



# Postal Services Act 2011

## 2011 CHAPTER 5

An Act to make provision for the restructuring of the Royal Mail group and about the Royal Mail Pension Plan; to make new provision about the regulation of postal services, including provision for a special administration regime; and for connected purposes. [13th June 2011]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### RESTRUCTURING OF ROYAL MAIL GROUP

##### *Removal of existing statutory restrictions on ownership*

#### **1 Removal of restrictions on ownership of Royal Mail Holdings plc etc**

- (1) Sections 65 to 67 of the Postal Services Act 2000 (which contain restrictions on the issue and transfer of shares and share rights in Royal Mail Holdings plc and its relevant subsidiaries) are repealed.
- (2) But see section 4 of this Act (which imposes restrictions on the issue and transfer of shares and share rights in a Post Office company etc).

#### **Commencement Information**

- II** S. 1 in force at 20.12.2011 by [S.I. 2011/3044](#), [art. 2](#)

*Status: Point in time view as at 06/04/2012. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Postal Services Act 2011. (See end of Document for details)*

## Ownership of the Royal Mail

### 2 Report on decision to dispose of shares in a Royal Mail company etc

- (1) This section applies where the Secretary of State—
  - (a) has decided to undertake a particular kind of relevant disposal, or
  - (b) has decided that another person may undertake a particular kind of relevant disposal.
- (2) As soon as reasonably practicable after making the decision, the Secretary of State must lay before Parliament a report on the proposed disposal.
- (3) The report must state—
  - (a) the kind of relevant disposal intended to be undertaken,
  - (b) the expected time-scale for undertaking it, and
  - (c) the objective intended to be achieved by the undertaking of it.
- (4) The report must—
  - (a) contain information about the expected commercial relationship, after the proposed disposal, between the Royal Mail company in question and any Post Office company, and
  - (b) if the proposed disposal would result in shares or share rights being owned by or on behalf of an employee share scheme for the first time, give details of the scheme.

In paragraph (b) “employee share scheme” has the meaning given by section 3.
- (5) In this Part “relevant disposal” means—
  - (a) the issue or transfer of shares in a company the effect of which is to reduce the proportion of a Royal Mail company owned by the Crown, or
  - (b) the issue or transfer of share rights to a person the effect of which would be, if the shares to which the share rights relate were issued or transferred to the person, to reduce the proportion of a Royal Mail company owned by the Crown.
- (6) In this Part “Royal Mail company” means a company that—
  - (a) provides a universal postal service, and
  - (b) is or has at any time been in the same group as—
    - (i) the original holding company, or
    - (ii) another company that is or has at any time been a Royal Mail company.

#### Commencement Information

**I2** S. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 3 Employee share scheme

- (1) The Secretary of State must ensure that arrangements are made, before the time at which the first relevant disposal is made in relation to a Royal Mail company, for the establishment of an employee share scheme.

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- (2) Those arrangements must secure that if at any time the proportion of the company owned by the Crown is reduced to nil, the proportion of the company owned by or on behalf of the employee share scheme is at that time (or has before that time been) at least 10%.
- (3) If any shares or shares rights have been transferred under the employee share scheme to beneficiaries of the scheme, the shares or share rights are to be regarded for the purposes of subsection (2) as if they are still owned by or on behalf of the scheme.
- (4) “Employee share scheme” means a scheme for encouraging or facilitating the holding of shares or share rights in the company (or companies in the same group as the company) by or for the benefit of persons who are or include employees of the company.

#### Commencement Information

**I3** S. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Ownership of the Post Office*

#### **4 Restrictions on issue and transfer of shares and share rights in a Post Office company etc**

- (1) No disposal of the Crown's interest in a Post Office company may be made other than a disposal that—
  - (a) is made pursuant to a direction under subsection (2), or
  - (b) is authorised under subsection (3).
- (2) The Secretary of State may by order—
  - (a) direct a Post Office company (if it is wholly owned by the Crown) to issue shares or share rights to a relevant mutual, or
  - (b) direct a company wholly owned by the Crown to transfer shares or share rights in a Post Office company to a relevant mutual.
- (3) A disposal of the Crown's interest in a Post Office company is authorised under this subsection if—
  - (a) the disposal is by way of an issue or transfer of shares or share rights in a Post Office company to a relevant mutual, and
  - (b) the Secretary of State has by order approved the issue or transfer.
- (4) An order under subsection (2) or (3)(b) is subject to affirmative resolution procedure.
- (5) No disposal of a relevant mutual's interest in a Post Office company may be made other than a disposal to—
  - (a) another relevant mutual,
  - (b) the Secretary of State or the Treasury (or a nominee of either of them), or
  - (c) a company wholly owned by the Crown.
- (6) Any disposal in contravention of subsection (1) or (5) has no effect.
- (7) For the meaning of “Post Office company” and “relevant mutual”, see sections 6 and 7.

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- (8) In this section any reference to a disposal of a person's interest in a Post Office company is to—
- (a) the issue or transfer of shares in a company the effect of which is to reduce the proportion of the Post Office company owned by the person, or
  - (b) the issue or transfer of share rights to a person the effect of which would be, if the shares to which the share rights relate were issued or transferred to the person, to reduce the proportion of the Post Office company owned by the person.

**Commencement Information**

**I4** S. 4 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**5 Report on transfer of interest in a Post Office company to a relevant mutual**

- (1) This section applies where the Secretary of State proposes to make an order under section 4(2) or (3)(b) (order directing or approving issue or transfer of shares or share rights in a Post Office company to a relevant mutual).
- (2) The Secretary of State must lay before Parliament a report on the proposed issue or transfer before making the order.
- (3) The report must—
  - (a) give details of the proposed issue or transfer (including the expected time-scale for the issue or transfer),
  - (b) name the body to whom shares or share rights are proposed to be issued or transferred, and
  - (c) explain how that body meets the conditions set out in section 7.

**Commencement Information**

**I5** S. 5 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**6 Meaning of “Post Office company”**

- (1) In this Part “Post Office company” means a company that—
  - (a) is engaged in the provision of post offices,
  - (b) is or has at any time been—
    - (i) a subsidiary of the original holding company, or
    - (ii) in the same group as a company that is or (as the case may be) was at that time designated under this section, and
  - (c) is designated for the purposes of this subsection by order made by the Secretary of State.
- (2) A company may be designated only if, immediately before it is designated, it is wholly owned by the Crown.
- (3) An order under subsection (1) may not be amended or revoked.

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- (4) An order under section 93 that appoints a day for the commencement of section 1 (removal of restrictions on ownership of Royal Mail Holdings plc etc) may not be made unless Post Office Limited (registered number 02154540) has been designated under subsection (1).

#### Commencement Information

**I6** S. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 7 Meaning of “relevant mutual”

- (1) In section 4 “relevant mutual” means a body in respect of which the Secretary of State considers that conditions A to C are (and will continue to be) met.
- (2) Condition A is that the purpose (or main purpose) for which the body exists is to act for the public benefit by promoting the use by the public of services provided by a Post Office company or at its post offices.
- (3) Condition B is that the members of the body are—
  - (a) persons who have an interest in the use by the public of such services (including employees of the Post Office company and other persons engaged in the provision of its post offices), or
  - (b) persons who act on behalf of, or represent, persons within paragraph (a).
- (4) Condition C is that the body has in place arrangements for the prevention of disposals of property or rights by the Post Office company that would be inconsistent with the purpose (or main purpose) for which the body exists.

#### Commencement Information

**I7** S. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Transfer of property etc*

### 8 Transfer schemes

- (1) The Secretary of State, or the original holding company (if it is wholly owned by the Crown), may make one or more transfer schemes.
- (2) A “transfer scheme” is a scheme for the transfer of property, rights or liabilities (or the creation of interests, rights or liabilities)—
  - (a) between companies within subsection (3), or
  - (b) between—
    - (i) a company within subsection (3), and
    - (ii) the Secretary of State or the Treasury (or a nominee of either of them) or a company wholly owned by the Crown.
- (3) A company is within this subsection if—
  - (a) it is the original holding company or a subsidiary of that company, and
  - (b) it is wholly owned by the Crown.

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- (4) A transfer scheme made by the original holding company has effect—
  - (a) only if approved by the Secretary of State, and
  - (b) subject to any modifications made by the Secretary of State.
- (5) The Secretary of State must consult the original holding company—
  - (a) before making a transfer scheme, and
  - (b) before making any modifications of a transfer scheme made by the company.
- (6) The Secretary of State may direct the original holding company (if it is wholly owned by the Crown) to make a transfer scheme in accordance with the direction.
- (7) Schedule 1 contains further provision about transfer schemes.
- (8) Nothing in that Schedule is to be read as restricting the provision that may be contained in transfer schemes.
- (9) A company within subsection (3) must provide the Secretary of State with any information or other assistance that the Secretary of State may reasonably require for the purposes of, or in connection with, the exercise of any power under this section or that Schedule.
- (10) That duty overrides any contractual or other requirement to keep information in confidence.
- (11) That duty is enforceable in civil proceedings by the Secretary of State—
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

#### **Commencement Information**

**18** S. 8 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## **9 Transfer of employees otherwise than under transfer scheme**

- (1) This section applies if an agreement between companies within subsection (3) provides for the transfer from one to the other of rights and liabilities under contracts of employment.
- (2) This section also applies if—
  - (a) employees of a company within subsection (3) (“company A”) are provided to another company within that subsection (“company B”),
  - (b) an agreement between the companies provides for the employees to cease to be provided to company B, and
  - (c) company B intends to employ the employees.
- (3) A company is within this subsection if—
  - (a) it is the original holding company or a subsidiary of that company, and
  - (b) it is wholly owned by the Crown.
- (4) At any time before the agreement comes into force, the Secretary of State may—

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- (a) in a case within subsection (1), designate any contract of employment the rights and liabilities under which are to be transferred under the agreement, and
  - (b) in a case within subsection (2), designate any employee of company A who is provided as mentioned in subsection (2)(a).
- (5) The designation may specify or describe the contracts of employment or employees.
- (6) On the coming into force of the agreement, the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply in relation to—
- (a) the transfer of designated contracts of employment, and
  - (b) the cessation of the provision of designated employees to company B,
- whether or not the agreement would otherwise be regarded for the purposes of those regulations as giving rise to a relevant transfer.
- (7) Where by virtue of the agreement a designated employee of a company within subsection (3) (“the transferor”) becomes an employee of another company within that subsection (“the transferee”)—
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and
  - (b) the transfer to the transferee is not to be treated as a break in service.

**Commencement Information**

**I9** S. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**10 Taxation provisions relating to re-structuring**

Schedule 2 contains taxation provisions.

**Commencement Information**

**I10** S. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Supplementary provisions*

**11 Annual report on post office network**

- (1) A Post Office company must send to the Secretary of State each year a report on its network of post offices.
- (2) The report must give details of—
- (a) the number and location of the company's post offices in England, Wales, Scotland and Northern Ireland,
  - (b) the postal services, the services provided under arrangements with a government department and the other services that are provided at those post offices, and
  - (c) the accessibility of those post offices to users of those services.

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- (3) In subsection (2)(b) the reference to postal services includes postal services provided pursuant to arrangements made with a person who provides a universal postal service.
- (4) The report must, in particular, provide information about the accessibility of the company's post offices to—
  - (a) individuals living in rural areas,
  - (b) individuals living in urban areas,
  - (c) small businesses,
  - (d) disadvantaged individuals,
  - (e) individuals with low incomes,
  - (f) individuals with disabilities, and
  - (g) elderly individuals.
- (5) The report must contain such other information as the Secretary of State may from time to time require.
- (6) The Secretary of State must lay a copy of the report before Parliament.
- (7) The Secretary of State must give a copy of the report to—
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) the Office of the First Minister and deputy First Minister in Northern Ireland.
- (8) A Post Office company's duties under this section are enforceable in civil proceedings by the Secretary of State—
  - (a) for an injunction,
  - (b) for specific performance under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

#### **Commencement Information**

**III** [S. 11](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## **12 Annual report on postal museum collection and archive**

- (1) A Royal Mail company must send to the Secretary of State each year a report on its activities in relation to—
  - (a) the British Postal Museum Collection, and
  - (b) the Royal Mail Archive.
- (2) Before preparing the report, the company must consult any Post Office company.
- (3) The Secretary of State must lay a copy of the report before Parliament.
- (4) A Royal Mail company's duties under this section are enforceable in civil proceedings by the Secretary of State—
  - (a) for an injunction,
  - (b) for specific performance under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.



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- (5) This section applies irrespective of whether the British Postal Museum Collection or the Royal Mail Archive alters the name by which it is known or forms part of a wider collection or archive.

**Commencement Information**

**I12** S. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 13 Directions

- (1) This section applies to directions under this Part.
- (2) A direction must be in writing.
- (3) A direction may be varied or revoked by a further direction.
- (4) A person to whom a direction has been given has a duty to comply with it.
- (5) That duty is enforceable in civil proceedings by the person by whom the direction was given—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

**Commencement Information**

**I13** S. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Interpretation*

### 14 Ownership of companies

- (1) This section applies for the purposes of this Part.
- (2) References to ownership of a company are to ownership of its issued share capital.
- (3) References to ownership of a company include indirect ownership of it.
- (4) References to the reduction of the proportion of a company owned by the Crown include a reduction to nil.
- (5) For the purposes of determining the proportion of any company owned by the Crown, property and rights of the Secretary of State or the Treasury (or a nominee of either of them) are to be regarded as property and rights of the Crown.

**Commencement Information**

**I14** S. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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## 15 Part 1: general interpretation

(1) In this Part—

“agreement” means agreement in writing,

“company” means any body corporate,

“debt securities” means any instrument creating or acknowledging indebtedness which is issued by a company (including, in particular, debentures, loan stock, bonds and certificates of deposit),

“the original holding company” means the company that was nominated under section 62 of the Postal Services Act 2000 (transfer of property etc to nominated company),

“post office” means any premises or vehicle in the United Kingdom from which postal services, or services provided under arrangements with a government department, are provided directly to the public,

“Post Office company” has the meaning given by section 6,

“relevant disposal” has the meaning given by section 2,

“Royal Mail company” has the meaning given by section 2,

“securities”, in relation to a company, includes—

(a) shares, debt securities and other securities of the company (whether or not constituting a charge on the assets of the company), and

(b) the right to subscribe for, or acquire, such securities and any other rights in connection with such securities,

“shares” include stock,

“share rights”, in relation to any shares, means—

(a) rights to subscribe for or acquire the shares, and

(b) any other rights in connection with the shares,

“subsidiary” has the meaning given by section 1159 of the Companies Act 2006, and

“wholly owned by the Crown”, in relation to a company, means the Crown owns all of it.

(2) In this Part references to a person providing a universal postal service have the same meaning as in Part 3 (see section 65(2) and (3)).

(3) In this Part references to a company’s post offices (or network of post offices) are to those post offices (whether or not owned or operated by the company) that the company is engaged in providing.

(4) For the purposes of this Part (other than Schedule 2) a company is to be regarded as being in the same “group” as another company if, for the purposes of section 1161(5) of the Companies Act 2006, the company is a group undertaking in relation to that other company.

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### Commencement Information

**I15** S. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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## PART 2

### ROYAL MAIL PENSION PLAN

#### *Introduction*

#### 16 Introduction

(1) In this Part—

“the RMPP” means the Royal Mail Pension Plan,

“qualifying member of the RMPP” means a person who is or has been a member of the RMPP of a prescribed description,

“the qualifying time” means the time immediately before such date as may be prescribed (which may be before the passing of this Act),

“qualifying accrued rights” means—

- (a) any right which, at the qualifying time, has accrued to or in respect of a qualifying member of the RMPP to future benefits under the RMPP,
- (b) any entitlement under the RMPP to the present payment of a pension or other benefit which a qualifying member of the RMPP has at the qualifying time, or
- (c) any entitlement to benefits, or rights to future benefits, under the RMPP which a person who has survived a qualifying member of the RMPP has at the qualifying time in respect of the member.

(2) For the purposes of the definition of “qualifying accrued rights”—

- (a) references to pensions or other benefits (including future benefits) do not include money purchase benefits but, subject to that, do include benefits attributable to additional voluntary contributions, and
- (b) references to a right include a pension credit right.

(3) In the event that qualifying members of the RMPP include any person (“P”) who is in pensionable service under the RMPP after the qualifying time—

- (a) the qualifying accrued rights in respect of P, and
- (b) the amounts payable in respect of those rights,

are to be determined for the purposes of this Part on the assumption that P had opted, immediately before the qualifying time, to terminate that service.

#### **Commencement Information**

**I16** S. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Powers exercisable*

#### 17 Transfer of qualifying accrued rights to new public scheme

(1) The Secretary of State may by order establish a scheme (a “new public scheme”) which, in respect of pensionable service under the RMPP before the qualifying time, provides for pensions or other benefits to be payable to or in respect of persons who are or have been qualifying members of the RMPP.

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- (2) The Secretary of State may by order make provision for the transfer of qualifying accrued rights to a new public scheme (without the need for any approval or consent to the transfer).
- (3) An order under subsection (2) may include provision for the discharge of liabilities in respect of the qualifying accrued rights that are transferred.
- (4) A new public scheme may—
  - (a) include provision for increasing in particular circumstances the amounts payable in respect of qualifying accrued rights,
  - (b) include provision in relation to any persons who are active members of the RMPP which (despite the effect of section 16(3)) differs from the provision made in relation to persons who are deferred members of the RMPP,
  - (c) include provision for the payment of transfer values, and
  - (d) include provision for the transfer of money purchase benefits under the RMPP into the scheme (whether or not the contributions to which those benefits are attributable are made before or after the qualifying time) and the conversion of those benefits into benefits under the scheme.
- (5) An order under this section may include provision for treating a new public scheme as an occupational pension scheme for the purposes of any provision made by or under any enactment specified, or of a description specified, in the order.
- (6) An order under this section may include provision for—
  - (a) treating a new public scheme as a salary-related contracted out scheme for the purposes of Part 3 of the Pension Schemes Act 1993, and
  - (b) applying any provision of that Part with modifications.
- (7) Provision made by an order under this section may have retrospective effect.
- (8) The Secretary of State may—
  - (a) provide for a new public scheme to be administered by any person, and
  - (b) delegate to any person any functions exercisable by the Secretary of State under a new public scheme.

**Commencement Information**

**I17** S. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**18 Division of the RMPP into different sections**

- (1) The Secretary of State may by order make provision for—
  - (a) the division of the RMPP into different sections,
  - (b) the participation of different companies in the different sections, and
  - (c) the allocation of assets, rights, liabilities or obligations between the different sections.
- (2) Provision made by an order under this section may have retrospective effect.

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#### Commencement Information

**II8** S. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 19 Amendments of the RMPP

- (1) The Secretary of State may by order make such amendments of the RMPP as the Secretary of State considers appropriate in connection with any order made under section 17 or 18.
- (2) The provision that may be made by an order under this section includes provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the RMPP to be determined in particular circumstances by reference to pensionable service under the RMPP before and after the qualifying time.
- (3) Provision made by an order under this section may have retrospective effect.

#### Commencement Information

**II9** S. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 20 Protection against adverse treatment

- (1) Subsection (2) applies to the exercise by the Secretary of State of—
  - (a) the power to make an order under section 17 in a case where the order contains provision establishing a new public scheme or transferring qualifying accrued rights to a new public scheme, and
  - (b) the power to make an order under section 18 or 19.
- (2) In exercising the power the Secretary of State must ensure that the relevant pensions provision in respect of each person who is or has been a member of the RMPP is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before the exercise of the power.
- (3) “The relevant pensions provision” means the provision for the payment of pensions or other benefits which is contained in the RMPP or in a new public scheme.
- (4) Subsections (1) to (3) do not require provision to be included in a new public scheme if the Secretary of State is of the opinion that the provision would be incompatible with any enactment or EU obligation (including any enactment applying as a result of any provision made under this Part).
- (5) Nothing in subsections (1) to (3) is to be read as—
  - (a) requiring particular provisions of the RMPP or a new public scheme to take the same or similar form,
  - (b) requiring a new public scheme to be established in a particular way,
  - (c) requiring any power or duty conferred or imposed by the RMPP or a new public scheme to be exercised or performed in a particular way, or
  - (d) affecting any power of any person to amend the RMPP or a new public scheme.

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- (6) The power of the Secretary of State to amend a new public scheme may not be exercised in any manner which would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless—
- (a) the consent requirements are satisfied in respect of the exercise of the power in that manner, or
  - (b) the scheme is amended in the prescribed manner.
- (7) The consent requirements are those prescribed for the purpose of obtaining the consent of members of the scheme to its amendment.

#### Commencement Information

**I20** S. 20 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 21 Transfer of assets of the RMPP

- (1) The Secretary of State may by order make provision for the transfer of assets of the RMPP to—
- (a) the Secretary of State,
  - (b) a nominee of the Treasury, or
  - (c) a fund established by the Secretary of State for the purpose of holding the assets pending their disposal.
- (2) An order under this section may be made only if an order under section 17 is being, or has been, made.
- (3) An order under this section may include provision for—
- (a) the delegation to any person of the administration and management of any fund within subsection (1)(c), and
  - (b) the making of payments into the Consolidated Fund.
- (4) This section needs to be read with section 22 (which contains restrictions on the exercise of the power to make a transfer under this section).

#### Commencement Information

**I21** S. 21 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 22 Restriction on power to transfer assets

- (1) The power of the Secretary of State to make an order under section 21 (a “transfer order”) must be exercised so as to secure that the ratio of assets to liabilities of the RMPP immediately after the relevant time is at least equal to the ratio of the assets to liabilities of the RMPP immediately before that time.
- (2) “The relevant time” is the time at which the order under section 17 in consequence of which the transfer order is made has effect.
- (3) For the purposes of this section any reference to the assets or liabilities of the RMPP is to their amount or value determined, calculated and verified by a prescribed person and in the prescribed manner.

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- (4) In calculating the value of any liabilities for those purposes, a provision of the RMPP that limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- (5) For the purposes of this section as it applies in relation to the transfer of assets after the relevant time by virtue of a transfer order—
  - (a) treat the assets as if they had been transferred at the relevant time, but
  - (b) disregard so much of the assets as were transferred to reflect the fact that the assets were not actually transferred at the relevant time.

#### Commencement Information

**I22** S. 22 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Supplementary provisions*

## **23 Taxation**

- (1) The Treasury may by regulations make provision for varying the way in which any relevant tax would, apart from the regulations, have effect in relation to—
  - (a) a new public scheme,
  - (b) members of a new public scheme, or
  - (c) a fund within section 21(1)(c).
- (2) Regulations under subsection (1) may include provision for treating a new public scheme as a registered pension scheme.
- (3) The Treasury may by regulations make provision for varying the way in which any relevant tax would, apart from the regulations, have effect in relation to, or in connection with, anything done in relation to—
  - (a) the RMPP, or
  - (b) any members of the RMPP,by or under, or in consequence of, an order made under this Part.
- (4) Regulations under subsection (1) or (3) may include provision for any of the following—
  - (a) a tax provision not to apply or to apply with modifications,
  - (b) anything done to have or not to have a specified consequence for the purposes of a tax provision, and
  - (c) the withdrawal of relief and the charging of a relevant tax.
- (5) Provision made by regulations under subsection (1) or (3), other than provision withdrawing a relief or charging a relevant tax, may have retrospective effect.
- (6) The Treasury may by regulations make provision, in relation to qualifying accounting periods, for extinguishing such losses made in a trade as they consider are attributable to deductions made for, or in connection with, contributions in respect of qualifying members of the RMPP.

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- (7) A “qualifying” accounting period is one beginning on or after the date (“the trigger date”) on which an order under section 17 is made establishing a new public scheme or transferring qualifying accrued rights to a new public scheme.
- (8) Regulations under subsection (6) have effect only if the company whose losses are extinguished is wholly owned by the Crown (within the meaning of Part 1) on the day before the trigger date.
- (9) In this section—
- “relevant tax” means—
- (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - (d) inheritance tax,
  - (e) stamp duty and stamp duty reserve tax, and
  - (f) stamp duty land tax,
- “registered pension scheme” has the same meaning as in Part 4 of the Finance Act 2004,
- “tax provision” means any provision made by or under an enactment relating to a relevant tax.

