give notice of that decision to the licence holder concerned and the Council.
- (10) A notice under subsection (2) shall be given by serving a copy of the notice on the Council and a notice under subsection (9) shall be given by serving a copy of the notice on the licence holder and the Council.
- (11) Any other notice under this section shall be given by-
 - (a) serving a copy of the notice on the licence holder and the Council, and

- (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

Validity of enforcement orders.

28. - (1) This section applies if a licence holder to whom a final or provisional order relates is aggrieved by the order and wants to question its validity on the ground that-

- (a) its making or confirmation was not within the powers conferred by section 22, 23 or (as the case may be) 24, or
- (b) any of the requirements of sections 26 and 27 have not been complied with in relation to the making or confirmation of the order.

(2) The licence holder may apply to the court.

(3) If a copy of the order as made or confirmed was served on the licence holder the application to the court shall be made within the period of 42 days starting with the day on which the copy was served on the licence holder.

(4) On an application under this section the court may quash the order or any provision of it if the court considers it appropriate to do so and is satisfied that-

- (a) the making or confirmation of the order was not within the powers conferred by section 22, 23 or (as the case may be) 24, or
- (b) any of the requirements of sections 26 and 27 have not been complied with in relation to the making or confirmation of the order and the interests of the licence holder have been substantially prejudiced by the non-compliance.

(5) Where an application has been made under this section, the licence holder concerned shall not be required to comply with the order to which the application relates until the application has been determined, withdrawn or otherwise dealt with; and section 29 shall be construed accordingly.

(6) Except as provided by this section, the validity of a final or provisional order shall not be questioned in any legal proceedings.

(7) In this section "the court" means,

- (a) in relation to England and Wales or Northern Ireland, the High Court,
- (b) in relation to Scotland, the Court of Session.

Effect of enforcement orders.

29. - (1) The licence holder to whom a final or provisional order relates shall have a duty to comply with it.

(2) The duty shall be owed to any person who may be affected by a contravention of the order.

(3) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(4) In any proceedings brought against a licence holder under subsection (3) it shall be a defence for the licence holder to show that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(5) Compliance with a final or provisional order shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.

(6) Subsection (5) shall not prejudice any right that a person may have by virtue of subsection (3) to bring civil proceedings for contravention or apprehended contravention of a final or provisional order.

Financial penalties

Financial penalties.

30. - (1) If the Commission is satisfied that a licence holder-

- (a) has contravened any condition of his licence, or
- (b) is contravening any such condition,

the Commission may impose on the licence holder a penalty of such amount as is reasonable.

(2) No such penalty shall exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).

(3) The Commission may impose a penalty under this section in respect of a contravention of a licence condition irrespective of whether it has made or may make a final or provisional order in respect of that contravention.

Statement of policy in relation to penalties.

31. - (1) The Commission shall prepare and publish a statement of policy in relation to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, the Commission shall have regard to the statement of policy which was most recently published at the time when the contravention concerned occurred.

(3) The Commission may revise its statement of policy and, where it does so, it shall publish the revised statement.

(4) Publication under this section shall be in such manner as the Commission considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) The Commission shall consult the Council and such other persons as it considers appropriate when preparing or revising its statement of policy.

Imposition of penalties: main procedural requirements.

32. - (1) Before imposing a penalty under section 30, the Commission shall-

- (a) give notice of the proposed penalty, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(2) The notice shall state-

- (a) that the Commission proposes to impose a penalty,
- (b) the amount of the proposed penalty,
- (c) the condition which the Commission is satisfied has been contravened or is being contravened,
- (d) the acts or omissions which the Commission considers constitute the contravention,
- (e) any other facts which the Commission considers justify the imposition of a penalty and the amount of the proposed penalty,
- (f) the manner in which, and place at which, it is proposed to require the penalty to be paid, and
- (g) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed penalty.

(3) As soon as practicable after imposing a penalty, the Commission shall give notice of the penalty.