#### Commencement Information

**I23** S. 23 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## 24 Information

- (1) The Secretary of State may by order make provision for requiring any prescribed person to disclose any information (whether in the form of a document or otherwise) to the Secretary of State for any purpose of this Part.
- (2) Information that—
- (a) relates to pensions or other benefits under the RMPP or a new public scheme, or
  - (b) relates to the administration of the RMPP or a new public scheme in respect of those pensions or other benefits,
- may be shared among relevant persons for the purpose of facilitating the administration of the RMPP or new public scheme.
- (3) “Relevant persons” means—
- (a) the Secretary of State,
  - (b) any person who administers, or exercises functions under, a new public scheme,
  - (c) the trustee of the RMPP,
  - (d) any person who exercises functions on behalf of the trustee of the RMPP, or
  - (e) any person who is or has been an employer of a qualifying member of the RMPP.



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- (4) In the event that a section of the RMPP is constituted as a separate pension scheme the members of which consist of or include persons who are qualifying members of the RMPP—
- (a) any reference in subsection (2) to the RMPP includes that separate pension scheme, and
  - (b) any reference in subsection (3) to the trustee of the RMPP includes the trustees or managers of that separate pension scheme.

#### Commencement Information

**I24** S. 24 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 25 Orders and regulations

- (1) Before making—
- (a) an order under section 17 that contains provision establishing a new public scheme or transferring qualifying accrued rights to a new public scheme, or
  - (b) any order under any other provision of this Part,
- the Secretary of State must consult the trustee of the RMPP and a Royal Mail company (within the meaning of Part 1).
- (2) The Secretary of State may not make an order under any provision of this Part (apart from section 24) unless the Treasury have consented to its making.
- (3) Any order under this Part is subject to negative resolution procedure.
- (4) Any order under this Part may provide for it (or any of its provisions) to come into force on a specified day.
- (5) A “specified day” means a day specified in an order made by the Secretary of State under this subsection (and different days may be specified for different purposes).
- Subsections (1) to (3) do not apply to an order under this subsection.
- (6) A statutory instrument containing regulations under section 23 is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Nothing in any provision of this Part that authorises the inclusion of any particular kind of provision in any order, regulations or scheme is to be read as restricting the generality of the provision that may be included in the order, regulations or scheme.

#### Commencement Information

**I25** S. 25 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 26 Interpretation of Part 2

- (1) In this Part—
- “active member” has the meaning given by section 124(1) of the Pensions Act 1995,
  - “company” means any body corporate,

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“deferred member” has the meaning given by section 124(1) of the Pensions Act 1995,

“enactment” includes an enactment whenever passed or made,

“member” has the meaning given by section 124(1) of the Pensions Act 1995,

“money purchase benefits” has the meaning given by section 181 of the Pension Schemes Act 1993,

“new public scheme” has the meaning given by section 17,

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993,

“pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995,

“pension credit right” has the meaning given by section 124(1) of the Pensions Act 1995,

“prescribed” means specified in, or determined in accordance with, an order made by the Secretary of State,

“qualifying accrued rights”, in relation to qualifying members of the RMPP, has the meaning given by section 16,

“qualifying member of the RMPP” has the meaning given by section 16,

“the qualifying time” has the meaning given by section 16,

“the RMPP” has the meaning given by section 16.

(2) Any reference in this Part to amending the RMPP includes—

- (a) amending the trust deed or rules of the RMPP or any other instrument relating to the constitution, management or operation of the RMPP, and
- (b) amending any instrument relating to the provision of financial support to or in relation to the RMPP.

**Commencement Information**

**I26** S. 26 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## PART 3

### REGULATION OF POSTAL SERVICES

#### *Postal services*

## 27 **Postal services, postal packets and postal operators**

(1) “Postal services” means—

- (a) the service of conveying postal packets from one place to another by post,
- (b) the incidental services of receiving, collecting, sorting and delivering postal packets, and
- (c) any other service which relates to, and is provided in conjunction with, any service within paragraph (a) or (b).

(2) “Postal packet” means a letter, parcel, packet or other article transmissible by post.

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- (3) “Postal operator” means a person who provides—
  - (a) the service of conveying postal packets from one place to another by post, or
  - (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.
- (4) A person is not to be regarded as a postal operator merely as a result of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another.
- (5) The Secretary of State may make regulations prescribing circumstances in which subsection (4) is not to apply.
- (6) Regulations under subsection (5) are subject to affirmative resolution procedure.

**Commencement Information**

**I27** S. 27 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 28 General authorisation to provide postal services

- (1) Persons may provide postal services without the need for any licence or authorisation, but the provision of those services by postal operators may be subject to regulatory conditions that OFCOM may impose on them under this Part.
- (2) In this Part a “regulatory condition” means any of the following conditions—
  - (a) a designated USP condition (see sections 36 and 37),
  - (b) a USP access condition (see section 38 and Schedule 3),
  - (c) a USP accounting condition (see section 39),
  - (d) a notification condition (see section 41),
  - (e) a general universal service condition (see section 42),
  - (f) an essential condition (see section 49),
  - (g) a general access condition (see section 50 and Schedule 3), and
  - (h) a consumer protection condition (see sections 51 and 52).

**Commencement Information**

**I28** S. 28 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *The universal postal service*

## 29 Duty to secure provision of universal postal service

- (1) OFCOM must carry out their functions in relation to postal services in a way that they consider will secure the provision of a universal postal service.
- (2) Accordingly, the power of OFCOM to impose access or other regulatory conditions is subject to the duty imposed by subsection (1).
- (3) In performing their duty under subsection (1) OFCOM must have regard to—
  - (a) the need for the provision of a universal postal service to be financially sustainable, and

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- (b) the need for the provision of a universal postal service to be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times.
- (4) The reference in subsection (3)(a) to the need for the provision of a universal postal service to be financially sustainable includes the need for a reasonable commercial rate of return for any universal service provider on any expenditure incurred by it for the purpose of, or in connection with, the provision by it of a universal postal service.
- (5) In subsection (3)(b) “a reasonable period” means such period beginning with the day on which the provisions of this Part come generally into force as OFCOM consider, in all the circumstances, to be reasonable.
- (6) OFCOM's duty under subsection (1) includes a duty to carry out their functions in relation to postal services in a way that they consider will secure the provision of sufficient access points to meet the reasonable needs of users of the universal postal service.
- (7) The Secretary of State may direct OFCOM to take, or refrain from taking, specified action for the purpose of securing that, in the opinion of the Secretary of State, sufficient access points are provided throughout the United Kingdom to meet the interests of the public.
- (8) The duty imposed on OFCOM as a result of subsection (6) is subject to any direction given under this section.
- (9) The action that may be specified in a direction under this section includes the imposition of a regulatory condition consisting of or including provision specified in the direction.
- (10) Before giving a direction under this section, the Secretary of State must consult OFCOM.
- (11) In this Part “access point” means any box, receptacle or other facility provided for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission by post.

**Modifications etc. (not altering text)**

- C1** S. 29 excluded by 2003 c. 21, s. 371(11)(12) (as amended) (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\), Sch. 12 para. 64\(2\), \(3\); S.I. 2011/2329, art. 3](#)
- C2** S. 29 excluded by 2003 c. 21, s. 370(11)(12) (as amended) (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\), Sch. 12 para. 63\(2\), \(3\); S.I. 2011/2329, art. 3](#)

**Commencement Information**

- I29** S. 29 in force at 1.10.2011 by [S.I. 2011/2329, art. 3](#)

### 30 The universal postal service

- (1) OFCOM must by order (a “universal postal service order”) set out—
  - (a) a description of the services that they consider should be provided in the United Kingdom as a universal postal service, and
  - (b) the standards with which those services are to comply.

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- (2) A universal postal service must, as a minimum, include each of the services set out in section 31 (as read with sections 32 and 33).
- (3) Before making or modifying a universal postal service order, OFCOM must carry out an assessment of the extent to which the market for the provision of postal services in the United Kingdom is meeting the reasonable needs of the users of those services.
- (4) Subsection (3) does not apply in relation to the making of the first universal postal service order; but OFCOM must carry out an assessment of the kind mentioned in that subsection before the end of the period of 18 months beginning with the day on which the provisions of this Part come generally into force.
- (5) The Secretary of State may direct OFCOM to secure that the first universal postal service order does not include services of a description specified in the direction.
- (6) OFCOM must notify the European Commission of—
  - (a) the universal postal service order, and
  - (b) any modifications of the order.

#### Commencement Information

**I30** S. 30 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 31 Minimum requirements

This section sets out the services that must, as a minimum, be included in a universal postal service.

### *Requirement 1: delivery of letters or other postal packets*

- (1) At least one delivery of letters every Monday to Saturday—
  - (a) to the home or premises of every individual or other person in the United Kingdom, or
  - (b) to such identifiable points for the delivery of postal packets as OFCOM may approve.
- (2) At least one delivery of other postal packets every Monday to Friday to the places within paragraph (1)(a) or (b).
- (3) The references in this requirement to the delivery of letters or other postal packets include the delivery of packets posted outside the United Kingdom.

### *Requirement 2: collection of letters or other postal packets*

- (1) At least one collection of letters every Monday to Saturday from every access point in the United Kingdom used for the purpose of receiving postal packets, or any class of them, for onwards transmission in connection with the provision of a universal postal service.
- (2) At least one collection of other postal packets every Monday to Friday from every access point in the United Kingdom used for that purpose.
- (3) The references in this requirement to the onwards transmission of letters or other postal packets include their onwards transmission to places outside the United Kingdom.

### *Requirement 3: service at affordable prices in accordance with uniform public tariff*

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- (1) A service of conveying postal packets from one place to another by post (including the incidental services of receiving, collecting, sorting and delivering them) at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.
- (2) The reference in this requirement to conveying postal packets from one place to another includes conveying them to places outside the United Kingdom.

*Requirement 4: registered items service*

A registered items service at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

*Requirement 5: insured items service*

An insured items service at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

*Requirement 6: services to blind or partially sighted*

The provision free of charge of such postal services as are specified in the universal postal service order to such descriptions of blind or partially sighted persons as are so specified.

*Requirement 7: legislative petitions and addresses*

A service of conveying free of charge qualifying legislative petitions and addresses.

**Commencement Information**

**I31** S. 31 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**32 Section 31: definitions**

- (1) “Insured items service” means a service of conveying postal packets from one place to another by post which, in the event of the theft or loss of or damage to the packets, provides for the payment of an amount up to the value of the packets as declared by the sender.
- (2) “Legislative petitions and addresses” means—
  - (a) petitions and addresses to Her Majesty meeting the weight and covers requirements which are sent by post to a member of a legislative body,
  - (b) petitions meeting those requirements which are addressed to a legislative body and are sent by post to a member of such a body or to the Clerk of the Scottish Parliament, or
  - (c) petitions and addresses forwarded to Her Majesty or, in Northern Ireland, to the Secretary of State.
- (3) For the purposes of subsection (2)—
  - (a) a “legislative body” means either House of Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and
  - (b) petitions or addresses meet the “weight and covers requirements” if they do not exceed 1 kilogram in weight and are sent without covers or in covers open at the sides.

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- (4) “Registered items service” means a service of conveying postal packets from one place to another by post which provides—
- (a) for the registration of the packets in connection with their conveyance by post, and
  - (b) for the payment of an amount determined by the person providing the service in the event of the theft or loss of or damage to the packets.
- (5) In this section references to conveying postal packets from one place to another include—
- (a) the incidental services of receiving, collecting, sorting and delivering them, and
  - (b) conveying them to places outside the United Kingdom.

#### Commencement Information

I32 S. 32 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 33 Exceptions to minimum requirements

- (1) Nothing in section 31 requires the doing of anything in relation to a letter or other postal packet—
- (a) whose weight exceeds 20 kilograms, or
  - (b) whose dimensions fall outside the minimum and maximum dimensions laid down in the Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union.
- (2) The requirements in section 31 in respect of the delivery or collection of letters or other postal packets (requirements 1 and 2)—
- (a) do not need to be met on any day which is (in the part of the United Kingdom concerned) a public holiday, and
  - (b) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional.
- (3) Nothing in section 31 is to be read—
- (a) as requiring a service to continue without interruption, suspension or restriction in an emergency, or
  - (b) as preventing individual agreements as to prices from being concluded with customers.

#### Commencement Information

I33 S. 33 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 34 Review of minimum requirements

- (1) OFCOM may from time to time review the extent to which the provision made by section 31 reflects the reasonable needs of the users of postal services provided in the United Kingdom.

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- (2) A review under subsection (1) may, in particular, consider whether the requirements imposed by that section could be altered so as better to reflect those needs.
- (3) OFCOM must send a copy of each review under subsection (1) to the Secretary of State.
- (4) The Secretary of State may at any time direct OFCOM to carry out a review under subsection (1).
- (5) Where OFCOM have carried out a review under subsection (1), the Secretary of State may by order amend section 31.
- (6) The provision that may be made by an order under subsection (5) does not include the making of different provision in relation to different places in the United Kingdom.
- (7) An order under subsection (5)—
  - (a) is subject to affirmative resolution procedure, and
  - (b) may include such amendments of this Part as the Secretary of State considers necessary or expedient in consequence of any provision made by the order.

#### **Commencement Information**

**I34** [S. 34](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

### *Universal service providers*

#### **35 Designation of universal service providers**

- (1) OFCOM may designate one or more postal operators as universal service providers.
- (2) But there are only two cases in which there may be more than one postal operator designated as a universal service provider.
- (3) The first case is where—
  - (a) OFCOM have made a procurement determination under section 45 (fairness of bearing burden of universal service obligations), and
  - (b) in the light of that determination, OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one.
- (4) The second case is where—
  - (a) a postal administration order has been made under Part 4, and
  - (b) OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one for, or in connection with, achieving the objective of the postal administration.
- (5) OFCOM must publish each designation in such way as they consider appropriate for bringing it to the attention of members of the public.
- (6) The procedure to be followed for the making of a designation under this section must be provided for in regulations made by OFCOM.
- (7) OFCOM may—



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- (a) review the designations for the time being in force, and
  - (b) consider what (if any) designated USP conditions should continue to apply to each of the universal service providers.
- (8) The procedure to be followed on a review must be provided for in regulations made by OFCOM.
- (9) Regulations made by OFCOM must provide for a postal operator's designation to cease to have effect where, in any case described in the regulations, the operator is no longer subject to any universal service obligations.
- (10) Both the procedure for designations and the procedure for the conduct of review of designations provided for by regulations under this section must be one appearing to OFCOM—
- (a) to be efficient, objective, proportionate and transparent, and
  - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (11) OFCOM must notify the European Commission of the designations and of any case where a designation ceases to have effect (and the notification must identify the postal operator designated or ceasing to be designated).

#### Commencement Information

**I35** S. 35 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 36 Designated USP conditions

- (1) OFCOM may impose a designated USP condition on a universal service provider.
- (2) A designated USP condition is a condition requiring the provider to do one or more of the following—
- (a) to provide a universal postal service, or part of a universal postal service, throughout the United Kingdom, or in a specified area of the United Kingdom, in accordance with the standards set out in the universal postal service order,
  - (b) to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service,
  - (c) to provide specified information (at such times and in such manner as OFCOM may direct) to other postal operators and users of postal services about the services within paragraph (a) that it is required to provide, and
  - (d) to do anything else that OFCOM consider appropriate for the purposes of, or in consequence of, the obligations imposed under any of paragraphs (a) to (c).

In this subsection “specified” means specified in the condition.

- (3) OFCOM may impose a designated USP condition only if they consider it is necessary to do so in order to secure the provision of a service of a description set out in the universal postal service order in accordance with the standards set out there.
- (4) A designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which a universal postal service, or part of a universal postal service, is provided.

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- (5) In exercising the power conferred by subsection (4), OFCOM must seek to ensure that—
- (a) the prices are affordable,
  - (b) the prices take account of the costs of providing the service or part of a service, and
  - (c) the prices provide incentives to provide the service or part of a service efficiently.
- (6) A designated USP condition may impose performance targets.
- (7) If there are two or more universal service providers—
- (a) OFCOM must secure that there is no overlap in the universal service obligations imposed on the providers, and
  - (b) designated USP conditions may require the providers to make arrangements for securing that a universal postal service operates uniformly and effectively throughout the United Kingdom.
- (8) In this Part “universal service obligations”, in relation to a universal service provider, means the obligations imposed on the provider by any designated USP condition.

#### Commencement Information

**I36** S. 36 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 37 Publication of information about performance

- (1) A designated USP condition must include provision requiring the universal service provider concerned—
- (a) to publish information about the extent to which it is providing specified postal services in accordance with specified standards, and
  - (b) to publish annually an independently audited performance report.
- (2) The reference here to an independently audited performance report is to a report that—
- (a) contains information about the provider's performance in complying with specified requirements under the designated USP condition, and
  - (b) is audited by an independent person for accuracy and, if there are two or more universal service providers, for its usefulness in comparing information published by other universal service providers.
- (3) An “independent person” means a person who is independent of both OFCOM and universal service providers.
- (4) OFCOM must notify the European Commission of anything contained in a designated USP condition as a result of subsection (1).
- (5) A designated USP condition may require the universal service provider concerned to meet the costs of the audit required as a result of subsection (1)(b).
- (6) A designated USP condition may include other provision requiring the universal service provider concerned to publish information about its performance in complying with specified requirements under the designated USP condition.
- (7) The provision made as a result of this section—

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- (a) must include provision—
    - (i) requiring information previously published to be updated and published again, and
    - (ii) requiring the published information to satisfy requirements that OFCOM consider appropriate to secure its adequacy, and
  - (b) may include requirements as to the times at which, and the manner in which, the information is to be published.
- (8) In this section “specified” means specified in the designated USP condition.

#### **Commencement Information**

**I37** S. 37 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### **38 USP access conditions**

- (1) OFCOM may impose a USP access condition on a universal service provider.
- (2) A USP access condition is a condition requiring the provider to do either or both of the following—
  - (a) to give access to its postal network to other postal operators or users of postal services, and
  - (b) to maintain a separation for accounting purposes between such different matters relating to access (including proposed or potential access) to its postal network as OFCOM may direct.
- (3) The provider’s “postal network” means the systems and all the resources used by the provider for the purpose of complying with its universal service obligations (and, accordingly, includes arrangements made with others for the provision of any service).
- (4) OFCOM may not impose a USP access condition unless it appears to them that the condition is appropriate for each of the following purposes—
  - (a) promoting efficiency,
  - (b) promoting effective competition, and
  - (c) conferring significant benefits on the users of postal services.
- (5) In addition, OFCOM may not impose any price controls on a universal service provider in a USP access condition unless it appears to them that the provider concerned—
  - (a) might otherwise fix and maintain some or all of its prices at an excessively high level with adverse consequences for users of postal services, or
  - (b) might otherwise impose a price squeeze with adverse consequences for users of postal services.
- (6) In imposing price controls in a USP access condition in connection with the giving of access to a universal service provider’s postal network or to part of that network, OFCOM must have regard to such of the costs incurred in the provision of that network, or part of that network, as OFCOM consider appropriate.
- (7) In imposing price controls in a USP access condition OFCOM may—
  - (a) have regard to the prices at which services are available in comparable competitive markets, and

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*Changes to legislation: There are currently no known outstanding effects  
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- (b) determine what they consider to represent efficiency by using cost accounting methods.
- (8) In deciding what obligations to impose in a USP access condition in a particular case, OFCOM must (in addition to taking into account anything relevant for the purpose of performing their duty under section 29) take into account, in particular, the following factors—
- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary,
  - (b) the feasibility of giving the proposed access,
  - (c) the investment made by the universal service provider concerned in relation to the matters in respect of which access is proposed,
  - (d) the need to secure effective competition in the long term, and
  - (e) any rights to intellectual property that are relevant to the proposal.
- (9) For the purposes of this section references to giving a person access to a provider's postal network include giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the postal network.
- (10) In Schedule 3—
- (a) Part 1 makes provision about the kind of matters that may be included in a USP access condition, and
  - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.

**Commencement Information**

**I38** S. 38 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**39 USP accounting conditions**

- (1) OFCOM may impose a USP accounting condition on a universal service provider.
- (2) A USP accounting condition is a condition requiring the provider to do one or more of the following—
  - (a) to maintain a separation for accounting purposes between such different matters as OFCOM may direct for such purposes as they may direct,
  - (b) to comply with rules made by OFCOM in relation to those matters about the identification of costs and cost orientation,
  - (c) to comply with rules made by OFCOM about the use of cost accounting systems in relation to those matters, and
  - (d) to secure that its compliance with those systems is audited annually by a qualified independent auditor.
- (3) An obligation within subsection (2)(a)—
  - (a) may require the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
  - (b) may impose requirements about the accounting methods to be used in maintaining the separation.

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*Changes to legislation:* There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (4) An obligation within subsection (2)(b) or (c)—
  - (a) may include conditions requiring the application of presumptions in the fixing and determination of costs and charges for any purpose, and
  - (b) may require the universal service provider concerned to publish such accounts and other information relating to anything required to be done as a result of those provisions as OFCOM consider appropriate.
- (5) An obligation within subsection (2)(d) may require the universal service provider concerned to meet the costs of the audit.
- (6) If a USP accounting condition imposes rules on a universal service provider about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the provider to make arrangements for a description to be made available to the public of the cost accounting system used.
- (7) If OFCOM impose an obligation under subsection (6), the description of information to be made available must include details of—
  - (a) the main categories under which costs are brought into account for the purposes of that system, and
  - (b) the rules applied for the purposes of that system with respect to the allocation of costs.
- (8) In this section “qualified independent auditor” means a person who—
  - (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
  - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

#### **Commencement Information**

**I39** S. 39 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Persons providing services within scope of universal postal service*

#### **40 Services within scope of the universal postal service**

- (1) A postal service is within the scope of the universal postal service if—
  - (a) the service falls within the description of a service set out in the universal postal service order, or
  - (b) the service would fall within the description of a service set out in that order but for the fact that—
    - (i) in the case of a service consisting of the delivery or collection of letters or other postal packets, the delivery or collection is not made on each of the days required by section 31 (see requirements 1 and 2),
    - (ii) the service is not provided throughout the United Kingdom, or
    - (iii) the service is not provided at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom, or

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- (c) in the opinion of OFCOM the service is of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service of a description set out in that order.

(2) In this section any reference to a service includes a part of a service.

**Commencement Information**

**I40** S. 40 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**41 Notification condition**

- (1) OFCOM may impose a notification condition on—
- (a) every person providing, or intending to provide, a service within the scope of the universal postal service, or
  - (b) every person providing, or intending to provide, a service within the scope of the universal postal service of a specified description.
- (2) A notification condition is a condition requiring the person to give OFCOM—
- (a) advance notice of the person's intention to provide a letters business on a specified scale (whether or not the person is currently providing a letters business or any other postal service), and
  - (b) where the person is already providing a letters business on a specified scale, advance notice of the person's intention to expand the business by a specified extent.
- (3) A specified scale or extent may be determined by reference to any specified factor.
- (4) The Secretary of State may at any time direct OFCOM to impose a notification condition.
- (5) The direction may (but need not) specify some or all of the provision to be contained in the condition.
- (6) Where a notification condition applies to a person at a time when the person is not providing a postal service—
- (a) Schedule 7 (enforcement of regulatory conditions) is to have effect as if paragraph 7(2) and (3) were omitted and as if, for the purposes of paragraph 11, the person were providing a postal service, and
  - (b) Schedule 8 (information provisions) is to have effect as if the person were a person falling within paragraph 1(2) and as if, for the purposes of paragraph 8, the person were providing a postal service.
- (7) In this section—
- “advance notice” means written notice given at least a specified period of time before the person intends to do as mentioned in subsection (2)(a) or (b),
- “a letters business” means a postal service which consists in the delivery of letters, and
- “specified” means specified in the notification condition.

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

#### Commencement Information

**I41** S. 41 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 42 General universal service conditions

- (1) OFCOM may impose a general universal service condition on—
  - (a) every postal operator providing a service within the scope of the universal postal service, or
  - (b) every postal operator providing a service within the scope of the universal postal service of a description specified in the condition.
- (2) A general universal service condition is—
  - (a) a condition containing such obligations as OFCOM consider necessary to impose for, or in connection with, securing the provision of a universal postal service in accordance with the standards set out in the universal postal service order, or
  - (b) a condition containing such obligations as OFCOM consider necessary to impose for the purposes of section 46.
- (3) A general universal service condition may require a person—
  - (a) to make contributions in accordance with any scheme established under section 46, and
  - (b) to take such steps as may be required by any such scheme as regards contributions made by users of services within the scope of the universal postal service.
- (4) At any time when there is a universal service provider, nothing in subsection (2)(a) is to be read as authorising the imposition of a condition requiring a person—
  - (a) to deliver or collect letters or other postal packets as mentioned in section 31,
  - (b) to provide a service throughout the United Kingdom, or
  - (c) to provide a service at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom.

#### Commencement Information

**I42** S. 42 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 43 Recovery of administrative charges incurred by OFCOM

Schedule 4 makes provision authorising OFCOM to impose charges on postal operators providing services within the scope of the universal postal service to meet costs incurred by OFCOM in carrying out their functions in relation to postal services.

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### *Financial support for universal postal service*

#### **44 Review of costs of universal service obligations**

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a universal service provider of complying with its universal service obligations.
- (2) In carrying out a review under this section OFCOM must consider the extent to which, in their opinion, the provider is complying with its universal service obligations in a cost-efficient manner.
- (3) If—
  - (a) regulations under section 35 require the financial burden of complying with universal service obligations (or proposed universal service obligations) to be taken into account in determining whom to designate, and
  - (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,
 that must be the method of calculation applied on a review under this section.
- (4) If subsection (3) does not apply, the financial burden of complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the universal service provider from—
  - (a) the provider's designation, and
  - (b) the application to the provider of universal service obligations.
- (5) After carrying out a review under this section OFCOM must either—
  - (a) ensure that the calculations made by them on the review are audited by a person who appears to them to be independent of universal service providers, or
  - (b) carry out an audit of those calculations themselves.
- (6) OFCOM must ensure that a report on the audit—
  - (a) is prepared, and
  - (b) if not prepared by OFCOM, is provided to them.
- (7) OFCOM must publish—
  - (a) their conclusions on the review, and
  - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (8) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (9) The Secretary of State may at any time direct OFCOM to carry out a review under this section.
- (10) Unless directed to do so by the Secretary of State, OFCOM may not carry out a review under this section before the end of the period of 5 years beginning with the day on which this section comes into force.

#### **Commencement Information**

**I43** S. 44 in force at 1.10.2011 by S.I. 2011/2329, art. 3



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*Changes to legislation:* There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

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## **45 Fairness of bearing burden of universal service obligations**

- (1) This section applies if OFCOM—
  - (a) have concluded on a review under section 44 that complying with its universal service obligations imposes a financial burden on a universal service provider, and
  - (b) have published that conclusion in accordance with that section.
- (2) OFCOM must determine whether they consider it is or would be unfair for the provider to bear, or to continue to bear, the whole or a part of the burden of complying with its universal service obligations.
- (3) The determination by OFCOM of—
  - (a) whether it is or would be unfair for the provider to bear, or to continue to bear, that burden, or
  - (b) the extent (if any) to which that is or would be unfair,must be made in accordance with regulations made by OFCOM.
- (4) OFCOM must publish the determination.
- (5) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) If OFCOM determine that it is or would be unfair for the provider to bear, or to continue to bear, the whole or a part of that burden, they must submit a report to the Secretary of State setting out their recommendations as to the action (if any) that they consider ought to be taken to deal with the burden.
- (7) The report may make recommendations—
  - (a) about the order in which action ought to be taken, and
  - (b) as to whether the taking of action ought to be contingent on the success or otherwise of the taking of other action.
- (8) The recommended action may consist of one or more of the following—
  - (a) the carrying out of a review under section 34 (review of minimum requirements),
  - (b) requiring contributions to be made in accordance with section 46 for meeting some or all of that burden, and
  - (c) the making of a procurement determination.
- (9) A procurement determination is a determination by OFCOM as to whether, in their opinion, any particular postal operator or operators (which may include the provider) could provide any of the postal services required to be provided by the universal service obligations concerned in a way which would mean that—
  - (a) no unfair financial burden would be imposed on any person (or persons) in complying with those obligations, or
  - (b) the financial burden imposed on any person (or persons) in complying with those obligations would be less unfair than the one mentioned in subsection (6).
- (10) A procurement determination must be made in accordance with regulations made by OFCOM.

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- (11) After receiving the report under subsection (6), the Secretary of State must determine what action (if any) the Secretary of State considers ought to be taken by OFCOM to deal with the burden.
- (12) The Secretary of State may then direct OFCOM to take that action.
- (13) A direction under subsection (12) may make provision—
- (a) about the order in which specified action is to be taken, and
  - (b) for the taking of specified action to be contingent on the success or otherwise of the taking of other specified action.

In this subsection “specified” means specified in the direction.

- (14) A direction under subsection (12) may not require OFCOM to make a procurement determination at any time in the period of 10 years beginning with the day on which this section comes into force unless the universal service provider has agreed to the making of the determination.

#### **Commencement Information**

**I44** S. 45 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## **46 Contributions for meeting burden**

- (1) This section applies where the Secretary of State has directed OFCOM to require contributions to be made for meeting some or all of the burden concerned.
- (2) The contributions are to be made by either or both of the following—
- (a) postal operators providing services within the scope of the universal postal service,
  - (b) users of services within the scope of the universal postal service (by way of the charges paid by them).
- (3) OFCOM may determine that the contributions under this section are to be made only by a description of postal operator or user.
- (4) The assessment, collection and distribution of the contributions must be carried out in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.
- (5) OFCOM must exercise their power to make the regulations in a way they consider will secure the operation of the scheme—
- (a) in an objective, proportionate and transparent way,
  - (b) in a way that does not involve, or tend to give rise to, any undue discrimination against particular postal operators (or a particular description of postal operators) or particular users (or a particular description of users), and
  - (c) in a way that avoids, or (if that is impracticable) minimises, any distortion of competition.
- (6) The regulations may provide for—
- (a) the scheme, and
  - (b) any fund set up for the purposes of the scheme,

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to be administered by OFCOM or some other person specified in the regulations.

- (7) A person may be specified only if OFCOM are satisfied as to the person's independence of both—
  - (a) universal service providers, and
  - (b) postal operators providing postal services within the scope of the universal postal service.
- (8) The regulations may not be made unless—
  - (a) the Secretary of State has consented to the making of them and
  - (b) a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

#### Commencement Information

**I45** S. 46 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 47 Report on sharing mechanism

- (1) This section applies where regulations under section 46 provide for a scheme for the assessment, collection and distribution of contributions.
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—
  - (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything required to be provided by a universal service provider to meet its universal service obligations,
  - (b) the market benefits for each universal service provider that have accrued to the provider during that period from its designation and the application to it of universal service obligations, and
  - (c) the contribution made by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of 12 months beginning with the coming into force of the first regulations made under section 46.
- (4) Subsequent reports must be prepared in relation to the period of 12 months beginning with the end of the period to which the previous report applied.
- (5) A report under this section—
  - (a) must be prepared as soon as practicable after the end of the period to which it is to apply, and
  - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
  - (a) to publish any matter that is confidential, or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential for this purpose—

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- (a) if it relates specifically to the affairs of a particular body and publication of the matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of the body, and
  - (b) if it relates to the private affairs of an individual and publication of the matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of the individual.
- (8) A report under this section must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

#### **Commencement Information**

**I46** S. 47 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

### *Postal operators generally*

#### **48 Notification by postal operators**

- (1) The Secretary of State may make regulations requiring persons to notify OFCOM before they carry on business as postal operators.
- (2) The Secretary of State must consult OFCOM before making the regulations.
- (3) The regulations may make provision corresponding, with such modifications as appear to the Secretary of State to be appropriate, to any of the provisions of sections 33 to 37 of the Communications Act 2003 (requirements to notify before carrying on a regulated activity).
- (4) The maximum penalty which may be imposed by the regulations for failure to comply with any of its provisions must not exceed the maximum penalty for the time being specified in section 37(6) of that Act.
- (5) OFCOM must establish and maintain a register which records every notification given to them under the regulations.
- (6) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (7) OFCOM must publish a notice setting out—
  - (a) the times at which the register is for the time being available for public inspection, and
  - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (8) The notice must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (9) OFCOM must make the register available for public inspection—
  - (a) during such hours, and
  - (b) on payment of such fees,
 as are set out in the notice for the time being in force under subsection (7).

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(10) Regulations under this section are subject to negative resolution procedure.

**Commencement Information**

**I47** S. 48 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**49 Essential conditions**

- (1) OFCOM may impose an essential condition on—
  - (a) every postal operator, or
  - (b) every postal operator of a description specified in the condition.
- (2) An essential condition is a condition containing such obligations as OFCOM consider necessary to impose for, or in connection with, any one or more of the following purposes—
  - (a) safeguarding confidentiality in connection with the sending, conveyance and delivery of letters,
  - (b) safeguarding security where dangerous goods are transported,
  - (c) safeguarding the confidentiality of information conveyed,
  - (d) guarding against the theft or loss of or damage to postal packets, and
  - (e) securing the delivery of postal packets to the intended addressees.

**Commencement Information**

**I48** S. 49 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**50 General access conditions**

- (1) OFCOM may impose a general access condition on a particular postal operator (or operators).
- (2) A general access condition is a condition requiring the operator to do either or both of the following—
  - (a) to give access to other postal operators, or users of postal services, to the operator's postal infrastructure or any service within the scope of the universal postal service which it provides, and
  - (b) to maintain a separation for accounting purposes between such different matters relating to access of a kind within paragraph (a) (including proposed or potential access of that kind) as OFCOM may direct.
- (3) An operator's "postal infrastructure" includes both physical infrastructure (such as letter boxes) and infrastructure in non-physical form (such as information relating to postcodes or addresses or arrangements made with others for the provision of any service).
- (4) OFCOM may impose a general access condition only if it appears to them that the condition is necessary for either or both of the following purposes—
  - (a) protecting the interests of the users of postal services, and
  - (b) promoting effective competition.

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- (5) In deciding what obligations to impose in general access conditions in a particular case, OFCOM must (in addition to taking into account anything relevant for the purpose of performing their duty under section 29) take into account, in particular, the following factors—
- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary,
  - (b) the feasibility of giving the proposed access,
  - (c) the investment made by the postal operator in relation to the matters in respect of which access is proposed,
  - (d) the need to secure effective competition in the long term, and
  - (e) any rights to intellectual property that are relevant to the proposal.
- (6) For the purposes of this section a reference to giving a person access to an operator's postal infrastructure includes giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the infrastructure.
- (7) In Schedule 3—
- (a) Part 1 makes provision about the kind of matters that may be included in general access conditions, and
  - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.

**Commencement Information**

**I49** S. 50 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**51 Consumer protection conditions**

- (1) OFCOM may impose a consumer protection condition on—
- (a) every postal operator, or
  - (b) every postal operator of a specified description.
- (2) A consumer protection condition is a condition requiring the operator to do one or more of the following—
- (a) to assume specified liability in respect of specified loss of or damage to specified postal packets,
  - (b) to establish and maintain procedures, standards and policies with respect to consumer protection matters, and
  - (c) to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading.
- (3) The reference in subsection (2)(b) to consumer protection matters is to—
- (a) the handling of complaints made to postal operators by users of their services,
  - (b) the resolution of disputes between postal operators and users of their services,
  - (c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes,
  - (d) the information that is to be made available by postal operators to users of their services about service standards and about the rights of those users, and

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- (e) anything else appearing to OFCOM to be necessary to secure effective protection for those users.
- (4) The reference in subsection (2)(c) to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading is to—
  - (a) such proportion of the expenses of the National Consumer Council as the Secretary of State considers reasonable having regard to the functions exercisable by it in relation to users of postal services, and
  - (b) such proportion of the expenses of the Office of Fair Trading incurred in connection with its support of any public consumer advice scheme as the Secretary of State considers reasonable having regard to the functions under the scheme exercisable in relation to those users.
- (5) In imposing a consumer protection condition, OFCOM must (so far as they consider appropriate) secure that—
  - (a) the procedures for the handling of complaints and the resolution of disputes are easy to use, transparent and effective and otherwise facilitate the settling of disputes fairly and promptly,
  - (b) users have the right to use those procedures free of charge, and
  - (c) if a postal operator contravenes a consumer protection condition, the operator follows such procedures as may be required by the condition.
- (6) The Secretary of State may direct OFCOM to include provision within subsection (2)(c) in consumer protection conditions.
- (7) In this section and section 52 any reference, in relation to postal operators, to users of their services is to users of any of the postal services provided by the operators.
- (8) In this section “specified” means specified in the consumer protection condition.

#### **Commencement Information**

**I50** S. 51 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## **52 Provision that may be made by consumer protection conditions**

- (1) A consumer protection condition may require postal operators to be members of an approved redress scheme.
- (2) A “redress scheme” is a scheme under which complaints about postal operators by users of their services may be made to, and investigated and determined by, a person who is independent of postal operators and OFCOM.
- (3) A redress scheme is “approved” if it is approved by OFCOM in accordance with Schedule 5.
- (4) For the purposes of the law relating to defamation, proceedings under an approved redress scheme are to be treated in the same way as proceedings before a court.
- (5) A consumer protection condition may require postal operators—
  - (a) to provide information to OFCOM with respect to the levels of compliance with the standards for the handling of complaints, and

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- (b) to publish information about the number of complaints made about them (whether under an approved redress scheme or otherwise) and the way in which the complaints have been dealt with.
- (6) Requirements may be contained in the condition as to the times at which, and the manner in which, any information is to be published as a result of subsection (5)(b).
- (7) A consumer protection condition imposed on a universal service provider must include a requirement within subsection (5)(b).

**Commencement Information**

**I51** [S. 52](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

*General provisions*

**53 Imposition, modification or revocation of regulatory conditions**

Schedule 6 contains general provision about the imposition of regulatory conditions and their modification or revocation.

**Commencement Information**

**I52** [S. 53](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**54 Enforcement of regulatory requirements**

Schedule 7 makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services.

**Commencement Information**

**I53** [S. 54](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**55 Information**

- (1) Schedule 8 makes provision for requiring information to be provided to OFCOM for the purpose of carrying out their functions in relation to postal services or for related purposes.
- (2) In that Schedule—
  - (a) Part 1 makes provision authorising OFCOM to require information to be provided to them,
  - (b) Part 2 makes provision for the enforcement of those requirements, and
  - (c) Part 3 contains supplementary provision.
- (3) Nothing in Schedule 7 to the Postal Services Act 2000 (disclosure of information) prevents the Postal Services Commission from disclosing information to OFCOM for the purposes of OFCOM's functions in relation to postal services.



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*Changes to legislation:* There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

### Commencement Information

**I54** S. 55 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 56 General restriction on disclosure of information

- (1) Information that—
- (a) is obtained as a result of this Part, and
  - (b) relates to the affairs of an individual or to a particular business,
- must not be disclosed during the lifetime of the individual or so long as the business is carried on, except as provided by this section.
- (2) Disclosure is permitted—
- (a) with the consent of the individual or the person for the time being carrying on the business,
  - (b) for the purpose of facilitating the carrying out by OFCOM of any of their functions,
  - (c) for the purpose of facilitating the carrying out by the Secretary of State, the Treasury or the Competition Commission of any of their functions under this Act,
  - (d) for the purpose of facilitating the carrying out by a prescribed body or other person of any functions under a prescribed enactment,
  - (e) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings,
  - (f) for the purposes of any civil proceedings brought as a result of this Part or any prescribed enactment,
  - (g) in pursuance of an EU obligation, or
  - (h) in any other prescribed circumstances or for any other prescribed purpose.
- (3) In subsection (2) “prescribed” means prescribed by an order of the Secretary of State.
- (4) An order under subsection (3) is subject to affirmative resolution procedure.
- (5) This section does not apply to information that has been made available to the public by being disclosed in circumstances in which, or for a purpose for which, disclosure is not precluded by this section.
- (6) This section also does not apply to information that is subject to the disclosure regime in Part 9 of the Enterprise Act 2002 as a result of—
- (a) section 393(8) of the Communications Act 2003 (information obtained by OFCOM in exercise of competition functions), or
  - (b) section 29(3) of the Consumers, Estate Agents and Redress Act 2007 (information obtained by the National Consumer Council).
- (7) A person who discloses information in contravention of this section commits an offence.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

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**Modifications etc. (not altering text)**

**C3** S. 56(2) disclosure powers extended by 2001 c. 24, Sch. 4 para. 53D (as inserted (1.10.2011) by *Postal Services Act 2011 (c. 5)*, s. 93(2)(3), **Sch. 12 para. 162(b)**; S.I. 2011/2329, art. 3)

**Commencement Information**

**I55** S. 56 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## *Appeals*

### **57 Decisions by OFCOM to impose regulatory conditions, penalties etc**

- (1) For the purposes of this section a “qualifying decision” means—
  - (a) a decision to impose or modify a regulatory condition,
  - (b) a decision to give, modify or withdraw a direction, consent or approval that falls within paragraph 2 of Schedule 6,
  - (c) a decision to impose a penalty, or give or modify a direction, under any provision of Schedule 4, 7 or 8,
  - (d) a decision to give or modify a direction under section 89A or 116(2A) of the Postal Services Act 2000 (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or
  - (e) a decision to give a direction under section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement of requirements to give information to the National Consumer Council).
- (2) A person affected by a qualifying decision may appeal against it to the Competition Appeal Tribunal (“the CAT”).
- (3) The means of making an appeal is by sending the CAT a notice of appeal in accordance with rules made under section 15 of the Enterprise Act 2002.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) In determining an appeal under this section the CAT must apply the same principles as would be applied by a court on an application for judicial review.
- (6) The CAT must either—
  - (a) dismiss the appeal, or
  - (b) quash the whole or part of the qualifying decision to which the appeal relates.
- (7) If the CAT quashes the whole or part of a qualifying decision, it may refer the matter back to the person who made the decision with a direction to reconsider and make a new decision in accordance with its ruling.
- (8) The CAT may not direct the person who made the decision to take any action that the person would not otherwise have the power to take in relation to the decision.
- (9) Except in the case of a decision to impose a penalty, or give or modify a direction, under Schedule 4, 7 or 8, the effect of a qualifying decision is not suspended by the making of an appeal against the decision under this section.

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*Changes to legislation:* There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

#### Commencement Information

**I56** S. 57 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 58 Appeals from the CAT

- (1) An appeal lies to the appropriate court on any point of law arising from a decision of the CAT under section 57.
- (2) An appeal under this section may be brought by—
  - (a) a party to the proceedings before the CAT, or
  - (b) any other person who has a sufficient interest in the matter.
- (3) An appeal under this section requires the permission of the CAT or the appropriate court.
- (4) In this section “the appropriate court” means—
  - (a) in relation to England and Wales and Northern Ireland, the Court of Appeal, and
  - (b) in relation to Scotland, the Court of Session.

#### Commencement Information

**I57** S. 58 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 59 Price control decisions

- (1) A person affected by a price control decision may appeal against it by sending a notice of appeal to OFCOM within the period of two months beginning with the day on which the decision is published.
- (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate the error (or errors) which the appellant contends OFCOM made.
- (3) OFCOM must refer any appeal made in accordance with this section (and with rules made under section 60) to the Competition Commission (“the Commission”) as soon as reasonably practicable after it is made.
- (4) The making of an appeal against a decision does not suspend the effect of the decision.
- (5) The Commission must determine an appeal before the end of—
  - (a) the period of 4 months beginning with the day on which OFCOM refer the appeal to it, or
  - (b) if the decision appealed against is not an initial price control decision and the Commission considers that the circumstances of the case are exceptional, the period of 6 months beginning with that day.

If paragraph (b) applies, the Commission must, before the end of the period mentioned in paragraph (a), publish its reasons for considering that the circumstances of the case are exceptional.

- (6) On determining the appeal, the Commission must—

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- (a) dismiss the appeal,
  - (b) allow the appeal and make its own decision on the subject matter of the appeal,  
or
  - (c) quash the whole or part of the price control decision to which the appeal relates.
- (7) The Commission may allow the appeal, or quash the whole or part of the price control decision to which the appeal relates, only if it considers that OFCOM made a material error.
- (8) If the Commission quashes the whole or part of a price control decision, it may refer the matter back to OFCOM with a direction to reconsider and make a new decision in accordance with its ruling.
- (9) The Commission may not direct OFCOM to take any action that they would not otherwise have the power to take in relation to the decision.
- (10) OFCOM must give effect to any decision of the Commission under subsection (6)(b) as soon as is reasonably practicable after it is made.
- (11) The Commission may investigate any matter or do any other thing for the purpose of making a decision under subsection (6)(b) or (c).
- (12) Any decision made by the Commission under subsection (6) other than one relating to an initial price control decision is a qualifying decision for the purposes of section 57.
- (13) In this section—
- a “price control decision” means—
    - (a) a decision of OFCOM as to the tariffs that are to be used as mentioned in section 36(4) (designated USP condition: tariffs), or
    - (b) a decision of OFCOM (other than under Part 2 of Schedule 3) as to prices that may be charged for the giving of access under an access condition,  
and
  - an “initial price control decision” means—
    - (a) the first decision of OFCOM within paragraph (a) of the definition of “price control decision”, or
    - (b) the first decision of OFCOM within paragraph (b) of that definition.

**Commencement Information**

**I58** S. 59 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**60 Section 59: supplementary**

- (1) The Commission may make rules about the making, conduct and disposal of appeals under section 59.
- (2) The rules may, in particular, impose time limits or other restrictions on—
- (a) the taking of evidence at an oral hearing, or
  - (b) the making of representations or observations at an oral hearing.
- (3) The rules may make different provision for different cases.

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- (4) The Commission must publish the rules in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (5) Before making the rules, the Commission must consult such persons as it considers appropriate.
- (6) The Secretary of State may by order—
  - (a) apply any of sections 109 to 117 of the Enterprise Act 2002 (investigation powers of the Commission), with or without modifications, in relation to appeals made under section 59, and
  - (b) make provision for and in connection with the extension of the period within which appeals must be determined in cases where requirements imposed under section 109 of that Act (as applied) have not been complied with.
- (7) An order under subsection (6) applying an enactment under which a criminal or civil penalty could be imposed may not provide for the penalty to be greater than that which could be imposed under the enactment.
- (8) An order under subsection (6) is subject to negative resolution procedure.

#### Commencement Information

**I59** [S. 60](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

### *Supplementary and consequential provisions*

#### **61 Duties in relation to social and environmental matters**

- (1) The Secretary of State may from time to time give guidance about the making by OFCOM, in the carrying out of their functions in relation to postal services, of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) OFCOM must, when carrying out their functions in relation to postal services, have regard to any guidance given under subsection (1).
- (3) Before giving any such guidance, the Secretary of State must consult—
  - (a) OFCOM,
  - (b) the National Consumer Council, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (4) A draft of any guidance proposed to be given under subsection (1) must be laid before Parliament.
- (5) Guidance may not be given under subsection (1) until after the end of the period of 40 days beginning with the day on which the draft is laid before Parliament.
- (6) In calculating that 40 day period, no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses of Parliament are adjourned for more than four days.
- (7) If, before the end of that 40 day period, either House of Parliament resolves that the guidance should not be given, the Secretary of State must not give it.

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- (8) The Secretary of State must publish any guidance given under subsection (1) in such way as the Secretary of State considers appropriate.

**Commencement Information**

**I60** S. 61 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**62 UK postage stamps bearing image of Her Majesty**

- (1) The Secretary of State may give a direction to a universal service provider requiring the provider to do either or both of the following—
- (a) to issue United Kingdom postage stamps bearing the image of Her Majesty (“relevant stamps”) in cases specified in the direction, and
  - (b) to comply with provision specified in the direction in relation to any relevant stamps that the provider is required or proposes to issue.
- (2) A direction under subsection (1)(b) must include provision for relevant stamps not to be issued without the approval of Her Majesty.
- (3) The provision that may be contained in a direction under subsection (1)(b) includes—
- (a) provision in relation to the design or subject-matter of relevant stamps (including the frequency of designs in any period specified in the direction), and
  - (b) provision conferring functions on persons (or a committee of persons).
- (4) A person to whom a direction has been given has a duty to comply with it.
- (5) That duty is enforceable in civil proceedings by the Secretary of State—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

**Commencement Information**

**I61** S. 62 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**63 Orders, schemes and regulations made by OFCOM**

Section 403 of the Communications Act 2003 (regulations and orders made by OFCOM) applies to any power of OFCOM under this Part to make an order, a scheme or regulations.