(4) The notice shall state-

- (a) that the Commission has imposed a penalty on the licence holder,
- (b) the amount of the penalty,
- (c) the condition which the Commission is satisfied has been contravened or is being contravened,
- (d) the acts or omissions which the Commission considers constitute the contravention,
- (e) any other facts which the Commission considers justify the imposition of a penalty and the amount of the penalty,
- (f) the manner in which, and place at which, the penalty is required to be paid, and
- (g) the date or dates, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty or (as the case may be) different portions of it are required to be paid.

(5) The licence holder may, within 21 days of the date of service on him of a notice under subsection (3), apply to the Commission for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.

(6) A notice under this section shall be given by-

- (a) serving a copy of the notice on the licence holder and the Council, and
- (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(7) This section has effect subject to section 33.

Penalties: further procedural requirements.

33. - (1) The Commission shall not vary the proposed amount of a penalty as stated in a notice under section 32(1) unless-

- (a) the licence holder consents to the variation, or
- (b) the Commission complies with the requirements of subsection (2).

(2) The requirements are that the Commission shall-

- (a) give notice of the proposed variation, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(3) The notice shall state-

- (a) the proposed variation,
- (b) the reasons for it, and
- (c) the period (not less than 7 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed variation.

(4) If, after giving notice under section 32(1) or subsection (2) of this section, the Commission decides not to impose a penalty, it shall give notice of that decision.

(5) A notice under this section shall be given by-

- (a) serving a copy of the notice on the licence holder and the Council, and
- (b) publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

Time-limits on the imposition of penalties.

34. - (1) No penalty shall be imposed under section 30 in respect of a contravention of a licence condition-

- (a) where a provisional order has been made but not confirmed in respect of the contravention and no final order has been made in respect of it, unless a copy of the notice under section 32(1) has been served on the licence holder no later than six months starting with the date on which the provisional order was made,
- (b) where a provisional order has been confirmed or a final order made in respect of the contravention, unless a copy of the notice under section 32(1) has been served

on the licence holder no later than three months starting with the date on which the order was confirmed or (as the case may be) made.

(2) No penalty shall be imposed under section 30 in respect of a contravention of a licence condition for which no provisional or final order has been made unless a copy of the notice under section 32(1) has been served on the licence holder within twelve months from the time of the contravention.

Interest and payments by instalment.

35. - (1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.

(2) Where an application has been made under section 32(5), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.

(3) If a portion of a penalty has not been paid by the date required for it, the Commission may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid to be paid immediately.

Appeals.

36. - (1) This section applies if a licence holder on whom a penalty is imposed under section 30 is aggrieved by-

- (a) the imposition of the penalty,
- (b) the amount of the penalty, or
- (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.

(2) The licence holder may apply to the court.

(3) If a copy of the notice under section 32(3) was served on the licence holder, the application to the court shall, subject to subsection (4), be made within the period of 42 days starting with the day on which the copy was served on the licence holder.

(4) If the application relates to a decision of the Commission on an application by a licence holder under section 32(5), the application to the court shall be made within the period of 42 days starting with the day on which the licence holder is notified of the decision.

(5) On an application under this section, the court may-

- (a) quash the penalty,
- (b) substitute a penalty of such lesser amount as the court considers appropriate, or
- (c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the Commission an alternative date or dates,

if it considers it appropriate to do so and is satisfied of one or more of the grounds mentioned in subsection (6).

(6) The grounds are-

- (a) that the imposition of the penalty was not within the powers of the Commission under section 30,
- (b) that any of the requirements of section 32 or 33 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance,
- (c) that it was unreasonable of the Commission to require the penalty to be paid by the date concerned or (as the case may be) to require portions of it to be paid by the dates concerned.

(7) Where an application has been made under this section, the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.

(8) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers appropriate.

(9) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.

(10) Except as provided by this section, the validity of a penalty shall not be questioned in any legal proceedings.

(11) In this section “the court” means-

- (a) in relation to England and Wales or Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Court of Session.

Recovery of penalties.

37. Where a penalty imposed under section 30, or any portion of such a penalty, has not been paid by the date on which it is required to be paid and-

- (a) no application relating to the penalty has been made under section 36 during the period within which such an application may be made, or
- (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the Commission may recover from the licence holder any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the Commission.