**Commencement Information**

**I62** S. 63 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

**Status:** Point in time view as at 06/04/2012. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

## 64 Abolition of Postal Services Commission etc

- (1) The Postal Services Commission is abolished.
- (2) In section 30 of, and Schedule 2 to, the Communications Act 2003 (transfers of property etc from pre-commencement regulators), each reference to a pre-commencement regulator includes the Postal Services Commission.
- (3) The following provisions apply in relation to a transfer scheme made by virtue of subsection (2).
- (4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer, by virtue of a transfer scheme, of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).
- (5) Where an employee of the Postal Services Commission becomes an employee of OFCOM by virtue of a transfer scheme—
  - (a) a period of employment with that Commission is to be treated as a period of employment with OFCOM, and
  - (b) the transfer to OFCOM is not to be treated as a break in service.
- (6) The transfer of functions, property, rights or liabilities from the Postal Services Commission to OFCOM under or by virtue of this Act is not to be treated as a merger for accounting purposes.

### Commencement Information

**I63** S. 64(1) in force at 1.10.2011 by S.I. 2011/2329, art. 3

**I64** S. 64(2)-(6) in force at 15.9.2011 by S.I. 2011/2329, art. 2

## 65 Interpretation of Part 3 etc

- (1) In this Part—
  - “access condition” means a USP access condition or a general access condition,
  - “access point” has the meaning given by section 29(11),
  - “consumer protection condition” has the meaning given by section 51,
  - “contravention” has the meaning given by subsection (4)(a),
  - “designated USP condition” has the meaning given by section 36,
  - “essential condition” has the meaning given by section 49,
  - “general access condition” has the meaning given by section 50,
  - “general universal service condition” has the meaning given by section 42,
  - “letter”—
    - (a) means any communication in written form on any kind of physical medium to be conveyed to the person or address indicated on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical), and
    - (b) includes a postal packet containing any communication within paragraph (a),
  - “notification condition” has the meaning given by section 41,

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“postal operator” has the meaning given by section 27,  
“postal packet” has the meaning given by section 27,  
“postal services” has the meaning given by section 27,  
“regulatory condition” has the meaning given by section 28,  
“universal postal service order” has the meaning given by section 30,  
“universal service obligations” has the meaning given by section 36(8),  
“universal service provider” means any postal operator for the time being designated under section 35,  
“user”, in relation to a postal service, includes—  
(a) addressees, and  
(b) potential users,  
“USP access condition” has the meaning given by section 38, and  
“USP accounting condition” has the meaning given by section 39.

(2) In this Part—

- (a) references to the provision of a universal postal service are to be read in accordance with sections 30 to 33, and
- (b) references to the provision of a service within the scope of the universal postal service are to be read in accordance with section 40.

(3) In the case of a universal service provider who—

- (a) provides part of a universal postal service, or
- (b) provides a universal postal service, or part of a universal postal service, in a specified area of the United Kingdom,

references in this Part to the provision of a universal postal service are to the provision of that part or to the provision of a universal postal service, or part of a universal postal service, in that area.

(4) For the purposes of this Part—

- (a) “contravention” includes a failure to comply (and related expressions are to be read accordingly),
- (b) where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, the contravention is to be taken to continue after the end of that period, or after that time, until that thing is done,
- (c) references to remedying the consequences of a contravention include paying an amount to a person—
  - (i) by way of compensation for loss or damage suffered by the person, or
  - (ii) in respect of annoyance, inconvenience or anxiety to which the person has been put, and
- (d) in determining whether a contravention is a repeated contravention for any purposes, a notification of a contravention under any provision is to be ignored if it has been withdrawn before the imposition of a penalty in respect of the matters notified.

(5) Any direction given by the Secretary of State under any provision of this Part—

- (a) must be in writing, and
- (b) may be varied or revoked by a further direction.



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- (6) Nothing in any provision of this Part that authorises the inclusion of any particular kind of provision in any regulatory condition or direction is to be read as restricting the generality of the provision that may be included in the condition or direction.
- (7) Any power under this Part to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.
- (8) Any reference in this Part to OFCOM's functions under an enactment includes their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.

#### Commencement Information

**I65** S. 65 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

### 66 Transitional provisions for Part 3

Schedule 9 makes transitional provision in connection with the coming into force of this Part and provides for OFCOM to carry out certain functions before the provisions of this Part come into force generally.

### 67 Review of Part 3

- (1) As soon as reasonably practicable after the end of the review period, the Secretary of State must—
  - (a) carry out a review of the provisions of this Part, and
  - (b) set out the conclusions of the review in a report.
- (2) The report must, in particular—
  - (a) set out the objectives intended to be achieved by the regulatory system established by those provisions,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposed less regulation.
- (3) The review period is the period of 5 years beginning with the day on which the provisions of this Part come generally into force.
- (4) The Secretary of State must lay the report before Parliament.

#### Commencement Information

**I66** S. 67 in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

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*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)*

## PART 4

### SPECIAL ADMINISTRATION REGIME

#### *Postal administration orders*

#### **68 Postal administration orders**

- (1) In this Part “postal administration order” means an order which—
  - (a) is made by the court in relation to a company which is a universal service provider, and
  - (b) directs that, while the order is in force, the company's affairs, business and property are to be managed by a person appointed by the court.
- (2) The person appointed in relation to a company for the purposes of a postal administration order is referred to in this Part as the postal administrator of the company.
- (3) The postal administrator of a company must—
  - (a) manage the company's affairs, business and property, and
  - (b) exercise and perform all the powers and duties conferred or imposed on the postal administrator of the company,
 so as to achieve the objective set out in section 69.
- (4) In relation to a postal administration order applying to a foreign company, references in this section to the company's affairs, business and property are references to its UK affairs, business and property.

#### **Commencement Information**

**I67** [S. 68](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

#### **69 Objective of a postal administration**

- (1) The objective of a postal administration is to secure—
  - (a) that a universal postal service is provided in accordance with the standards set out in the universal postal service order, and
  - (b) that it becomes unnecessary, by one or both of the following means, for the postal administration order to remain in force for that purpose.
- (2) Those means are—
  - (a) the rescue as a going concern of the company subject to the order, and
  - (b) relevant transfers.
- (3) A transfer is a “relevant” transfer if it is a transfer as a going concern—
  - (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the order, to two or more different companies,
 of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the postal administration.

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- (4) The means by which relevant transfers may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the order, or of a part of its undertaking, to a wholly-owned subsidiary of that company, and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer within paragraph (a).

In this subsection “wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

- (5) The objective of a postal administration may be achieved by relevant transfers to the extent only that—
- (a) the rescue as a going concern of the company is not reasonably practicable or is not reasonably practicable without the transfers,
  - (b) the rescue of the company as a going concern will not achieve the objective of the postal administration or will not do so without the transfers,
  - (c) the transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them, or
  - (d) the transfers would, without prejudicing the interests of the company's creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

#### Commencement Information

**I68** S. 69 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 70 Applications for postal administration orders

- (1) An application for a postal administration order in relation to a company may be made only—
- (a) by the Secretary of State, or
  - (b) with the consent of the Secretary of State, by OFCOM.
- (2) The applicant for a postal administration order in relation to a company must give notice of the application to—
- (a) every person who has appointed an administrative receiver of the company,
  - (b) every person who is or may be entitled to appoint an administrative receiver of the company,
  - (c) every person who is or may be entitled to make an appointment in relation to the company under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrators by holders of floating charges), and
  - (d) such other persons as may be prescribed by postal administration rules.
- (3) The notice must be given as soon as reasonably practicable after the making of the application.
- (4) In this section “administrative receiver” means—
- (a) an administrative receiver within the meaning given by section 251 of the 1986 Act for the purposes of Parts 1 to 7 of that Act, or
  - (b) a person whose functions in relation to a foreign company are equivalent to those of an administrative receiver and relate only to its UK affairs, business and property.

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*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)*

### Commencement Information

**I69** S. 70 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 71 Powers of court

- (1) On hearing an application for a postal administration order, the court has the following powers—
  - (a) it may make the order,
  - (b) it may dismiss the application,
  - (c) it may adjourn the hearing conditionally or unconditionally,
  - (d) it may make an interim order,
  - (e) it may treat the application as a winding-up petition and make any order the court could make under section 125 of the 1986 Act (power of court on hearing winding-up petition), and
  - (f) it may make any other order which it thinks appropriate.
- (2) The court may make a postal administration order in relation to a company only if it is satisfied—
  - (a) that the company is unable, or is likely to be unable, to pay its debts, or
  - (b) that, on a petition by the Secretary of State under section 124A of the 1986 Act, it would be just and equitable (disregarding the objective of the postal administration) to wind up the company in the public interest.
- (3) The court may not make a postal administration order on the ground set out in subsection (2)(b) unless the Secretary of State has certified to the court that the case is one in which the Secretary of State considers (disregarding the objective of the postal administration) that it would be appropriate to petition under section 124A of the 1986 Act.
- (4) The court has no power to make a postal administration order in relation to a company which—
  - (a) is in administration under Schedule B1 to the 1986 Act, or
  - (b) has gone into liquidation (within the meaning of section 247(2) of the 1986 Act).
- (5) A postal administration order comes into force—
  - (a) at the time appointed by the court, or
  - (b) if no time is appointed by the court, when the order is made.
- (6) An interim order under subsection (1)(d) may, in particular—
  - (a) restrict the exercise of a power of the company or of its directors, or
  - (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company.
- (7) In the case of a foreign company, subsection (6)(a) is to be read as a reference to restricting the exercise of a power of the company or of its directors—
  - (a) within the United Kingdom, or
  - (b) in relation to the company's UK affairs, business or property.
- (8) For the purposes of this section a company is unable to pay its debts if—

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

- (a) it is a company which is deemed to be unable to pay its debts under section 123 of the 1986 Act, or
- (b) it is an unregistered company which is deemed, as a result of any of sections 222 to 224 of the 1986 Act, to be so unable for the purposes of section 221 of the 1986 Act, or which would be so deemed if it were an unregistered company for the purposes of those sections.

**Commencement Information**

**I70** S. 71 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**72 Postal administrators**

- (1) The postal administrator of a company—
  - (a) is an officer of the court, and
  - (b) in exercising and performing powers and duties in relation to the company, is the company's agent.
- (2) The management by the postal administrator of a company of any of its affairs, business or property must be carried out for the purpose of achieving the objective of the postal administration as quickly and as efficiently as is reasonably practicable.
- (3) The postal administrator of a company must exercise and perform powers and duties in the way which, so far as it is consistent with the objective of the postal administration to do so, best protects—
  - (a) the interests of the company's creditors as a whole, and
  - (b) subject to those interests, the interests of the company's members as a whole.
- (4) A person is not to be the postal administrator of a company unless qualified to act as an insolvency practitioner in relation to the company.
- (5) If the court appoints two or more persons as the postal administrator of a company, the appointment must set out—
  - (a) which (if any) of the powers and duties of a postal administrator are to be exercisable or performed only by the appointees acting jointly,
  - (b) the circumstances (if any) in which powers and duties of a postal administrator are to be exercisable, or may be performed, by one of the appointees, or by particular appointees, acting alone, and
  - (c) the circumstances (if any) in which things done in relation to one of the appointees, or in relation to particular appointees, are to be treated as done in relation to all of them.

**Commencement Information**

**I71** S. 72 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**73 Conduct of administration, transfer schemes etc**

- (1) Schedule 10 contains provision applying the provisions of Schedule B1 to the 1986 Act, and certain other enactments, to postal administration orders.

*Status:* Point in time view as at 06/04/2012. This version of this Act contains provisions that are not valid for this point in time.

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- (2) Schedule 11 contains provision for transfer schemes to achieve the objective of a postal administration.
- (3) The power to make rules under section 411 of the 1986 Act is to apply for the purpose of giving effect to this Part as it applies for the purpose of giving effect to Parts 1 to 7 of that Act (and, accordingly, as if references in that section to those Parts included references to this Part).
- (4) Section 413(2) of the 1986 Act (duty to consult Insolvency Rules Committee about rules) is not to apply to rules made under section 411 of the 1986 Act as a result of this section.

#### Commencement Information

**I72** S. 73 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Restrictions on other insolvency procedures*

#### **74 Winding-up orders**

- (1) This section applies if a person other than the Secretary of State petitions for the winding-up of a company which is a universal service provider.
- (2) The court is not to exercise its powers on a winding-up petition unless—
  - (a) notice of the petition has been served on the Secretary of State and OFCOM, and
  - (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.
- (3) If an application for a postal administration order in relation to the company is made to the court in accordance with section 70(1) before a winding-up order is made on the petition, the court may exercise its powers under section 71 (instead of exercising its powers on the petition).
- (4) References in this section to the court's powers on a winding-up petition are to—
  - (a) its powers under section 125 of the 1986 Act (other than its power of adjournment), and
  - (b) its powers under section 135 of the 1986 Act.

#### Commencement Information

**I73** S. 74 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### **75 Voluntary winding up**

- (1) A company which is a universal service provider has no power to pass a resolution for voluntary winding up without the permission of the court.
- (2) Permission may be granted by the court only on an application made by the company.
- (3) The court is not to grant permission unless—

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- (a) notice of the application has been served on the Secretary of State and OFCOM, and
  - (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.
- (4) If an application for a postal administration order in relation to the company is made to the court in accordance with section 70(1) after an application for permission under this section has been made and before it is granted, the court may exercise its powers under section 71 (instead of granting permission).
- (5) In this section “a resolution for voluntary winding up” has the same meaning as in the 1986 Act.

#### Commencement Information

I74 S. 75 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 76 Making of ordinary administration orders

- (1) This section applies if a person other than the Secretary of State makes an ordinary administration application in relation to a company which is a universal service provider.
- (2) The court must dismiss the application if—
- (a) a postal administration order is in force in relation to the company, or
  - (b) a postal administration order has been made in relation to the company but is not yet in force.
- (3) If subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless—
- (a) notice of the application has been served on the Secretary of State and OFCOM,
  - (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served, and
  - (c) there is no application for a postal administration order which is outstanding.
- (4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for a postal administration order.
- (5) On the making of a postal administration order in relation to a company, the court must dismiss any ordinary administration application made in relation to the company which is outstanding.
- (6) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the 1986 Act.

#### Commencement Information

I75 S. 76 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Status: Point in time view as at 06/04/2012. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
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## 77 Administrator appointments by creditors etc

- (1) Subsections (2) to (4) make provision about appointments under paragraph 14 or 22 of Schedule B1 to the 1986 Act (powers to appoint administrators) in relation to a company which is a universal service provider.
- (2) If in any case—
  - (a) a postal administration order is in force in relation to the company,
  - (b) a postal administration order has been made in relation to the company but is not yet in force, or
  - (c) an application for a postal administration order in relation to the company is outstanding,

a person may not take any step to make an appointment.
- (3) In any other case, an appointment takes effect only if each of the following conditions are met.
- (4) The conditions are—
  - (a) that a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the 1986 Act has been served on the Secretary of State and OFCOM,
  - (b) that a period of 14 days has elapsed since the service of the last of those copies to be served,
  - (c) that there is no outstanding application to the court for a postal administration order in relation to the company, and
  - (d) that the making of an application for a postal administration order in relation to the company has not resulted in the making of a postal administration order which is in force or is still to come into force.
- (5) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for a postal administration order at any time before the appointment takes effect.

### Commencement Information

**I76** S. 77 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 78 Enforcement of security

- (1) A person may not take any step to enforce a security over property of a company which is a universal service provider unless—
  - (a) notice of the intention to do so has been served on the Secretary of State and OFCOM, and
  - (b) a period of at least 14 days has elapsed since the service of the last of those notices to be served.
- (2) In the case of a foreign company which is a universal service provider, the reference to the property of the company is to its property in the United Kingdom.



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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

#### Commencement Information

**I77** [S. 78](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

### *Financial support for companies in administration*

## **79 Grants and loans**

- (1) This section applies if a postal administration order has been made in relation to a company.
- (2) The Secretary of State may, with the consent of the Treasury, make grants or loans to the company of such amounts as it appears to the Secretary of State appropriate for achieving the objective of the postal administration.
- (3) The grants or loans may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) The terms on which the grants may be made include, in particular, terms requiring the whole or a part of the grants to be repaid to the Secretary of State if there is a contravention of the other terms on which they are made.
- (5) The terms on which loans may be made include, in particular, terms requiring—
  - (a) the loans to be repaid at such times and by such methods as the Secretary of State may, with the consent of the Treasury, from time to time direct, and
  - (b) interest to be paid on the loans at such rates and at such times as the Secretary of State may, with the consent of the Treasury, from time to time direct.
- (6) The Secretary of State must pay sums received as a result of this section into the Consolidated Fund.

#### Commencement Information

**I78** [S. 79](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## **80 Indemnities**

- (1) This section applies if a postal administration order has been made in relation to a company.
- (2) The Secretary of State may, with the consent of the Treasury, agree to indemnify persons in respect of one or both of the following—
  - (a) liabilities incurred in connection with the exercise and performance of powers and duties by the postal administrator, and
  - (b) loss or damage sustained in that connection.
- (3) The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) As soon as practicable after agreeing to indemnify persons under this section, the Secretary of State must lay a statement of the agreement before Parliament.

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- (5) If sums are paid by the Secretary of State in consequence of an indemnity agreed to under this section, the company must pay the Secretary of State—
- (a) such amounts in or towards the repayment to the Secretary of State of those sums as the Secretary of State may, with the consent of the Treasury, direct, and
  - (b) interest on amounts outstanding under this subsection at such rates as the Secretary of State may, with the consent of the Treasury, direct.
- (6) The payments must be made by the company at such times and in such manner as the Secretary of State may, with the consent of the Treasury, determine.
- (7) Subsection (5) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company.
- (8) If a sum has been paid out in consequence of an indemnity agreed to under this section, the Secretary of State must lay a statement relating to that sum before Parliament—
- (a) as soon as practicable after the end of the financial year in which the sum is paid out, and
  - (b) if subsection (5) applies to the sum, as soon as practicable after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (9) The repayment condition is met in relation to a financial year if—
- (a) the whole of the sum has been repaid to the Secretary of State before the beginning of the year, and
  - (b) the company was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.
- (10) The power of the Secretary of State to agree to indemnify persons—
- (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons, but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (11) The following are relevant persons for the purposes of this section—
- (a) the postal administrator,
  - (b) an employee of the postal administrator,
  - (c) a partner or employee of a firm of which the postal administrator is a partner,
  - (d) a partner or employee of a firm of which the postal administrator is an employee,
  - (e) a partner of a firm of which the postal administrator was an employee or partner at a time when the order was in force,
  - (f) a body corporate which is the employer of the postal administrator,
  - (g) an officer, employee or member of such a body corporate, and
  - (h) a Scottish firm which is the employer of the postal administrator or of which the postal administrator is a partner.
- (12) For the purposes of subsection (11)—
- (a) references to the postal administrator are to be read, where two or more persons are appointed as the postal administrator, as references to any one or more of them, and

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- (b) references to a firm of which a person was a partner or employee at a particular time include a firm which holds itself out to be the successor of a firm of which the person was a partner or employee at that time.
- (13) The Secretary of State must pay sums received as a result of subsection (5) into the Consolidated Fund.

#### Commencement Information

**I79** S. 80 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 81 Guarantees where postal administration order is made

- (1) This section applies if a postal administration order has been made in relation to a company.
- (2) The Secretary of State may, with the consent of the Treasury, guarantee—
- (a) the repayment of any sum borrowed by the company while that order is in force,
  - (b) the payment of interest on any sum borrowed by the company while that order is in force, and
  - (c) the discharge of any other financial obligation of the company in connection with the borrowing of any sum while that order is in force.
- (3) The Secretary of State may give the guarantees in such manner, and on such terms, as the Secretary of State considers appropriate.
- (4) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (5) If sums are paid out by the Secretary of State under a guarantee given under this section, the company must pay the Secretary of State—
- (a) such amounts in or towards the repayment to the Secretary of State of those sums as the Secretary of State may, with the consent of the Treasury, direct, and
  - (b) interest on amounts outstanding under this subsection at such rates as the Secretary of State may, with the consent of the Treasury, direct.
- (6) The payments must be made by the company at such times, and in such manner, as the Secretary of State may, with the consent of the Treasury, from time to time direct.
- (7) If a sum has been paid out under a guarantee given under this section, the Secretary of State must lay a statement relating to that sum before Parliament—
- (a) as soon as practicable after the end of the financial year in which the sum is paid out, and
  - (b) as soon as practicable after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (8) The repayment condition is met in relation to a financial year if—
- (a) the whole of the sum has been repaid to the Secretary of State before the beginning of the year, and
  - (b) the company was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

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(9) The Secretary of State must pay sums received as a result of subsection (5) into the Consolidated Fund.

(10) In this section “financial year” means a period of 12 months ending with 31 March.

**Commencement Information**

**I80** S. 81 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Modifications of regulatory conditions etc*

**82 Regulatory powers exercisable during postal administration**

- (1) This section applies if a postal administration order has been made.
- (2) The Secretary of State may by order modify the universal postal service order made by OFCOM under section 30.

An order under this subsection is subject to negative resolution procedure.

- (3) Before modifying that order, the Secretary of State must consult—
  - (a) OFCOM, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (4) If the Secretary of State modifies that order, it is for the Secretary of State (rather than OFCOM) to notify the European Commission of the modification.
- (5) The Secretary of State may by order amend section 31.
- (6) An order under subsection (5)—
  - (a) is subject to approval after being made, and
  - (b) may include such amendments of Part 3 as the Secretary of State considers necessary or expedient in consequence of any provision made by the order.
- (7) The Secretary of State may modify or revoke any regulatory condition if the Secretary of State considers it appropriate to do so for, or in connection with, achieving the objective of the postal administration.
- (8) The Secretary of State's power to make modifications includes power to make incidental, supplementary, consequential, transitional or transitory modifications.
- (9) Before modifying or revoking a regulatory condition, the Secretary of State must consult—
  - (a) OFCOM,
  - (b) the person whose condition is being modified or revoked, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (10) The Secretary of State must publish every modification or revocation of a regulatory condition made under this section.
- (11) The publication must be in such manner as the Secretary of State considers appropriate.
- (12) The provisions of Part 3 (including section 29) other than—
  - (a) sections 57 to 60 (appeals), and

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- (b) paragraph 3 of Schedule 6 (procedure for modifying or revoking regulatory conditions),  
apply in relation to the modification or revocation by the Secretary of State of regulatory conditions as they apply in relation to the modification or revocation by OFCOM of regulatory conditions.
- (13) The power conferred by subsection (2) or (5) may not be exercised at any time after the postal administration order has ceased to be in force.
- (14) Any duty to consult under this section may be met by consultation before the making of the postal administration order.

#### Commencement Information

**181** S. 82 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 83 Regulatory conditions to secure funding of postal administration order

- (1) The modifications that may be made under section 82 include, in particular, modifications of any price control provision contained in a regulatory condition for the purpose of raising such amounts as may be determined by the Secretary of State.
- (2) The modified condition may require the person on whom it is imposed to pay those amounts to such persons as may be so determined for the purpose of—
- (a) their applying those amounts in making good any shortfall in the property available for meeting the expenses of the postal administration, or
  - (b) enabling those persons to secure that those amounts are so applied.
- (3) The modified condition may require the person on whom it is imposed to apply amounts paid to it as result of this section in making good any shortfall in the property available for meeting the expenses of the postal administration.
- (4) For the purposes of this section “price control provision” means—
- (a) provision as to the tariffs that are to be used as mentioned in section 36(4) (designated USP condition: tariffs), or
  - (b) provision as to prices that may be charged for the giving of access under an access condition (within the meaning of Part 3).
- (5) For the purposes of this section—
- (a) there is a shortfall in the property available for meeting the costs of a postal administration if the property available (apart from this section) for meeting relevant debts is insufficient for meeting them, and
  - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (6) In this section “relevant debt”, in relation to a case in which a company is or has been subject to a postal administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the postal administrator of the company,

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- (b) to make a payment in discharge of a debt or other liability of the company arising out of a contract entered into at a time when the order was in force by the person who at that time was the postal administrator of the company,
- (c) to repay the whole or a part of a grant made to the company under section 79,
- (d) to repay a loan made to the company under section 79 or to pay interest on such a loan,
- (e) to make a payment under section 80(5), or
- (f) to make a payment under section 81(5).

#### Commencement Information

**I82** S. 83 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Supplementary provisions*

#### **84 Modification of Part 4 under Enterprise Act 2002**

The power to modify or apply enactments conferred on the Secretary of State by—

- (a) sections 248 and 277 of the Enterprise Act 2002 (amendments consequential on that Act), and
  - (b) section 254 of that Act (power to apply insolvency law to foreign companies),
- includes power to make such consequential modifications of this Part as the Secretary of State considers appropriate in connection with any other provision made under any of those sections.

#### Commencement Information

**I83** S. 84 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### **85 Interpretation of Part 4**

(1) In this Part—

“the 1986 Act” means the Insolvency Act 1986,  
“business”, “member”, “property” and “security” have the same meaning as in the 1986 Act,

“company” means—

- (a) a company registered under the Companies Act 2006, or
- (b) an unregistered company,

“the court”, in relation to a company, means the court having jurisdiction to wind up the company,

“foreign company” means a company incorporated outside the United Kingdom,

“objective of the postal administration” is to be read in accordance with section 69,

“postal administration order” has the meaning given by section 68(1),

“postal administration rules” means rules made under section 411 of the 1986 Act as a result of section 73 above,

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“postal administrator” has the meaning given by section 68(2) and is to be read in accordance with subsection (3) below,

“Scottish firm” means a firm constituted under the law of Scotland,

“UK affairs, business and property”, in relation to a company, means—

- (a) its affairs and business so far as carried on in the United Kingdom, and
- (b) its property in the United Kingdom, and

“unregistered company” means a company that is not registered under the Companies Act 2006.

- (2) Any expression which is used in this Part and in Part 3 has the same meaning in this Part as in that Part.
- (3) In this Part references to the postal administrator of a company—
  - (a) include a person appointed under paragraph 91 or 103 of Schedule B1 to the 1986 Act, as applied by Part 1 of Schedule 10 to this Act, to be the postal administrator of the company, and
  - (b) if two or more persons are appointed as the postal administrator of the company, are to be read in accordance with the provision made under section 72(5).
- (4) References in this Part to a person qualified to act as an insolvency practitioner in relation to a company are to be read in accordance with Part 13 of the 1986 Act, but as if references in that Part to a company included a company registered under the Companies Act 2006 in Northern Ireland.
- (5) For the purposes of this Part an application made to the court is outstanding if it—
  - (a) has not yet been granted or dismissed, and
  - (b) has not been withdrawn.
- (6) An application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.
- (7) An appeal is to be treated as pending for this purpose if—
  - (a) an appeal has been brought and has not been determined or withdrawn,
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn, or
  - (c) no appeal has been brought and the period for bringing one is still running.
- (8) References in this Part to Schedule B1 to the 1986 Act, or to a provision of that Schedule (except the references in subsection (2) above), are to that Schedule or that provision without the modifications made by Part 1 of Schedule 10 to this Act.

#### Commencement Information

**184** S. 85 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## 86 Partnerships

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, apply (with or without modifications) any provision of this Part in relation to partnerships.

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- (2) An order under subsection (1) is subject to negative resolution procedure.
- (3) Subsection (1) does not apply in relation to Scottish firms.
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function of the Lord Chief Justice under subsection (1).
- (5) The Secretary of State may by order apply (with or without modifications) any provision of this Part in relation to Scottish firms.
- (6) An order under subsection (5) is subject to negative resolution procedure.

#### Commencement Information

**I85** S. 86 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 87 Northern Ireland

- (1) This section makes provision about the application of this Part to Northern Ireland.
- (2) Any reference to any provision of the 1986 Act is to have effect as a reference to the corresponding provision of the Insolvency (Northern Ireland) Order 1989.
- (3) Section 85(4) is to have effect as if the reference to Northern Ireland were to England and Wales or Scotland.
- (4) Section 86 is to have effect as if—
  - (a) in subsection (1)—
    - (i) the reference to the Secretary of State were to the Department of Enterprise, Trade and Investment, and
    - (ii) the reference to the Lord Chief Justice were to the Lord Chief Justice of Northern Ireland, and
  - (b) for subsection (4) there were substituted—
 

“(4) The Lord Chief Justice of Northern Ireland may nominate—

    - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002, or
    - (b) a Lord Justice of Appeal (as defined in section 88 of that Act), to exercise the function of the Lord Chief Justice of Northern Ireland under subsection (1).”

#### Commencement Information

**I86** S. 87 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### 88 Review of Part 4

- (1) As soon as reasonably practicable after the end of the review period, the Secretary of State must—
  - (a) carry out a review of the provisions of this Part, and



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- (b) set out the conclusions of the review in a report.
- (2) The report must, in particular—
  - (a) set out the objectives intended to be achieved by the regulatory system established by those provisions,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposed less regulation.
- (3) The review period is the period of 5 years beginning with the day on which the provisions of this Part come generally into force.
- (4) The Secretary of State must lay the report before Parliament.

#### Commencement Information

**I87** S. 88 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## PART 5

### GENERAL

#### 89 Orders and regulations made by Ministers of Crown

- (1) This section applies to orders and regulations under this Act made by the Secretary of State, the Treasury or the Lord Chancellor.
- (2) Any order or regulations may—
  - (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances or for different areas.
- (3) Any order or regulations are to be made by statutory instrument.
- (4) Where any order or regulations are subject to “affirmative resolution procedure” the order or regulations may not be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Where any order is subject to “approval after being made”, the order—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of each House of Parliament.
- (6) In reckoning the period of 28 days no account is to be taken of any time—
  - (a) during which Parliament is dissolved or adjourned, or
  - (b) during which both Houses are adjourned for more than 4 days.
- (7) The order ceasing to have effect does not affect—
  - (a) anything previously done under it, or

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- (b) the making of a new order.
- (8) Where any order or regulations are subject to “negative resolution procedure” the statutory instrument containing the order or regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Any provision that may be made by any order or regulations subject to negative resolution procedure may be included in an order or regulations subject to affirmative resolution procedure (in which case negative resolution procedure does not apply to the order or regulations).

## 90 Minor definitions

In this Act—

“enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
  - (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
- “OFCOM” means the Office of Communications.

## 91 Minor and consequential amendments

- (1) Schedule 12 contains minor and consequential amendments (including repeals).
- (2) In that Schedule—
  - Part 1 makes provision in relation to the Postal Services Act 2000,
  - Part 2 makes provision in relation to the Communications Act 2003, and
  - Part 3 makes provision in relation to other enactments.
- (3) The Secretary of State or the Treasury may by order make such other provision amending, repealing, revoking or otherwise modifying any enactment as they consider necessary or expedient in consequence of any provision made by this Act.
- (4) An order under subsection (3) is subject to negative resolution procedure.

### Commencement Information

**I88** S. 91(3)(4) in force at Royal Assent, see s. 93(2)

**I89** S. 91(1)(2) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

## 92 Financial provisions

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown or the Postal Services Commission by virtue of this Act, and

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- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

### **93 Short title, commencement and extent**

- (1) This Act may be cited as the Postal Services Act 2011.
- (2) The following provisions of this Act come into force on the day on which this Act is passed—
  - (a) section 43 and Schedule 4 (recovery of administrative charges incurred by OFCOM),
  - (b) section 66 and Schedule 9 (transitional provisions for Part 3) and the provisions mentioned in that Schedule (to the extent provided),
  - (c) sections 89 and 90,
  - (d) section 91(3) and (4),
  - (e) section 92,
  - (f) this section, and
  - (g) any other provisions of this Act so far as necessary for the purposes of any of the provisions mentioned above.
- (3) The remaining provisions of this Act come into force on such day as the Secretary of State may by order appoint (and different days may be appointed for different purposes).
- (4) The Secretary of State may by order make such transitional provision and savings as the Secretary of State considers necessary or expedient in connection with the commencement of any provision made by this Act.
- (5) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates.
- (6) Subject to that, this Act extends to England and Wales, Scotland and Northern Ireland.

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## SCHEDULES

### SCHEDULE 1

Section 8

#### TRANSFER SCHEMES

##### *Introduction*

1 In this Schedule—

“transfer scheme” means a transfer scheme under section 8,

“transferee”—

- (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme, and
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created,

“transferor”—

- (a) in relation to a transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme, and
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created, and

“third party”, in relation to a transfer scheme, means any person other than a transferor or transferee.

#### **Commencement Information**

**I90** Sch. 1 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

##### *Identification of property etc to be transferred*

2 (1) A transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.

(2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

#### **Commencement Information**

**I91** Sch. 1 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Property, rights and liabilities that may be transferred*

- 3
- (1) A transfer scheme may transfer—
    - (a) property situated in any part of the world,
    - (b) rights and liabilities arising (in any way) under the law of any country or territory.
  - (2) The property, rights and liabilities that may be transferred by a transfer scheme include—
    - (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time specified under paragraph 6(1),
    - (b) rights and liabilities arising after that time in respect of matters occurring before that time,
    - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
  - (3) The transfers to which effect may be given by a transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
  - (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
  - (5) Sub-paragraph (3) has effect where shares in a subsidiary of the transferor are transferred as if the reference to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

**Commencement Information**

**192** Sch. 1 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Dividing and modifying transferor's property, rights and liabilities*

- 4
- (1) A transfer scheme may contain provision—
    - (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
    - (b) for giving effect to a transfer by the creation, in favour of the transferee, of an interest or right in or in relation to property or rights retained by a transferor, and
    - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
  - (2) A transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking into a contract—
    - (a) between different transferees, or

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- (b) between a transferee and a transferor.
- (3) A transfer scheme may contain provision—
  - (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor, and
  - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) Paragraph 3(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

#### **Commencement Information**

**193** Sch. 1 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Obligation to effect transfers etc*

- 5 (1) A transfer scheme may impose on a transferee or transferor an obligation—
  - (a) to enter into an agreement (specified or described in the scheme) with another person on whom a corresponding obligation is, could be or has been imposed as a result of this paragraph (whether in the same or a different scheme), or
  - (b) to execute an instrument (specified or described in the scheme) in favour of such a person.
- (2) A transfer scheme that imposes such an obligation may provide that paragraph 3(3) applies (to the extent specified in the scheme) in relation to—
  - (a) a transfer made by or under an agreement or instrument made in pursuance of the obligation, and
  - (b) interests or rights created by or under such an agreement or instrument.
- (3) Subject to that, nothing in paragraph 3 enables—
  - (a) an agreement or instrument made in pursuance of such an obligation, or
  - (b) anything done under such an agreement or instrument,
 to give effect to a transfer, or to create an interest or right, that could not otherwise have been made or created by or under the agreement or instrument.
- (4) An obligation imposed as a result of sub-paragraph (1) may be enforced by the person with, or in favour of, whom the agreement or instrument is to be entered into or executed, in proceedings for any of the following—
  - (a) an injunction,
  - (b) specific performance of a statutory duty under section 45 of the Court of Session Act 1988,
  - (c) any other appropriate remedy or relief.

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#### Commencement Information

**194** Sch. 1 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Effect of transfer scheme: general*

- 6 (1) At the time specified in the scheme—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
  - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this sub-paragraph, to vest in the transferee.
- (2) Sub-paragraph (1) is subject to any provision of the scheme that provides that the transfer or creation of any property, interests, rights or liabilities is to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 5(1).

#### Commencement Information

**195** Sch. 1 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Effect of transfer scheme on right to terminate or modify interest etc*

- 7 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
  - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
  - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the transferor are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.
- (4) A transfer scheme that (as a result of paragraph 5(1)) contains an obligation to enter into or execute an agreement or instrument may provide for sub-paragraphs (1) to (3) to apply to interests or rights affected by—
- (a) the agreement or instrument, or
  - (b) a proposal for the agreement or for the execution of the instrument.
- (5) Where the scheme does so provide, sub-paragraphs (1) to (3) apply in relation to the interests or rights as if references there to the transfer scheme included the agreement or instrument.

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#### Commencement Information

**I96** Sch. 1 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Supplementary provisions of schemes*

- 8 (1) A transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 9 to 13 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a transfer scheme includes the creation in accordance with a transfer scheme of an interest, right or liability.

#### Commencement Information

**I97** Sch. 1 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 (1) A transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a transferee to be treated as the same person in law as the transferor,
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to a transferee,
  - (c) for references in any document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and
  - (d) for proceedings commenced by or against the transferor to be continued by or against a transferee.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.

#### Commencement Information

**I98** Sch. 1 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) A transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities,
  - (b) the creation of foreign rights, interests and liabilities.
- (2) For the purposes of this paragraph property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.



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#### Commencement Information

**I99** Sch. 1 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 11 (1) A transfer scheme may contain provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or as a result of) a transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.

#### Commencement Information

**I100** Sch. 1 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 12 A transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different transferees, or
  - (b) between a transferee and a transferor,
- to be referred to such arbitration as may be specified in or determined under the scheme.

#### Commencement Information

**I101** Sch. 1 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 13 (1) This paragraph applies if, in consequence of a transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
  - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
  - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
  - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the

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basis that the acknowledgement does not contain an expression of contrary intention.

**Commencement Information**

**I102** Sch. 1 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Proof of title by certificate*

- 14 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

**Commencement Information**

**I103** Sch. 1 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Staff*

- 15 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

**Commencement Information**

**I104** Sch. 1 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 16 If an employee of the transferor becomes an employee of a transferee as a result of a transfer scheme—
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and
  - (b) the transfer to the transferee is not to be treated as a break in service.

**Commencement Information**

**I105** Sch. 1 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Modification of scheme*

- 17 (1) If—
- (a) before the end of the period of 3 years beginning with the time specified under paragraph 6(1), the transferor and transferee agree in writing that the scheme is to be treated as having come into force at that time with such modifications as are specified in the agreement, and
  - (b) the Secretary of State, with the consent of the Treasury, approves the agreement,

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the scheme as modified is to be treated for all purposes as having come into force at that time.

- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances.

**Commencement Information**

**I106** Sch. 1 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Disapplication of certain company law provisions etc*

- 18 Nothing in—
- (a) Part 23 of the Companies Act 2006 (distributions), or
  - (b) any rule of law relating to distributions by companies or the maintenance of capital by companies,
- applies in relation to a transfer of property, rights or liabilities, or the creation of rights or interests, by or under a transfer scheme.

**Commencement Information**

**I107** Sch. 1 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 19 For the purposes of any enactment none of the following persons are to be regarded as shadow directors of a transferor or transferee in relation to anything done by or under a transfer scheme—
- (a) the Secretary of State or the Treasury (or a nominee of either of them), or
  - (b) a person employed by, or acting on behalf of, anyone within paragraph (a).

**Commencement Information**

**I108** Sch. 1 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

SCHEDULE 2

Section 10

TAXATION PROVISIONS RELATING TO RE-STRUCTURING ETC

*Transfer of securities of subsidiaries of original holding company to Crown etc*

- 1 (1) This paragraph applies where—
- (a) there is a disposal of securities of a subsidiary of the original holding company to the Secretary of State or the Treasury (or a nominee of either of them) or to a company wholly owned by the Crown, and

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- (b) immediately before the disposal, the subsidiary was wholly owned by the original holding company.
- (2) For the purposes of the Taxation of Chargeable Gains Act 1992 the disposal is to be treated in relation to—
  - (a) the person making the disposal, and
  - (b) the person to whom the disposal is made,
as made for a consideration such that no gain or loss accrues to the person making the disposal.
- (3) The degrouping provisions are not to apply by reason of the disposal or any agreement to make the disposal (if they otherwise would).
- (4) In this Schedule a “degrouping provision” means—
  - (a) section 179 of the Taxation of Chargeable Gains Act 1992 (company ceasing to be member of group), or
  - (b) paragraph 3 of Schedule 7 to the Finance Act 2003 (withdrawal of SDLT group relief).
- (5) Stamp duty is not chargeable on the instrument effecting the disposal.
- (6) This paragraph applies whether or not the disposal is made by or under a transfer scheme under section 8.

**Commencement Information**

**1109** Sch. 2 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 2 (1) This paragraph applies where—
  - (a) paragraph 1(3) has applied at any time in relation to a disposal or an agreement to make a disposal,
  - (b) there is a subsequent disposal of securities of the subsidiary in relation to which paragraph 1(3) does not apply, and
  - (c) immediately before the subsequent disposal or the making of an agreement to make it, the subsidiary was a member of a new group.
- (2) For the purposes of the application of a degrouping provision in the case of that disposal or agreement—
  - (a) the company from which the subsidiary acquired relevant assets or chargeable interests is to be treated as if it had been a member of the new group at the time the relevant assets or chargeable interests were acquired, and
  - (b) that company is to be treated as if it were a member of the new group immediately before the disposal or the making of the agreement mentioned in sub-paragraph (1)(c).
- (3) “Relevant assets or chargeable interests” means assets or chargeable interests in relation to which, but for paragraph 1(3), the degrouping provision in question would have applied by reason of the disposal or agreement mentioned in sub-paragraph (1) (a).
- (4) In this paragraph—

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- (a) references to a group have the same meaning as in the degrouping provision in question, and
- (b) references to a new group are to a group other than a group of which the subsidiary was a member immediately before the making of a disposal or an agreement in relation to which paragraph 1(3) applied.

**Commencement Information**

**I110** Sch. 2 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Transfers of property, rights and liabilities by transfer schemes*

- 3 In paragraphs 4 to 6—
- a “relevant transfer” means a transfer of any property, rights or liabilities by or under a transfer scheme under section 8, and
  - “transferor” and “transferee” have the same meaning as in Schedule 1.

**Commencement Information**

**I111** Sch. 2 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 4 For the purposes of the Taxation of Chargeable Gains Act 1992 a disposal constituted by a relevant transfer is to be treated in relation to the transferor and transferee as made for a consideration such that no gain or loss accrues to the transferor.

**Commencement Information**

**I112** Sch. 2 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 5 For the purposes of Chapter 4 of Part 5 of the Corporation Tax Act 2009 (loan relationships: continuity of treatment on transfers within groups or on reorganisations) the transferor and transferee are to be treated in relation to a relevant transfer as if, for the purposes of the transfer, they were members of the same group.

**Commencement Information**

**I113** Sch. 2 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 6
- (1) For the purposes of Part 8 of the Corporation Tax Act 2009 (intangible fixed assets) a relevant transfer of a chargeable intangible asset is to be treated as tax-neutral.
  - (2) Part 4 of the Taxation (International and Other Provisions) Act 2010 (transfer pricing) does not apply in relation to a transfer to which sub-paragraph (1) applies.
  - (3) For the purposes of section 882 of the Corporation Tax Act 2009 (application of Part 8 to assets created or acquired on or after 1 April 2002) assets acquired by a transferee on a relevant transfer are to be treated as if they were acquired from a person who at the time of the acquisition was a related party.

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**Commencement Information**

**I114** Sch. 2 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Transfers of securities of original holding company or its subsidiaries*

- 7 (1) This paragraph applies where—
- (a) there is a disposal of securities of the original holding company or any of its subsidiaries, and
  - (b) immediately before the disposal, the original holding company or (as the case may be) the subsidiary was a 51% subsidiary of the Crown.
- (2) The degrouping provisions are not to apply by reason of the disposal or any agreement to make the disposal (if they otherwise would).
- (3) For the purposes of this paragraph “51% subsidiary” has the same meaning as it has for the purposes of the Corporation Tax Acts (see Chapter 3 of Part 24 of the Corporation Tax Act 2010), but—
- (a) the Crown is to be treated as a body corporate, and
  - (b) for the purpose of determining beneficial ownership the making of an agreement to make the disposal is to be ignored.

**Commencement Information**

**I115** Sch. 2 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 8 (1) This paragraph applies where—
- (a) paragraph 7 has applied at any time in relation to a disposal or an agreement to make a disposal,
  - (b) there is a subsequent disposal of securities of the original holding company or any of its subsidiaries in relation to which paragraph 7 does not apply, and
  - (c) immediately before the subsequent disposal or the making of an agreement to make it, the original holding company or (as the case may be) the subsidiary was a member of a new group.
- (2) For the purposes of the application of a degrouping provision in the case of that disposal or agreement—
- (a) the company from which the original holding company or (as the case may be) the subsidiary acquired relevant assets or chargeable interests is to be treated as if it had been a member of the new group at the time the relevant assets or chargeable interests were acquired, and
  - (b) that company is to be treated as if it were a member of the new group immediately before the disposal or the making of the agreement mentioned in sub-paragraph (1)(c).
- (3) “Relevant assets or chargeable interests” means assets or chargeable interests in relation to which, but for paragraph 7, the degrouping provision in question would have applied by reason of the disposal or agreement mentioned in sub-paragraph (1) (a).
- (4) In this paragraph—

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- (a) references to a group have the same meaning as in the degrouping provision in question, and
- (b) references to a new group are to a group other than a group of which the original holding company or (as the case may be) the subsidiary was a member immediately before the making of a disposal or an agreement in relation to which paragraph 7 applied.

**Commencement Information**

**I116** Sch. 2 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

SCHEDULE 3

Sections 38 and 50

FURTHER PROVISION ABOUT ACCESS CONDITIONS

**PART 1**

PROVISION THAT MAY BE MADE BY ACCESS CONDITIONS

*Introduction*

- 1 Access conditions imposed on a person may include provision of the kind mentioned in the following provisions of this Part of this Schedule.

**Commencement Information**

**I117** Sch. 3 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Terms of access*

- 2 An access condition imposed on a person may include provision—
- (a) requiring the terms and conditions on which the person is willing to offer access to include such terms and conditions as may be specified or described in the condition, or
  - (b) requiring the person to make such modifications as OFCOM may direct of any offer which sets out the terms and conditions on which the person is willing to offer access.

**Commencement Information**

**I118** Sch. 3 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Price controls etc.*

- 3 (1) An access condition imposed on a person may include provision imposing on the person—

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- (a) such price controls as OFCOM may direct in relation to matters connected with the giving of access (“access matters”),
  - (b) rules made by OFCOM in relation to access matters about the identification of costs and cost orientation,
  - (c) rules made by OFCOM for those purposes about the use of cost accounting systems,
  - (d) obligations to have compliance with those systems audited annually by a qualified independent auditor, and
  - (e) obligations to adjust prices in accordance with directions given by OFCOM.
- (2) An obligation within sub-paragraph (1)(d) may require the person to meet the costs of the audit.
- (3) In sub-paragraph (1)(d) “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
  - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

**Commencement Information**

**I119** Sch. 3 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 4 An access condition may include provision requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations referred to in paragraph 3.

**Commencement Information**

**I120** Sch. 3 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 5 (1) If an access condition imposes rules on any person about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the person to make arrangements for a description to be made available to the public of the cost accounting system used.
- (2) If OFCOM impose an obligation on a person under sub-paragraph (1), the description of information to be made available must include details of—
- (a) the main categories under which costs are brought into account for the purposes of that system, and
  - (b) the rules applied for the purposes of that system with respect to the allocation of costs.

**Commencement Information**

**I121** Sch. 3 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Arrangements for provision of services by others*

- 6 (1) This paragraph applies if—



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- (a) services are provided to a postal operator pursuant to arrangements made between the operator and another person (“B”),
  - (b) an access condition requires the operator to secure that those services are also provided to a third person (“C”), and
  - (c) the provisions of the arrangements are such that the operator cannot secure that the services are provided to C without B's agreement.
- (2) The access condition may include—
- (a) provision in relation to the giving of agreement by B (including provision for agreement to be deemed to be given in circumstances specified in the condition), and
  - (b) provision for determining the terms and conditions on which B is to secure the provision of the services to C.
- (3) Provision may not be included in an access condition as a result of this paragraph if it would have the effect of requiring a person who provides services pursuant to the arrangements to do more than the person could be required to do pursuant to the arrangements as they have effect before the condition is imposed.

**Commencement Information**

**I122** Sch. 3 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Separation for accounting purposes*

- 7 An access condition requiring a separation for accounting purposes between different matters may include provision—
- (a) requiring the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
  - (b) requiring particular accounting methods to be used in maintaining the separation.

**Commencement Information**

**I123** Sch. 3 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Restriction on use of information obtained in connection with giving access*

- 8 An access condition imposed on a person may include provision requiring the person not to use information which—
- (a) is obtained in connection with the giving of access, and
  - (b) relates to the provision of postal services by any person to whom access is given,
- for any purpose other than the purpose of the access given by the condition.

**Commencement Information**

**I124** Sch. 3 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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### *Periods for compliance*

- 9 An access condition imposed on a person may include provision for securing that obligations contained in the condition are complied with within the periods or at the times required by or under the condition.

**Commencement Information**

**I125** Sch. 3 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Dealing with requests for access*

- 10 An access condition imposed on a person may include provision for securing fairness and reasonableness in the way in which requests for access are made and responded to.

**Commencement Information**

**I126** Sch. 3 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Non-discrimination*

- 11 An access condition imposed on a person may include provision requiring the person not to discriminate unduly against particular persons, or against a description of persons, in relation to access matters.

**Commencement Information**

**I127** Sch. 3 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Transparency*

- 12 An access condition imposed on a person may include provision requiring the person—
- (a) to publish all such information as OFCOM may direct (in such manner as they may direct) for the purpose of securing transparency in relation to access matters, or
  - (b) to publish (in such manner as OFCOM may direct) the terms and conditions on which the person is willing to offer access.

**Commencement Information**

**I128** Sch. 3 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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## PART 2

### RESOLUTION OF ACCESS DISPUTES BY OFCOM

#### *Reference of disputes to OFCOM*

- 13 (1) Any one or more parties to an access dispute may refer the dispute to OFCOM.
- (2) In this paragraph “access dispute” means a dispute between postal operators, or between a postal operator and a user of postal services, about the terms and conditions (including those as to price) on which access, required by virtue of an access condition to be given—
- (a) is to be or may be provided,
  - (b) is being provided, or
  - (c) has been provided.
- (3) A reference under this paragraph must be made in such manner as OFCOM require.
- (4) A requirement under sub-paragraph (3) is to be imposed, withdrawn or modified by OFCOM publishing a notice in such manner as they consider appropriate for bringing the requirement, withdrawal or modification to the attention of persons who, in their opinion, are likely to be affected by it.
- (5) Different requirements may be imposed for different cases.

#### **Commencement Information**

**I129** Sch. 3 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *OFCOM to decide whether to handle dispute*

- 14 (1) This paragraph applies where a dispute has been referred to OFCOM under paragraph 13.
- (2) OFCOM must decide whether it is appropriate for them to handle the dispute.
- (3) As soon as possible after they have reached a decision, OFCOM must inform each of the parties to the dispute of—
- (a) their decision,
  - (b) the date it was made, and
  - (c) their reasons for it.

#### **Commencement Information**

**I130** Sch. 3 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Resolution of disputes by OFCOM*

- 15 (1) This paragraph applies if OFCOM have decided under paragraph 14 that it is appropriate for them to handle a dispute.
- (2) OFCOM must—

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- (a) consider the dispute, and
  - (b) make a determination for resolving it.
- (3) The determination must be made as soon as reasonably practicable.
- (4) A determination binds all of the parties to the dispute.
- (5) Where there has been an attempt to resolve the dispute by other means—
- (a) OFCOM may, in making their determination, take account of decisions made by others in the course of that attempt, and
  - (b) the determination may include provision ratifying any of those decisions.

**Commencement Information**

**I131** Sch. 3 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Resolution of disputes: OFCOM's powers*

- 16 (1) The powers that may be exercised by OFCOM, on the making of a determination under paragraph 15, are those listed in sub-paragraph (2).
- (2) The powers are—
- (a) to make a declaration setting out the rights and obligations of parties to the dispute,
  - (b) to give a direction fixing the terms or conditions of transactions between parties to the dispute,
  - (c) to give a direction imposing an obligation, enforceable by the parties, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM,
  - (d) to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment (but see sub-paragraph (3)),
  - (e) to require a party to the dispute to pay all or part of another party's costs and expenses incurred in connection with the dispute,
  - (f) to require a party to pay all or part of OFCOM's costs of dealing with the dispute (but see sub-paragraph (4)).
- (3) A direction under sub-paragraph (2)(d) may be given only for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one party to the dispute to another.
- (4) A direction under sub-paragraph (2)(f) may be given to a party only if—
- (a) the party referred the dispute to OFCOM, and
  - (b) OFCOM consider that the reference was frivolous or vexatious or that the party has otherwise abused the right (conferred by paragraph 13) to refer disputes.

**Commencement Information**

**I132** Sch. 3 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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### *Resolution of disputes: procedure*

- 17 (1) The procedure for the consideration and determination of a dispute is the procedure that OFCOM consider appropriate.
- (2) That procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by other means.
- (3) OFCOM must send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute.
- (4) OFCOM must publish so much of their determination as (having regard in particular to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (5) Information published under sub-paragraph (4) must be published in such manner as OFCOM consider appropriate for bringing it to the attention (to the extent that they consider appropriate) of members of the public.

#### **Commencement Information**

**I133** Sch. 3 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Reference not to affect legal proceedings or OFCOM's powers*

- 18 (1) A reference under paragraph 13 of a dispute does not prevent any person from bringing or continuing any civil or criminal proceedings in or before a court with respect to any of the matters under dispute.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 15(4) (determination binding on all parties), and
- (b) any agreement to the contrary.
- (3) Any reference of a dispute to OFCOM, or consideration or determination by OFCOM of a dispute, does not prevent OFCOM from exercising any of their powers (or from doing anything in connection with the exercise of any of their powers) in relation to the subject-matter of the dispute.

#### **Commencement Information**

**I134** Sch. 3 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Information*

- 19 (1) This paragraph applies where a dispute has been referred under paragraph 13 to OFCOM.
- (2) OFCOM may require a person to provide them with specified information, in the specified manner and within the specified period.
- (3) The information that may be specified is information required by OFCOM for the purpose of—
- (a) deciding whether it is appropriate for them to handle the dispute, or
- (b) considering the dispute and making a determination under paragraph 15.

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- (4) The specified period must be reasonable.
- (5) In fixing that period, OFCOM must have regard, in particular, to—
  - (a) the information that is required,
  - (b) the nature of the dispute, and
  - (c) the obligation imposed by paragraph 15(3) (obligation to make a determination as soon as reasonably practicable).
- (6) Part 2 of Schedule 8 (information: enforcement) applies in relation to a requirement imposed under this paragraph as if—
  - (a) the requirement were imposed under paragraph 1 of that Schedule, and
  - (b) sub-paragraphs (4) and (5) of paragraph 5 of that Schedule were omitted.

**Commencement Information**

**I135** Sch. 3 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

SCHEDULE 4

Section 43

RECOVERY OF ADMINISTRATIVE CHARGES INCURRED BY OFCOM

*Fixing of charges*

- 1 (1) If, at any time in a charging year, a postal operator provides a service within the scope of the universal postal service, the operator must, in respect of the service, pay to OFCOM the administrative charge (if any) that is fixed by OFCOM as applicable to the operator.
- (2) OFCOM may fix the administrative charge for a charging year only if—
  - (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that they are proposing to apply in fixing charges under this paragraph for that year, and
  - (b) the charge is fixed in accordance with those principles.
- (3) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make, that—
  - (a) on a year-by-year basis the total amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their postal services functions,
  - (b) the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed, and
  - (c) the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent.
- (4) OFCOM's power to fix charges for a particular case includes—
  - (a) power to provide that the charges are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them,

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- (b) power to provide for different charges to be imposed on different descriptions of persons,
  - (c) power to provide for particular descriptions of persons to be excluded from the liability to pay charges.
- (5) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement (a “financial statement”) setting out for that year—
- (a) the total amount of the charges for that year that they have received,
  - (b) the total amount of the charges for that year that remain outstanding but are likely to be paid or recovered, and
  - (c) the cost to OFCOM of carrying out their postal services functions.
- (6) Any deficit or surplus shown (after applying this sub-paragraph for previous years) by a financial statement is to be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of sub-paragraph (3)
- (a) in relation to the following year.
- (7) For the purposes of this paragraph “charging year” means—
- (a) the period beginning with the commencement of this Schedule and ending with the next 31 March, or
  - (b) any subsequent period of 12 months beginning with 1 April.

#### *Meaning of OFCOM's postal services functions*

- 2 (1) For the purposes of paragraph 1 OFCOM's postal services functions are—
- (a) functions that OFCOM carry out under, or in consequence of, any enactment relating to postal services (including one contained in this Schedule),
  - (b) securing international co-operation in relation to the regulation of postal services,
  - (c) market analysis and any monitoring of the controls operating in the market for the provision of postal services,
  - (d) the carrying out for a relevant purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(6A)(b) to (e) of the Communications Act 2003 (as inserted by Schedule 12 to this Act),
  - (e) the publication under section 26 of that Act of any information or advice that appears to OFCOM to be appropriate to make available to users of postal services, and
  - (f) any incidental functions carried out in relation to any of the above functions.
- (2) In sub-paragraph (1)(d) “a relevant purpose” means the purpose of ascertaining the effectiveness of one or more of the following—
- (a) the regulation of the provision of postal services,
  - (b) the mechanisms in place for the handling by postal operators of complaints made about them by the users of postal services, and
  - (c) the mechanisms in place for resolving disputes between postal operators and the users of postal services.
- (3) In sub-paragraph (1)(f) the reference to incidental functions carried out in relation to any of the functions within sub-paragraph (1)(a) to (e) includes the taking of any steps that OFCOM consider necessary—
- (a) in preparation for the carrying out of any of those functions, or

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(b) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.

(4) In sub-paragraph (3) the reference to the taking of any steps includes the taking of any steps before the commencement of this Schedule.

#### *Procedure for fixing of charges*

- 3
- (1) The way in which a charge is to be fixed under paragraph 1 is by the publication or giving of such notification as OFCOM consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it.
- (2) OFCOM may set out in that notification the time at which the charge is to become due to them.
- (3) A charge fixed under paragraph 1 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which the service in respect of which it is fixed is not provided by the person otherwise liable to the charge.
- (4) A charge fixed under paragraph 1 for a charging year may also be fixed so that (subject to sub-paragraph (5)) it is referable, in whole or in part, to the provision of a service during a part of the year falling before the fixing of the charge.
- (5) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—
- (a) the imposition of the charge, and
  - (b) the amount of the charge,
- are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
- (6) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (7) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

#### *Notification of non-payment of charges*

- 4
- (1) OFCOM may bring proceedings for the recovery from a person of an administrative charge fixed for a year under paragraph 1 only if they have given that person a notification under this paragraph with respect to the amount they are seeking to recover.
- (2) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is in contravention of a requirement to pay the charge (whether the whole or part of it).
- (3) A notification under this paragraph must set out the determination made by OFCOM.
- (4) A notification under this paragraph must also specify the period during which the person notified has an opportunity—



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- (a) to make representations about the notified determination, and
    - (b) to pay the unpaid charge or (if applicable) the amount outstanding.
  - (5) The specified period must be at least one month beginning with the day after the day the notification is given unless—
    - (a) OFCOM and the person notified agree a shorter period, or
    - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
  - (6) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
    - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge, and
    - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 6(2) that the contravention to which the previous notification related did occur.
  - (7) OFCOM may (on one or more occasions) extend the specified period.
- 5
- (1) A notification under paragraph 4—
    - (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge, and
    - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
  - (2) If a notification under paragraph 4 has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount only if—
    - (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates, or
    - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

#### *Penalties for non-payment of charges*

- 6
- (1) This paragraph applies if—
    - (a) a person has been given a notification under paragraph 4,
    - (b) OFCOM have allowed the person an opportunity of making representations about the notified determination, and
    - (c) the period allowed for the making of the representations has ended.
  - (2) OFCOM may impose a penalty on the person if the person—
    - (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under paragraph 1, and
    - (b) has not, during the period allowed under paragraph 4, paid the whole of the notified amount outstanding.
  - (3) If a notification under paragraph 4 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

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- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be—
  - (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than twice the amount of the charge fixed for the year in relation to which the contravention occurred.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
  - (a) any representations made to them by the person, and
  - (b) any steps taken by the person towards paying the amounts that the person was notified under paragraph 4 were outstanding.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must—
  - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph—
  - (a) must be paid to OFCOM, and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) This paragraph does not affect OFCOM's power to bring proceedings (whether before or after the imposition of a penalty under this paragraph) for the recovery of the whole or part of an amount due to them under paragraph 1.

*Suspending service provision for non-payment*

- 7 (1) OFCOM may give a direction under this paragraph to any postal operator who is providing one or more postal services (“the contravening operator”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening operator to provide postal services—
  - (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to D are met.
- (4) Condition A is that the contravening operator is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under paragraph 1 (whether in respect of the whole or a part of the charges).
- (5) Condition B is that the bringing of proceedings for the recovery of the amounts outstanding—
  - (a) has failed to secure complete compliance by the contravening operator with the requirements to pay the charges, or

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- (b) has no reasonable prospect of securing such compliance.
- (6) Condition C is that an attempt, by the imposition of penalties under paragraph 6, to secure such compliance has failed.
- (7) Condition D is that the giving of the direction is—
  - (a) appropriate, and
  - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 8 (1) Unless it provides otherwise, a direction under paragraph 7 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 7—
  - (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening operator as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator's services.
- (3) Those conditions may include a condition requiring the making of payments—
  - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
  - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM are not to give a direction under paragraph 7 unless they have—
  - (a) notified the contravening operator of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
  - (b) provided the contravening operator with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
  - (c) considered every representation and proposal made to them during the period allowed by them for the contravening operator to take advantage of that opportunity.
- (5) That period must be at least one month beginning with the day after the day the notification is given.
- (6) OFCOM may revoke a direction under paragraph 7 or modify its conditions—
  - (a) with effect from such time as they may direct,
  - (b) subject to compliance with such requirements as they may specify, and
  - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (7) For the purposes of paragraph 7 there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—
  - (a) in the case of a previous notification given to that person under paragraph 4, OFCOM have determined for the purposes of paragraph 6(2) that a contravention did occur, and

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- (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges.

*Enforcement of directions under paragraph 7*

- 9 (1) A person commits an offence if the person provides any service—
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 7, or
  - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under paragraph 7 is to be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Sub-paragraphs (5) and (6) apply where a duty is owed by virtue of sub-paragraph (3) to a person.
- (5) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (6) An act which—
- (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
  - (b) is done wholly or partly for achieving that result,
- is actionable at the suit or instance of that person.
- (7) In proceedings brought against a person as a result of sub-paragraph (5) it is a defence for that person to show that the person took—
- (a) all reasonable steps, and
  - (b) exercised all due diligence,
- to avoid contravening the condition in question.

SCHEDULE 5

Section 52

APPROVAL OF REDRESS SCHEMES

*Approval of redress schemes*

- 1 (1) In deciding whether to approve a redress scheme, OFCOM must have regard to—
- (a) the provisions of the scheme,
  - (b) the manner in which the scheme will be operated (so far as that can be judged from the facts known to OFCOM),
  - (c) the interests of users of postal services (including, in particular, the number of other redress schemes which are, or are likely to be, approved), and

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- (d) applicable best practice.
- (2) “Applicable best practice” means the principles—
  - (a) which, in OFCOM's opinion, constitute generally accepted principles of best practice in relation to schemes for providing redress to consumers, and
  - (b) which it is reasonable to regard as applicable to the scheme.
- (3) OFCOM must not approve a redress scheme unless—
  - (a) the membership of the scheme is open to all postal operators,
  - (b) the independent adjudicator may require members of the scheme to provide complainants with the minimum types of redress (whether or not other types of redress are available), and
  - (c) OFCOM consider that the scheme makes satisfactory provision about the matters listed in sub-paragraph (6).
- (4) Sub-paragraph (3)(a) is not to be read as preventing OFCOM from approving a redress scheme that contains provision as to the expulsion of its members.
- (5) The minimum types of redress are—
  - (a) providing an apology or explanation,
  - (b) paying compensation, and
  - (c) taking such other action in the interests of the complainant as the independent adjudicator may specify.
- (6) The matters are—
  - (a) the matters about which complaints may be made (which may include contravention of a code of practice or other document),
  - (b) the independent adjudicator's duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint),
  - (c) the enforcement of any requirement to provide redress imposed on a member of the scheme,
  - (d) the acceptance and handling of complaints transferred from redress schemes which have their approval withdrawn under paragraph 2, and
  - (e) the provision of information by the independent adjudicator to the persons within sub-paragraph (7) (and, in the case of persons within sub-paragraph (7)(e) and (f), for the purposes mentioned there).
- (7) The persons are—
  - (a) OFCOM,
  - (b) persons carrying out functions under other redress schemes that apply to postal operators,
  - (c) the National Consumer Council,
  - (d) the Secretary of State,
  - (e) the Office of Fair Trading, for the purposes of any public consumer advice scheme supported by it, and
  - (f) persons who operate a public consumer advice scheme supported by the Office of Fair Trading, for the purposes of that scheme.
- (8) In this paragraph “the independent adjudicator” means the person mentioned in section 52(2) who investigates and determines the complaints.

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**Commencement Information**

**I136** Sch. 5 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Approval of redress schemes: supplementary*

- 2
- (1) An application for approval of a redress scheme must be made in such manner, and be accompanied by such information, as OFCOM may determine.
  - (2) The person who administers an approved redress scheme must notify OFCOM of any change to the scheme.
  - (3) That notification must be given before the end of the period of 14 days beginning with the day on which the change is made.
  - (4) OFCOM may withdraw their approval of a redress scheme, and may do so generally or in relation to complaints of a description specified by OFCOM.
  - (5) OFCOM may, in particular, specify complaints by reference to the date on which they were made.

**Commencement Information**

**I137** Sch. 5 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Procedure for refusing or withdrawing approval*

- 3
- (1) Before refusing or withdrawing their approval of a redress scheme, OFCOM must give the person who administers the scheme (“the scheme administrator”) a notice—
    - (a) stating that they propose to refuse or withdraw approval,
    - (b) giving the reasons for the proposed refusal or withdrawal, and
    - (c) specifying a period within which representations about the proposed refusal or withdrawal may be made.
  - (2) That period must be at least one month beginning with the day after the day the notice is given.
  - (3) OFCOM must give notice (a “decision notice”) to the scheme administrator of—
    - (a) OFCOM's decision on a proposal to refuse or withdraw approval, and
    - (b) the reasons for their decision.
  - (4) If the decision is to withdraw approval, OFCOM must also give notice of their decision and the reasons for it to the Secretary of State.
  - (5) The scheme administrator must give a copy of a decision notice to each member of the scheme.
  - (6) If OFCOM decide to withdraw approval, the withdrawal has effect in accordance with, and from the date specified in, the decision notice.

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**Commencement Information**

**I138** Sch. 5 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

SCHEDULE 6

Section 53

IMPOSITION, MODIFICATION OR REVOCATION OF REGULATORY CONDITIONS

*General test for imposing or modifying regulatory conditions*

- 1 OFCOM may impose or modify a regulatory condition only if satisfied that the condition or modification—
- (a) is objectively justifiable,
  - (b) does not discriminate unduly against particular persons or a particular description of persons,
  - (c) is proportionate to what it is intended to achieve, and
  - (d) is transparent in relation to what it is intended to achieve.

**Commencement Information**

**I139** Sch. 6 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Provision which may be contained in regulatory conditions*

- 2 (1) The power of OFCOM to impose a regulatory condition includes each of the following powers.

*Directions* The power to impose a requirement to comply with directions given by OFCOM, or by another person specified in the condition, with respect to the matters to which the condition relates.

*Consents, approvals and recommendations* The power to impose an obligation with respect to those matters framed by reference to, or conditional on, the consent, approval or recommendation of OFCOM or of another person specified in the condition.

*Discretion* The power to confer a discretion exercisable by OFCOM or by another person specified in, or determined in accordance with, the condition.

*Different provision for different cases* The power to impose different conditions for different cases (including different conditions in relation to different parts of the United Kingdom).

*Revocation and modification* The power to revoke or modify the condition.

- (2) The directions that are authorised as a result of this paragraph do not include directions withdrawing, suspending or restricting a person's entitlement to provide (in whole or in part) postal services.

**Commencement Information**

**I140** Sch. 6 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Procedure for imposing, modifying or revoking conditions*

- 3 (1) The way in which a regulatory condition is to be imposed or modified is by the publication of a notification setting out the condition or modification.
- (2) The way in which a regulatory condition is to be revoked is by the publication of a notification stating that the condition is revoked.
- (3) Before imposing, modifying or revoking a regulatory condition, OFCOM must publish a notification—
- (a) stating that they are proposing to impose, modify or revoke the condition specified in the notification,
  - (b) setting out the effect of the condition, modification or revocation,
  - (c) giving their reasons for making the proposal, and
  - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (4) The specified period must be at least one month beginning with the day after the day the notification is published.
- (5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they—
- (a) have considered every representation about the proposal that is made to them within the specified period, and
  - (b) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.
- (6) The publication of a notification under this paragraph must be in such manner as appears to OFCOM to be appropriate for bringing its contents—
- (a) in the case of a designated USP condition, a USP access condition or a USP accounting condition, to the attention of the persons who, in OFCOM's opinion, are likely to be affected by its contents, and
  - (b) in any other case, to the attention of such persons as OFCOM consider appropriate.
- (7) The requirements of this paragraph apply even if OFCOM is under a duty under any other provision of Part 3 of this Act to impose or modify a condition.

**Commencement Information**

**I141** Sch. 6 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Directions and approvals for purposes of conditions*

- 4 (1) This paragraph applies if—
- (a) a regulatory condition has effect by reference to directions, approvals or consents given by a person (whether OFCOM or another), and
  - (b) the person proposes to give a direction, approval or consent affecting the operation of the condition or to modify or withdraw a direction, approval or consent so as to affect its operation.



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- (2) A person may give, modify or withdraw the direction, approval or consent only if satisfied that to do so—
  - (a) is objectively justifiable,
  - (b) does not discriminate unduly against particular persons or a particular description of persons,
  - (c) is proportionate to what it is intended to achieve, and
  - (d) is transparent in relation to what it is intended to achieve.
- (3) Before the direction, approval or consent is given, modified or withdrawn, a notification must be published—
  - (a) stating that there is a proposal to give, modify or withdraw it,
  - (b) identifying the person whose proposal it is,
  - (c) setting out the direction, approval or consent to which the proposal relates,
  - (d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal,
  - (e) giving reasons for the making of the proposal, and
  - (f) specifying the period within which representations may be made about the proposal to the person whose proposal it is.
- (4) That period must be at least one month beginning with the day after the day the notification is published.
- (5) But if the person giving the notification is satisfied that there are exceptional circumstances justifying a shorter period, the period for making representations may be whatever shorter period that person considers reasonable in the circumstances.
- (6) If—
  - (a) a person other than OFCOM proposes to give, modify or withdraw a direction, approval or consent, and
  - (b) the condition for the purposes of which it has (or will have) effect provides for notifications of proposals for the purposes of the condition to be given by that person,the obligation of publishing the notification of that proposal for the purposes of this paragraph falls on that person.
- (7) Otherwise, the obligation of publishing a notification for the purposes of this paragraph falls on OFCOM.
- (8) The person who is authorised to give the direction, approval or consent may give effect, with or without modifications, to a proposal with respect to which a notification has been given only if the person—
  - (a) has considered every representation about the proposal that is made to the person within the period specified in the notification, and
  - (b) has had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.
- (9) The publication of a notification under this paragraph must be in such manner as appears to the person publishing it to be appropriate for bringing its contents to the attention of such persons as that person considers appropriate.

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#### Commencement Information

**I142** Sch. 6 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Delivery of copies of notifications etc.*

- 5 (1) The relevant person must send to the Secretary of State—
- (a) a copy of every notification published under paragraph 3 or 4,
  - (b) a copy of every direction, approval or consent given for the purpose of giving effect to a proposal required to be published under paragraph 4, and
  - (c) a copy of every instrument modifying or withdrawing a direction, approval or consent for the purpose of giving effect to a proposal required to be published under that paragraph.
- (2) The relevant person must send to the European Commission—
- (a) a copy of every notification published under paragraph 3(1) with respect to a designated USP condition or a general universal service condition,
  - (b) a copy of every direction, approval or consent given for the purposes of a designated USP condition or a general universal service condition, and
  - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (3) In this paragraph “the relevant person”, in relation to a notification, direction, approval or consent—
- (a) except in a case falling within paragraph (b), means the person by whom it is published or by whom it has been or is to be given, modified or withdrawn, and
  - (b) in the case of a direction, approval or consent given, modified or withdrawn by a person other than OFCOM for the purpose of giving effect to a proposal published by OFCOM under paragraph 4, means OFCOM.

#### Commencement Information

**I143** Sch. 6 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## SCHEDULE 7

Section 54

### ENFORCEMENT OF REGULATORY REQUIREMENTS

#### *Introduction*

- 1 (1) This Schedule makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services.
- (2) “Regulatory requirement” means—
- (a) a regulatory condition, or
  - (b) a direction under—

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- (i) section 89A or 116(2A) of the Postal Services Act 2000 (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or
  - (ii) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement of requirements to give information to the National Consumer Council).
- (3) The reference to the enforcement of a regulatory condition includes the enforcement of an access condition containing provision as a result of paragraph 6 of Schedule 3 against the person (B) who has made the arrangements with a postal operator mentioned in that paragraph.

#### Commencement Information

**1144** Sch. 7 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Notification of contravention of regulatory requirements*

- 2
- (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a regulatory requirement.
  - (2) A notification under this paragraph must—
    - (a) set out the determination made by OFCOM, and
    - (b) specify the requirement and contravention in respect of which that determination has been made.
  - (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
    - (a) to make representations about the notified determination,
    - (b) to comply with notified requirements of which the person remains in contravention, and
    - (c) to remedy the consequences of notified contraventions.
  - (4) The specified period must be at least one month beginning with the day after the day the notification is given unless—
    - (a) OFCOM and the person notified agree a shorter period,
    - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate, or
    - (c) OFCOM specify a shorter period under paragraph 8(3) (power to deal with urgent cases).
  - (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
    - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same regulatory requirement, and
    - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 5(2) or 6(2) that the contravention to which the previous notification related did occur.
  - (6) OFCOM may (on one or more occasions) extend the specified period.

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**Commencement Information**

**I145** Sch. 7 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 3 (1) A notification under paragraph 2—
- (a) may be given in respect of more than one contravention, and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 2 has been given to a person in respect of a contravention of a regulatory requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if—
- (a) the contravention occurs after the earlier notification is given,
  - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
  - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

**Commencement Information**

**I146** Sch. 7 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 4 OFCOM may not give a notification under paragraph 2 in relation to a contravention if—
- (a) they decide that a more appropriate way of proceeding in relation to the contravention would be under the Competition Act 1998, and
  - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.

**Commencement Information**

**I147** Sch. 7 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Enforcement notification for contravention of regulatory requirements*

- 5 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 2,
  - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
  - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may give the person an enforcement notification if they are satisfied that the person—
- (a) has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2, and
  - (b) has not, during the period allowed under that paragraph, taken all such steps as they consider appropriate—

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- (i) for complying with that requirement, and
  - (ii) for remedying the consequences of the notified contravention of that requirement.
- (3) An enforcement notification is a notification which imposes one or both of the following requirements on the person—
  - (a) a requirement to take such steps for complying with the notified regulatory requirement as may be specified in the notification,
  - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.
- (4) A decision of OFCOM to give an enforcement notification to a person—
  - (a) must be notified by them to that person, together with their reasons for the decision, no later than one week after the day on which it is taken, and
  - (b) must fix a reasonable period for the taking of the steps required by the notification.
- (5) A person to whom an enforcement notification has been given has a duty to comply with it.
- (6) That duty is enforceable in civil proceedings by OFCOM—
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

#### Commencement Information

**I148** Sch. 7 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Penalties for contravention of regulatory requirements*

- 6
- (1) This paragraph applies (in addition to paragraph 5) if—
    - (a) a person has been given a notification under paragraph 2,
    - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
    - (c) the period allowed for the making of the representations has ended.
  - (2) OFCOM may impose a penalty on a person if the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2.
  - (3) If a notification under paragraph 2 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
  - (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
  - (5) OFCOM may also impose a penalty on a person if the person is contravening, or has contravened, a requirement of an enforcement notification given under paragraph 5.
  - (6) If OFCOM impose a penalty on a person under this paragraph, they must—

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- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this paragraph—
- (a) must be paid to OFCOM, and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

**Commencement Information**

**I149** Sch. 7 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 7 (1) The amount of a penalty imposed under paragraph 6 on a person is to be such amount as OFCOM determine to be—
- (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (2) The amount must not be more than 10% of the turnover of the person's postal services business for the relevant period, calculated in accordance with such rules as may be set out by order made by the Secretary of State.
- (3) For the purposes of this paragraph—
- “the person's postal services business” means so much of any business carried on by the person as consists in the provision of postal services, and
- “the relevant period” means—
- (a) except in a case within paragraph (b) or (c), the period of one year ending with the 31 March next before the time when notification of the contravention was given under paragraph 2,
  - (b) in the case of a person who at that time has been carrying on postal services business for under a year, the period, ending with that time, during which the person has been carrying it on, and
  - (c) in the case of a person who at that time has ceased to carry on postal services business, the period of one year ending with the time when the person ceased to carry it on.
- (4) In making the determination of the amount of the penalty OFCOM must have regard to—
- (a) any representations made to them by the person,
  - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 2, and
  - (c) any steps taken by the person for remedying the consequences of those contraventions.
- (5) An order under this paragraph is subject to affirmative resolution procedure.

**Commencement Information**

**I150** Sch. 7 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Power to deal with urgent cases*

- 8 (1) This paragraph applies if OFCOM determine—
- (a) that they are entitled to give a notification under paragraph 2 with respect to a contravention by a person (“the contravening person”) of a regulatory requirement,
  - (b) that there are reasonable grounds for suspecting that the case is urgent, and
  - (c) that the urgency of the case makes it appropriate for them to act under this paragraph.
- (2) A case is urgent for the purposes of this paragraph if the contravention has resulted in or creates an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security,
  - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
  - (c) serious economic or operational problems for users of postal services.
- (3) OFCOM may, in a notification under paragraph 2 with respect to the contravention, specify a period of less than one month for doing the things mentioned in subparagraph (3) of that paragraph.
- (4) OFCOM may also give to the contravening person a direction that the entitlement of the contravening person to provide postal services—
- (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.

**Commencement Information**

**1151** Sch. 7 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 8—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person's services.
- (3) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
  - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under this paragraph or modify its conditions—
- (a) with effect from such time as they may direct,
  - (b) subject to compliance with such requirements as they may specify, and

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- (c) to such extent and in relation to such services, or parts of a service, as they may determine.

**Commencement Information**

**I152** Sch. 7 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) As soon as reasonably practicable after giving a direction under paragraph 8 to a person, OFCOM must give the person—
- (a) an opportunity of making representations to them about the grounds on which it was given, and
  - (b) an opportunity of proposing steps to remedy the situation.
- (2) As soon as reasonably practicable after the period allowed by OFCOM for making those representations has ended, OFCOM must determine—
- (a) whether the contravention did occur, and
  - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) If they decide that the contravention did occur and that the direction was justified, they may confirm the direction.
- (4) If not, they must revoke the direction or modify its conditions.
- (5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify their decision to the person to whom the direction was given.
- (6) Conditions included in a direction as a result of paragraph 9(3) have effect only if the direction is confirmed.

**Commencement Information**

**I153** Sch. 7 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Suspending service provision for contravention of regulatory requirements*

- 11 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services—
- (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of regulatory requirements.
- (5) Condition B is that an attempt, by the giving of enforcement notifications under paragraph 5 or the imposition of penalties under paragraph 6 (or both), to secure compliance with the contravened requirements has failed.



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- (6) Condition C is that the giving of the direction is—
- (a) appropriate, and
  - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.

**Commencement Information**

**I154** Sch. 7 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 12 (1) Unless it provides otherwise, a direction under paragraph 11 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 11—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person's services.
- (3) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
  - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under this paragraph or modify its conditions—
- (a) with effect from such time as they may direct,
  - (b) subject to compliance with such requirements as they may specify, and
  - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (5) For the purposes of paragraph 11 there are repeated contraventions by a person of regulatory requirements to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 2, OFCOM have determined for the purposes of paragraph 5(2) or 6(2) that a contravention did occur,
  - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a regulatory requirement, and
  - (c) the previous notification and the subsequent ones all relate to contraventions of the same regulatory requirement (whether the same contravention or different ones).

**Commencement Information**

**I155** Sch. 7 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 13 (1) OFCOM are not to give a direction under paragraph 11 unless they have—

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- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
  - (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
  - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.
- (2) That period must be at least one month beginning with the day after the day the notification is given.
- (3) This paragraph does not apply in an urgent case (as to which, see paragraph 14).

**Commencement Information**

**I156** Sch. 7 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 14 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 11, give the contravening person—
- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
  - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM—
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
  - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 13.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security,
  - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
  - (c) serious economic or operational problems for users of postal services.

**Commencement Information**

**I157** Sch. 7 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Enforcement of directions under paragraph 8 or 11*

- 15 (1) A person commits an offence if the person provides any service—
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 8 or 11, or
  - (b) in contravention of a restriction contained in a direction under either of those paragraphs.

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- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.

**Commencement Information**

**I158** Sch. 7 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Civil liability for breach of regulatory requirements etc.*

- 16 (1) The duty of a person to comply with—
- (a) regulatory requirements,
  - (b) requirements imposed by an enforcement notification under paragraph 5, or
  - (c) a condition of a direction under paragraph 8 or 11,
- is a duty owed to every person who may be affected by a contravention of the requirement or condition.
- (2) Sub-paragraphs (3) and (4) apply where a duty is owed by virtue of sub-paragraph (1) to a person.
- (3) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (4) An act which—
- (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
  - (b) is done wholly or partly for achieving that result,
- is actionable at the suit or instance of that person.
- (5) In proceedings brought against a person as a result of sub-paragraph (3) it is a defence for that person to show that the person took—
- (a) all reasonable steps, and
  - (b) exercised all due diligence,
- to avoid contravening the requirement or condition in question.
- (6) The consent of OFCOM is required for the bringing of proceedings as a result of sub-paragraph (1)(a).
- (7) If OFCOM give their consent subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on except in compliance with those conditions.

**Commencement Information**

**I159** Sch. 7 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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## SCHEDULE 8

Section 55

## INFORMATION PROVISIONS

## PART 1

## REQUIREMENTS TO PROVIDE INFORMATION TO OFCOM

*Information required for purposes of OFCOM's functions in relation to postal services*

- 1 (1) OFCOM may require a person falling within sub-paragraph (2) to provide them with all such information as they consider necessary for the purpose of carrying out any of their functions in relation to postal services.
- (2) The persons within this sub-paragraph are—
- (a) a person who is, or has been, a postal operator,
  - (b) a person who provides, or has provided, access points or other facilities for use in connection with a postal service, and
  - (c) a person not falling within paragraph (a) or (b) who appears to OFCOM to have information required by them for the purpose of carrying out any of their functions in relation to postal services.
- (3) The required information may, in particular, include information required for any one or more of the following purposes—
- (a) ascertaining whether a contravention of a regulatory requirement (within the meaning of Schedule 7) has occurred or is occurring,
  - (b) ascertaining whether a provision of a regulatory condition which is for the time being in force continues to be effective for the purpose for which it was made,
  - (c) making a designation in accordance with regulations made under section 35,
  - (d) carrying out a review under section 35 or 44,
  - (e) ascertaining or verifying amounts payable by virtue of section 46,
  - (f) ascertaining or verifying charges payable under Schedule 4,
  - (g) identifying markets and carrying out market analyses or assessments in accordance with, or for the purposes of, any enactment relating to postal services, and
  - (h) statistical purposes connected with the carrying out of any of OFCOM's functions in relation to postal services.
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

**Commencement Information**

**1160** Sch. 8 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Restrictions on imposing requirements in case of conditions of general application*

- 2 (1) This paragraph limits the circumstances in which OFCOM may require the provision of information under paragraph 1 for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application.
- (2) OFCOM may require the provision of information for that purpose only if—
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint,
  - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the condition in question has been complied with,
  - (c) the condition in question is one which OFCOM have reason to suspect is one that has been, or is being, contravened, or
  - (d) the condition in question falls within section 42(2)(b).
- (3) A “condition of general application” means a regulatory condition other than a designated USP condition, a USP access condition or a USP accounting condition.

**Commencement Information**

**I161** Sch. 8 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Information required for related purposes*

- 3 (1) OFCOM may require—
- (a) a postal operator, or
  - (b) a person who provides access points or other facilities for use in connection with a postal service,
- to provide OFCOM with all such information as they consider necessary to carry out comparative overviews of the quality and prices of postal services.
- (2) The overviews in question must be carried out—
- (a) with a view to publication, and
  - (b) in the interest of users of postal services.
- (3) OFCOM may also require—
- (a) a postal operator, or
  - (b) a person who provides access points or other facilities for use in connection with a postal service,
- to provide OFCOM, for use for such statistical purposes as they think fit, with information relating to the provision of postal services.
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

**Commencement Information**

**I162** Sch. 8 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Manner in which information may be required*

- 4 (1) A person required to provide information under paragraph 1 or 3 must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (2) OFCOM must require the provision of information under paragraph 1 or 3 by a demand which—
- (a) describes the required information, and
  - (b) sets out OFCOM's reasons for requiring it.
- (3) The reasons for requiring information for statistical purposes under paragraph 1 or 3 must set out the statistical purposes for which the information is required.
- (4) A demand for information under paragraph 1 or 3 must be contained in a notice served on the person from whom the information is required.
- (5) This is subject to an exception in the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under Schedule 4.
- (6) In that case, the demand—
- (a) may be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons described in the demand as the persons from whom the information is required, and
  - (b) may take the form of a general demand for a person so described to provide information when specified conditions relevant to the person's liability to the charges are satisfied.

**Commencement Information**

**I163** Sch. 8 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**PART 2**

ENFORCEMENT

*Notification of contravention of information requirements*

- 5 (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a requirement imposed under paragraph 1 or 3.
- (2) A notification under this paragraph must—
- (a) set out the determination made by OFCOM, and
  - (b) specify the requirement and contravention in respect of which that determination has been made.
- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
- (a) to make representations about the matters notified, and
  - (b) to comply with notified requirements of which the person remains in contravention.

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- (4) The specified period must be at least one month beginning with the day after the day the notification is given unless—
  - (a) OFCOM and the person notified agree a shorter period, or
  - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
  - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same requirement, and
  - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 7(2) that the contravention to which the previous notification related did occur.
- (6) OFCOM may (on one or more occasions) extend the specified period.

**Commencement Information**

**I164** Sch. 8 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 6 (1) A notification under paragraph 5—
  - (a) may be given in respect of more than one contravention, and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 5 has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if—
  - (a) the contravention occurs after the earlier notification is given,
  - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
  - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

**Commencement Information**

**I165** Sch. 8 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Penalties for contravention of information requirements*

- 7 (1) This paragraph applies if—
  - (a) a person has been given a notification under paragraph 5,
  - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
  - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on a person if—

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- (a) they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 5,
  - (b) the person has not, during the period allowed under that paragraph, complied with the notified requirement, and
  - (c) no proceedings for an offence under paragraph 13 have been brought against the notified person in respect of the contravention.
- (3) If a notification under paragraph 5 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be—
- (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than £50,000.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
- (a) any representations made to them by the person, and
  - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 5.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must—
- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph—
- (a) must be paid to OFCOM, and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) The Secretary of State may by order substitute a different maximum penalty for the maximum penalty for the time being specified in sub-paragraph (6).
- (11) An order under sub-paragraph (10) is subject to affirmative resolution procedure.

#### **Commencement Information**

**I166** Sch. 8 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Suspending service provision for contravention of information requirements*

- 8 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).



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- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services—
  - (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of requirements imposed under paragraph 1 or 3.
- (5) Condition B is that an attempt, by the imposition of penalties under paragraph 7 or the bringing of proceedings under paragraph 13, to secure compliance with the contravened requirements has failed.
- (6) Condition C is that the giving of the direction is—
  - (a) appropriate, and
  - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.

#### Commencement Information

**1167** Sch. 8 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 8—
  - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator's services.
- (3) Those conditions may include a condition requiring the making of payments—
  - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
  - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under paragraph 8 or modify its conditions—
  - (a) with effect from such time as they may direct,
  - (b) subject to compliance with such requirements as they may specify, and
  - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (5) For the purposes of paragraph 8 there are repeated contraventions by a person of requirements imposed under paragraph 1 or 3 to the extent that—

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- (a) in the case of a previous notification given to that person under paragraph 5, OFCOM have determined for the purposes of paragraph 7(2) that a contravention did occur, and
  - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a requirement imposed under paragraph 1 or 3.
- (6) For the purposes of sub-paragraph (5) it does not matter whether the notifications relate to the same contravention or to different contraventions of the same or different requirements or of requirements under different paragraphs.

#### Commencement Information

**I168** Sch. 8 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) OFCOM are not to give a direction under paragraph 8 unless they have—
- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
  - (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
  - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.
- (2) That period must be at least one month beginning with the day after the day the notification is given.
- (3) This paragraph does not apply in an urgent case (as to which, see paragraph 11).

#### Commencement Information

**I169** Sch. 8 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 11 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 8, give the contravening person—
- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
  - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM—
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
  - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 10.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security,

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- (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
- (c) serious economic or operational problems for users of postal services.

**Commencement Information**

**I170** Sch. 8 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Enforcement of directions under paragraph 8*

- 12 (1) A person commits an offence if the person provides any service—
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 8, or
  - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.

**Commencement Information**

**I171** Sch. 8 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Offences in connection with information requirements*

- 13 (1) A person who fails to provide information in accordance with a requirement imposed under paragraph 1 or 3 commits an offence.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (3) A person does not commit an offence under sub-paragraph (1) if—
- (a) it was not reasonably practicable to comply with the requirement within the period specified by OFCOM, and
  - (b) the person has taken all reasonable steps to provide the information after the end of that period.
- (4) A person commits an offence if—
- (a) in pursuance of a requirement under paragraph 1 or 3, the person provides any information that is false in any material particular, and
  - (b) at the time the information is provided, the person knows it to be false or is reckless as to whether or not it is false.
- (5) A person guilty of an offence under sub-paragraph (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (6) Proceedings for an offence under sub-paragraph (1) may be brought in respect of a contravention by a person of a requirement imposed under paragraph 1 or 3 only if—

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- (a) OFCOM have given the person a notification under paragraph 5 in respect of the contravention,
- (b) the period allowed under that paragraph for doing the things mentioned in sub-paragraph (3) of that paragraph has ended without the required information having been provided, and
- (c) OFCOM have not imposed a financial penalty under paragraph 7 in respect of the contravention.

#### Commencement Information

**I172** Sch. 8 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### PART 3

#### SUPPLEMENTARY PROVISIONS

##### *Statement of policy on information gathering*

- 14 (1) OFCOM must prepare and publish a statement of their general policy with respect to—
- (a) the exercise of their powers under paragraph 1 or 3, and
  - (b) the uses to which they are proposing to put information obtained under those paragraphs.
- (2) OFCOM may from time to time revise the statement.
- (3) Where OFCOM make or revise a statement under this paragraph, they must publish the statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) In exercising the powers conferred by this Schedule, OFCOM must have regard to the statement for the time being in force under this paragraph.

#### Commencement Information

**I173** Sch. 8 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

##### *Provision of information by OFCOM*

- 15 (1) OFCOM must comply with a request made by a person—
- (a) to notify the person whether or not a notification is required to be submitted by the person under regulations made under section 48,
  - (b) to notify the person whether a notification submitted for the purposes of those regulations satisfies the requirements of those regulations, or
  - (c) to provide the person with such information about the person's rights as may be necessary for the purpose of facilitating the negotiation by the person of any right to be provided with access pursuant to an access condition.
- (2) A request for the purposes of this paragraph must be made in such manner as OFCOM may require.

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- (3) OFCOM do not have to comply with a request under this paragraph if (without having been asked to do so) they have already given the person the notification or information for which the person is asking.
- (4) Any notification or information which under sub-paragraph (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request was made to them.

#### Commencement Information

**I174** Sch. 8 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## SCHEDULE 9

Section 66

### TRANSITIONAL PROVISIONS FOR PART 3

#### *Introduction*

- 1 In this Schedule—
  - “the appointed day” means the day appointed under section 93(3) as the day on which the provisions of Part 3 come generally into force,
  - “Postcomm” means the Postal Services Commission,
  - “the transitional period” means the period beginning with the day on which this Act is passed and ending immediately before the appointed day, and
  - “the 2000 Act” means the Postal Services Act 2000.

#### *The universal postal service*

- 2 (1) Until the first universal postal service order under section 30 comes into force—
  - (a) references in Part 3 to a universal postal service are to be read as references to a universal postal service as defined by section 4(1) and (2) of the 2000 Act, and
  - (b) references in Part 3 to services within the scope of the universal postal service are to be read as references to services that immediately before the appointed day were, according to section 7A of the 2000 Act, not outside the scope of the universal postal service in the United Kingdom.
- (2) Section 29 (duty to secure provision of universal postal service) is to have effect during the transitional period as if the references in that section (other than in subsection (2)) to OFCOM included Postcomm.

#### *Provisional designation of universal service providers*

- 3 (1) OFCOM may before the appointed day designate provisionally, with effect from that date, one or more postal operators as universal service providers.
- (2) A provisional designation must be—
  - (a) notified to the person designated,

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- (b) published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it, and
  - (c) notified to the European Commission.
- (3) Whilst in force a provisional designation has the same effect as designation under section 35.
- (4) A provisional designation ceases to have effect on the making of the first designation under that section.

*Regulatory conditions applicable as from appointed day*

- 4 (1) OFCOM must determine before the end of the transitional period what regulatory conditions (“initial conditions”) are to apply to postal operators on and after the appointed day.
- (2) Except as mentioned below, the initial conditions applicable to—
- (a) universal service providers, and
  - (b) other postal operators,
- must be to substantially the same effect as the licence conditions applying immediately before the appointed day to the universal service provider or (as the case may be) in relation to the corresponding description of operator.
- (3) Sub-paragraph (2) does not apply to consumer protection conditions (and, accordingly, references elsewhere in this Schedule to initial conditions do not include consumer protection conditions).
- (4) If it appears to OFCOM to be unnecessary to maintain any provision made by the existing licence conditions, sub-paragraph (2) does not require OFCOM to replicate that provision in the initial conditions.
- (5) The provisions of Part 3 as to what regulatory conditions may be imposed—
- (a) have effect subject to sub-paragraph (2) in their application to the imposition of initial conditions, and
  - (b) do not apply in relation to the modification of initial conditions.
- 5 (1) This paragraph applies to licence conditions—
- (a) which apply immediately before the appointed day to the universal service provider or other postal operators, and
  - (b) which contain provision of a kind that (but for this paragraph) could not be contained in any regulatory condition under Part 3.
- (2) The provision made by those licence conditions is to be regarded for the purposes of Part 3 as being capable of being imposed by a regulatory condition under that Part (to be known as a “transitory condition”).
- (3) Accordingly—
- (a) the references in paragraph 4 to initial conditions include transitory conditions, and
  - (b) paragraph 4(2) and(4) apply in relation to those licence conditions as they apply in relation to other licence conditions.

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- (4) A transitory condition is (as a result of this sub-paragraph) to be treated as revoked at the time when the first universal postal service order under section 30 comes into force.
- 6 (1) If OFCOM modify the initial conditions, they may not impose any conditions that could not have been imposed under Part 2 of the 2000 Act.
- (2) The provisions of Part 3 about—
- (a) the procedure for imposing, modifying or revoking regulatory conditions,
  - (b) the enforcement of regulatory conditions, and
  - (c) appeals,
- apply to initial conditions as to other regulatory conditions.
- (3) Any decision of OFCOM pursuant to paragraph 4(2) is not to be regarded as an initial price control decision for the purposes of section 59.
- (4) This paragraph applies in relation to transitory conditions as it applies in relation to other initial conditions, except that sub-paragraph (2)(a) does not apply in relation to the revocation of a transitory condition.

*Recovery of administrative charges incurred by OFCOM*

- 7 (1) This paragraph applies in relation to the first charging year under Schedule 4 (recovery of administrative charges incurred by OFCOM).
- (2) OFCOM must prepare a statement of the principles that they are proposing to apply in fixing administrative charges under paragraph 1 of that Schedule for that year (and the charges must be fixed in accordance with those principles), but there is no requirement for the statement to be in force at the beginning of that year or at the time the charges are fixed.
- (3) Sub-paragraph (2) has effect instead of paragraph 1(2) of that Schedule.
- (4) Paragraph 3(5) of that Schedule has effect as if the reference to the statement of charging principles in force at the beginning of the charging year were a reference to the statement of charging principles relating to the charging year.

*Power to extend operation of time-limited licence condition*

- 8 (1) This paragraph applies if it appears to the Secretary of State—
- (a) that a licence condition applicable before the appointed day to the universal service provider depends for its continuing operation on forecast figures indicating the volume of business in future periods (“index years”) set out in the condition, and
  - (b) that the index years and forecast figures set out in the condition do not extend beyond the index year ending 31 March 2011.
- (2) The Secretary of State may by order amend that condition so as to specify a forecast figure for the index year ending 31 March 2012.
- (3) The power of the Secretary of State is limited to inserting a forecast figure produced by applying the same methods as were used by Postcomm to determine the forecast figure for the index years presently set out in the condition.

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- (4) If it appears to the Secretary of State that Postcomm has produced, using those methods, a forecast figure for the index year ending 31 March 2012, the Secretary of State may adopt its figure and need not repeat, or examine the basis of, the work done by it in producing that figure.
- (5) Before making an order under this paragraph the Secretary of State must—
  - (a) consult the universal service provider and such other persons as the Secretary of State considers appropriate, and
  - (b) consider any representations made before the end of the consultation period.
- (6) The consultation period, in relation to a person, is the period of 21 days beginning with the day on which the person is consulted.
- (7) The requirements of sub-paragraph (5) may be met by consultation and consideration before the passing of this Act.
- (8) If an order under this paragraph is made before the appointed day, the reference in paragraph 4(2) to the licence conditions applicable immediately before that day is to be read accordingly as a reference to the conditions as amended by the order.

*Anticipatory exercise of powers*

- 9 (1) During the transitional period the provisions of Part 3 relating to—
  - (a) the designation of a universal service provider, and
  - (b) the imposition of regulatory conditions on postal operators,
 have effect so far as necessary to enable OFCOM to undertake work with a view to making a designation, or imposing regulatory conditions, under that Part as soon as practicable on or after the appointed day.
- (2) The work referred to in sub-paragraph (1) includes, in particular, consultation with existing licensed operators and others in connection with the imposition of regulatory conditions.
- 10 The provisions of Part 3 also come into force at the beginning of the transitional period so far as necessary to enable the making of any regulations, order or scheme by OFCOM or the Secretary of State.
- 11 (1) The provisions of section 55 and Schedule 8 (information) have effect during the transitional period so far as necessary for the purposes of the carrying out by OFCOM of their functions during or after that period.
- (2) The provisions of section 56 (general restriction on disclosure of information) have effect accordingly.

*Reliance by OFCOM on work done by Postcomm*

- 12 In carrying out any of their functions under Part 3 OFCOM may rely on anything done by or in relation to Postcomm at any time before the passing of this Act.

*Consultation on exercise of existing regulatory functions*

- 13 During the transitional period Postcomm must consult OFCOM before taking any step with a view to modifying or revoking the conditions of a licence under Part 2 of the 2000 Act.



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*Enforcement action by Postcomm etc*

- 14 (1) This paragraph applies to a contravention of a condition of a licence under Part 2 of the 2000 Act in respect of which Postcomm was in the process of doing something immediately before the day on which paragraph 3 of Schedule 12 comes into force (repeal of Part 2 of 2000 Act).
- (2) OFCOM are to have the power to do anything that they consider appropriate to do in relation to the contravention in question.
- (3) In particular, OFCOM may continue or discontinue any legal proceedings under section 30 of the 2000 Act (financial penalties) begun by Postcomm in respect of the contravention in question.
- (4) References in this paragraph to a contravention include anything that Postcomm considered might be a contravention.
- 15 (1) This paragraph applies if, at any time on or after the day on which paragraph 3 of Schedule 12 comes into force, OFCOM are satisfied that a person has contravened a condition of a licence under Part 2 of the 2000 Act.
- (2) Despite the repeal of that Part, OFCOM are to have—
- (a) the power to begin legal proceedings under section 30 of the 2000 Act in respect of the contravention in question, and
- (b) the power to do anything else that they consider appropriate to do in relation to it.

*References to universal service provider*

- 16 References in this Schedule to the universal service provider, in relation to periods before the appointed day, are to the operator whose identity is for the time being notified to the European Commission as being the provider of a universal postal service in the United Kingdom.

*Saving*

- 17 Nothing in this Schedule is to be read as impliedly restricting the generality of the power to make transitional provision by order under section 93(4).

SCHEDULE 10

Section 73

CONDUCT OF POSTAL ADMINISTRATION

**PART 1**

MODIFICATIONS OF SCHEDULE B1 TO 1986 ACT

*Introductory*

- 1 Paragraphs 1, 40 to 50, 54, 59 to 68, 70 to 75, 79, 83 to 91, 98 to 107, 109 to 111 and 112 to 116 of Schedule B1 to the 1986 Act are to have effect in relation to postal

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administration orders as they have effect in relation to administration orders under that Schedule, but with the modifications set out in this Part of this Schedule.

**Commencement Information**

**I175** Sch. 10 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*General modifications of the applicable provisions*

- 2 Those paragraphs are to have effect as if—
- (a) for “administration application”, in each place, there were substituted “postal administration application”,
  - (b) for “administration order”, in each place, there were substituted “postal administration order”,
  - (c) for “administrator”, in each place, there were substituted “postal administrator”,
  - (d) for “enters administration”, in each place, there were substituted “enters postal administration”,
  - (e) for “in administration”, in each place, there were substituted “in postal administration”, and
  - (f) for “purpose of administration”, in each place (other than in paragraph 111(1)), there were substituted “objective of the postal administration”.

**Commencement Information**

**I176** Sch. 10 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Specific modifications*

- 3 Paragraph 1 (administration) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
    - “(1) In this Schedule “postal administrator”, in relation to a company, means a person appointed by the court for the purposes of a postal administration order to manage its affairs, business and property.”,
    - and
  - (b) in sub-paragraph (2), for “Act” there were substituted “Schedule”.

**Commencement Information**

**I177** Sch. 10 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 4 Paragraph 40 (dismissal of pending winding-up petition) is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.

**Commencement Information**

**I178** Sch. 10 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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- 5 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.

**Commencement Information**

**I179** Sch. 10 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 6 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7)(a) to (c) were omitted.

**Commencement Information**

**I180** Sch. 10 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 7 Paragraph 46(6) (date for notifying administrator's appointment) is to have effect as if for paragraphs (a) to (c) there were substituted “the date on which the postal administration order comes into force”.

**Commencement Information**

**I181** Sch. 10 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 8 Paragraph 49 (administrator's proposals) is to have effect as if—
- (a) in sub-paragraph (2)(b) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” there were substituted “objective of the postal administration should be achieved by means other than just a rescue of the company as a going concern”, and
  - (b) in sub-paragraph (4), after paragraph (a) there were inserted—  
“(aa) to the Secretary of State and OFCOM,”.

**Commencement Information**

**I182** Sch. 10 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 Paragraph 54 is to have effect as if the following were substituted for it—
- “54 (1) The postal administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) If the postal administrator thinks that a revision is substantial, the postal administrator must send a copy of the revised proposals—
- (a) to the registrar of companies,
  - (b) to the Secretary of State and OFCOM,
  - (c) to every creditor of the company of whose claim and address the postal administrator is aware, and
  - (d) to every member of the company of whose address the postal administrator is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- ”

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- (4) The postal administrator is to be taken to have complied with sub-paragraph (2)(d) if the postal administrator publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.
- (5) The postal administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”

**Commencement Information**

**I183** Sch. 10 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

10 Paragraph 60 (powers of an administrator) is to have effect as if the existing text were to become sub-paragraph (1) and as if after that sub-paragraph there were inserted—

“(2) The postal administrator of a company has the power to act on behalf of the company for the purposes of any enactment which confers a power on the company or imposes a duty on it.

(3) In sub-paragraph (2) “enactment” has the same meaning as in the Postal Services Act 2011 (see section 90).”

**Commencement Information**

**I184** Sch. 10 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

11 Paragraph 68 (management duties of an administrator) is to have effect as if—  
 (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted—

“the proposals as—

(a) set out in the statement made under paragraph 49 in relation to the company, and

(b) from time to time revised under paragraph 54,

for achieving the objective of the postal administration.” and

(b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objective of the postal administration”.

**Commencement Information**

**I185** Sch. 10 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

12 Paragraph 71(3)(b) (charged property: non-floating charge) is to have effect as if for “market” there were substituted “the appropriate”.

**Commencement Information**

**I186** Sch. 10 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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- 13 Paragraph 72(3)(b) (hire-purchase property) is to have effect as if for “market” there were substituted “the appropriate”.

**Commencement Information**

**I187** Sch. 10 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 14 Paragraph 73(3) (protection for secured or preferential creditor) is to have effect as if for “or modified” there were substituted “under paragraph 54”.

**Commencement Information**

**I188** Sch. 10 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 15 Paragraph 74 (challenge to administrator's conduct) is to have effect as if—
- (a) for sub-paragraph (2) there were substituted—
- “(2) If a company is in postal administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the postal administrator is acting in a manner preventing the achievement of the objective of the postal administration as quickly and efficiently as is reasonably practicable.
- (2A) The persons who may apply to the court are—
- (a) the Secretary of State,
- (b) with the consent of the Secretary of State, OFCOM,
- (c) a creditor or member of the company.”,
- (b) in sub-paragraph (6)—
- (i) at the end of paragraph (b) there were inserted “or”, and
- (ii) paragraph (c) (and the “or” before it) were omitted, and
- (c) after that sub-paragraph there were inserted—
- “(7) In the case of a claim made otherwise than by the Secretary of State or OFCOM, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or OFCOM a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
- (8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the postal administrator—
- (a) is acting,
- (b) has acted, or
- (c) is proposing to act,
- in a way that is inconsistent with the achievement of the objective of the postal administration as quickly and as efficiently as is reasonably practicable.
- (9) Before the making of an order of the kind mentioned in sub-paragraph (4)(d)—

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- (a) the court must notify the postal administrator of the proposed order and of a period during which the postal administrator is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12), and
- (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,

and that period must be a reasonable period.

(10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates,
- (b) remedying any harm unfairly caused to those interests, and
- (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.

(11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.

(12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner preventing the achievement of the objective of the postal administration as quickly and as efficiently as is reasonably practicable,
- (b) remedying the consequences of the postal administrator having acted in such a manner, and
- (c) steps for ensuring that there is no repetition of conduct preventing the achievement of the objective of the postal administration as quickly and as efficiently as is reasonably practicable.”

#### Commencement Information

**I189** Sch. 10 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

16 Paragraph 75(2) (misfeasance) is to have effect as if after paragraph (b) there were inserted—

- “(ba) a person appointed as an administrator of the company under the provisions of this Act, as they have effect in relation to administrators other than postal administrators.”

#### Commencement Information

**I190** Sch. 10 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

17 Paragraph 79 (end of administration) is to have effect as if—

- (a) for sub-paragraphs (1) and (2) there were substituted—

“(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of a

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postal administrator of a company to cease to have effect from a specified time.

- (2) An application may be made to the court under this paragraph—
- (a) by the Secretary of State,
  - (b) with the consent of the Secretary of State, by OFCOM, or
  - (c) with the consent of the Secretary of State, by the postal administrator.”, and

(b) sub-paragraph (3) were omitted.

**Commencement Information**

**I191** Sch. 10 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 18 Paragraph 83(3) (notice to registrar when moving to voluntary liquidation) is to have effect as if after “may” there were inserted “, with the consent of the Secretary of State or of OFCOM,”.

**Commencement Information**

**I192** Sch. 10 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 19 (1) Paragraph 84 (notice to registrar when moving to dissolution) is to have effect as if—
- (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted—
    - “(a) to the Secretary of State and OFCOM, and
    - (b) if directed to do so by either the Secretary of State or OFCOM, to the registrar of companies.”,
  - (b) sub-paragraph (2) were omitted, and
  - (c) in sub-paragraphs (3) to (6), for “(1)”, in each place, there were substituted “(1)(b)”.

**Commencement Information**

**I193** Sch. 10 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 20 Paragraph 87(2) (resignation of administrator) is to have effect as if for paragraphs (a) to (d) there were substituted “by notice in writing to the court”.

**Commencement Information**

**I194** Sch. 10 para. 20 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 21 Paragraph 89(2) (administrator ceasing to be qualified) is to have effect as if for paragraphs (a) to (d) there were substituted “to the court”.

**Commencement Information**

**I195** Sch. 10 para. 21 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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- 22 Paragraph 90 (filling vacancy in office of administrator) is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “Paragraph 91 applies”.

**Commencement Information**

**I196** Sch. 10 para. 22 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 23 Paragraph 91 (vacancies in court appointments) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
- “(1) The court may replace the postal administrator on an application made—
- (a) by the Secretary of State,
- (b) with the consent of the Secretary of State, by OFCOM, or
- (c) where more than one person was appointed to act jointly as the postal administrator, by any of those persons who remains in office.”, and
- (b) sub-paragraph (2) were omitted.

**Commencement Information**

**I197** Sch. 10 para. 23 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 24 Paragraph 98 (discharge from liability on vacation of office) is to have effect as if sub-paragraphs (2)(b) and (3) were omitted.

**Commencement Information**

**I198** Sch. 10 para. 24 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 25 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if—
- (a) in sub-paragraph (4), for the words from the beginning to “cessation”, in the first place, there were substituted “A sum falling within sub-paragraph (4A)”,
- (b) after that sub-paragraph there were inserted—
- “(4A) A sum falls within this sub-paragraph if it is—
- (a) a sum payable in respect of a debt or other liability arising out of a contract that was entered into before cessation by the former postal administrator or a predecessor,
- (b) a sum that must be repaid by the company in respect of a grant that was made before cessation under section 79 of the Postal Services Act 2011 as is mentioned in subsection (4) of that section,
- (c) a sum that must be repaid by the company in respect of a loan made before cessation under that section or that must be paid by the company in respect of interest payable on such a loan,



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- (d) a sum payable by the company under subsection (5) of section 80 of that Act in respect of an agreement to indemnify made before cessation, or
  - (e) a sum payable by the company under subsection (5) of section 81 of that Act in respect of a guarantee given before cessation.”, and
- (c) in sub-paragraph (5), for “(4)” there were substituted “(4A)(a)”.

**Commencement Information**

**I199** Sch. 10 para. 25 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 26 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.

**Commencement Information**

**I200** Sch. 10 para. 26 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 27 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.

**Commencement Information**

**I201** Sch. 10 para. 27 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 28 Paragraph 103 (appointment of additional administrators) is to have effect as if—
- (a) in sub-paragraph (2) the words from the beginning to “order” were omitted and for paragraph (a) there were substituted—
    - “(a) the Secretary of State,
    - (aa) OFCOM, or”,
  - (b) after that sub-paragraph there were inserted—
    - “(2A) The consent of the Secretary of State is required for an application by OFCOM for the purposes of sub-paragraph (2).”, and
  - (c) sub-paragraphs (3) to (5) were omitted.

**Commencement Information**

**I202** Sch. 10 para. 28 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 29 Paragraph 106(2) (penalties) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.

**Commencement Information**

**I203** Sch. 10 para. 29 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 30 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.

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**Commencement Information**

**I204** Sch. 10 para. 30 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 31 Paragraph 111 (interpretation) is to have effect as if—
- (a) in sub-paragraph (1), the definitions of “correspondence”, “holder of a qualifying floating charge”, “market value”, “the purpose of administration” and “unable to pay its debts” were omitted,
  - (b) in that sub-paragraph, after the definition of “administrator” (as modified as a result of paragraph 2 above) there were inserted—
    - ““appropriate value” means the best price which would be reasonably available on a sale which is consistent with the achievement of the objective of the postal administration,”
  - (c) in that sub-paragraph, before the definition of “creditors' meeting” there were inserted—
    - ““company” and “court” have the same meaning as in Part 4 of the Postal Services Act 2011,”
  - (d) in that sub-paragraph, after the definition of “hire purchase agreement” there were inserted—
    - ““objective”, in relation to a postal administration, is to be read in accordance with section 69 of the Postal Services Act 2011,
    - “OFCOM” means the Office of Communications,
    - “postal administration application” means an application to the court for a postal administration order under Part 4 of the Postal Services Act 2011,
    - “postal administration order” has the same meaning as in Part 4 of the Postal Services Act 2011,
    - “prescribed” means prescribed by postal administration rules within the meaning of Part 4 of the Postal Services Act 2011.”
  - (e) sub-paragraphs (1A) and (1B) were omitted, and
  - (f) after sub-paragraph (3) there were inserted—
    - “(4) For the purposes of this Schedule a reference to a postal administration order includes a reference to an appointment under paragraph 91 or 103.”

**Commencement Information**

**I205** Sch. 10 para. 31 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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## PART 2

### FURTHER MODIFICATIONS OF SCHEDULE B1 TO 1986 ACT: FOREIGN COMPANIES

#### *Introductory*

- 32 (1) This Part of this Schedule applies in the case of a postal administration order applying to a foreign company.
- (2) The provisions of Schedule B1 to the 1986 Act mentioned in paragraph 1 above (as modified by Part 1 of this Schedule) have effect in relation to the company with the further modifications set out in this Part of this Schedule.
- (3) The Secretary of State may by order amend this Part of this Schedule so as to add more modifications.
- (4) An order under this paragraph is subject to negative resolution procedure.

#### **Commencement Information**

**I206** Sch. 10 para. 32 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 33 In paragraphs 34 to 39—
- (a) the provisions of Schedule B1 to the 1986 Act that are mentioned in paragraph 1 above are referred to as the applicable provisions, and
- (b) references to those provisions, or to provisions comprised in them, are references to those provisions as modified by Part 1 of this Schedule.

#### **Commencement Information**

**I207** Sch. 10 para. 33 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Modifications*

- 34 In the case of a foreign company—
- (a) paragraphs 42(2), 83 and 84 of Schedule B1 to the 1986 Act do not apply,
- (b) paragraphs 46(4), 49(4)(a), 54(2)(a), 71(5) and (6), 72(4) and (5) and 86 of that Schedule apply only if the company is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies), and
- (c) paragraph 61 of that Schedule does not apply.

#### **Commencement Information**

**I208** Sch. 10 para. 34 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 35 (1) The applicable provisions and Schedule 1 to the 1986 Act (as applied by paragraph 60(1) of Schedule B1 to that Act) are to be read by reference to the limitation imposed on the scope of the postal administration order in question as a result of section 68(4) above.
- (2) Sub-paragraph (1) has effect, in particular, so that—

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- (a) a power conferred, or duty imposed, on the postal administrator by or under the applicable provisions or Schedule 1 to the 1986 Act is to be read as being conferred or imposed in relation to the company's UK affairs, business and property,
- (b) references to the company's affairs, business or property are to be read as references to its UK affairs, business and property,
- (c) references to goods in the company's possession are to be read as references to goods in its possession in the United Kingdom,
- (d) references to premises let to the company are to be read as references to premises let to it in the United Kingdom, and
- (e) references to legal process instituted or continued against the company or its property are to be read as references to such legal process relating to its UK affairs, business and property.

**Commencement Information**

**I209** Sch. 10 para. 35 in force at 1.10.2011 by S.I. 2011/2329, art. 3

36 Paragraph 41 of Schedule B1 to the 1986 Act (dismissal of receivers) is to have effect as if—

(a) for sub-paragraph (1) there were substituted—

“(1) Where a postal administration order takes effect in respect of a company—

- (a) a person appointed to perform functions equivalent to those of an administrative receiver, and
- (b) if the postal administrator so requires, a person appointed to perform functions equivalent to those of a receiver,

must refrain, during the period specified in sub-paragraph (1A), from performing those functions in the United Kingdom or in relation to any of the company's property in the United Kingdom.

(1A) That period is—

- (a) in the case of a person mentioned in sub-paragraph (1)(a), the period while the company is in postal administration, and
- (b) in the case of a person mentioned in sub-paragraph (1)(b), during so much of that period as is after the date on which the person is required by the postal administrator to refrain from performing functions.”, and

(b) sub-paragraphs (2) to (4) were omitted.

**Commencement Information**

**I210** Sch. 10 para. 36 in force at 1.10.2011 by S.I. 2011/2329, art. 3

37 Paragraph 43(6A) of Schedule B1 to the 1986 Act (moratorium on appointment to receiverships) is to have effect as if for “An administrative receiver” there were substituted “A person with functions equivalent to those of an administrative receiver”.

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#### Commencement Information

**I211** Sch. 10 para. 37 in force at 1.10.2011 by S.I. 2011/2329, art. 3

38 Paragraph 44(7) of Schedule B1 to the 1986 Act (proceedings to which interim moratorium does not apply) is to have effect as if for paragraph (d) there were substituted—

“(d) the carrying out of functions by a person who (whenever appointed) has functions equivalent to those of an administrative receiver of the company.”

#### Commencement Information

**I212** Sch. 10 para. 38 in force at 1.10.2011 by S.I. 2011/2329, art. 3

39 Paragraph 64 of Schedule B1 to the 1986 Act (general powers of administrator) is to have effect as if—

- (a) in sub-paragraph (1), after “power” there were inserted “in relation to the affairs or business of the company so far as carried on in the United Kingdom or to its property in the United Kingdom”, and
- (b) in sub-paragraph (2)(b), after “instrument” there were inserted “or by the law of the place where the company is incorporated”.

#### Commencement Information

**I213** Sch. 10 para. 39 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### PART 3

#### OTHER MODIFICATIONS

##### *General modifications*

40 (1) References within sub-paragraph (2) which are contained—  
(a) in the 1986 Act (other than Schedule B1 to that Act), or  
(b) in other enactments passed or made before this Act,  
include references to whatever corresponds to them for the purposes of this paragraph.

- (2) The references are those (however expressed) which are or include references to—  
(a) an administrator appointed by an administration order,  
(b) an administration order,  
(c) an application for an administration order,  
(d) a company in administration,  
(e) entering into administration, and  
(f) Schedule B1 to the 1986 Act or a provision of that Schedule.

(3) For the purposes of this paragraph—

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- (a) a postal administrator corresponds to an administrator appointed by an administration order,
- (b) a postal administration order corresponds to an administration order,
- (c) an application for a postal administration order corresponds to an application for an administration order,
- (d) a company in postal administration corresponds to a company in administration,
- (e) entering into postal administration corresponds to entering into administration, and
- (f) what corresponds to Schedule B1 to the 1986 Act or a provision of that Schedule is that Schedule or that provision as applied by Part 1 of this Schedule.

**Commencement Information**

**I214** Sch. 10 para. 40 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 41 (1) Paragraph 40, in its application to section 1(3) of the 1986 Act, does not entitle the postal administrator of an unregistered company to make a proposal under Part 1 of the 1986 Act (company voluntary arrangements).
- (2) Paragraph 40 does not confer any right under section 7(4) of the 1986 Act (implementation of voluntary arrangements) for a supervisor of voluntary arrangements to apply for a postal administration order in relation to a company which is a universal service provider.
- (3) Paragraph 40 does not apply to section 359 of the Financial Services and Markets Act 2000 (administration applications by FSA).

**Commencement Information**

**I215** Sch. 10 para. 41 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Modifications of 1986 Act*

- 42 The following provisions of the 1986 Act are to have effect in the case of any postal administration with the following modifications.

**Commencement Information**

**I216** Sch. 10 para. 42 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 43 Section 5 (effect of approval of voluntary arrangements) is to have effect as if after subsection (4) there were inserted—
- “(4A) Where the company is in postal administration, the court must not make an order or give a direction under subsection (3) unless—
- (a) the court has given the Secretary of State or the Office of Communications a reasonable opportunity of making representations to it about the proposed order or direction, and

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(b) the order or direction is consistent with the objective of the postal administration.

(4B) In subsection (4A) “in postal administration” and “objective of the postal administration” are to be read in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 10 to the Postal Services Act 2011.”

**Commencement Information**

I217 Sch. 10 para. 43 in force at 1.10.2011 by S.I. 2011/2329, art. 3

44 Section 6 (challenge of decisions in relation to voluntary arrangements) is to have effect as if—

- (a) in subsection (2), for “this section” there were substituted “subsection (1)”,
- (b) after that subsection there were inserted—

“(2AA) Subject to this section, where a voluntary arrangement in relation to a company in postal administration is approved at the meetings summoned under section 3, an application to the court may be made—

- (a) by the Secretary of State, or
- (b) with the consent of the Secretary of State, by the Office of Communications,

on the ground that the voluntary arrangement is not consistent with the achievement of the objective of the postal administration.”,

- (c) in subsection (4), after “subsection (1)” there were inserted “or, in the case of an application under subsection (2AA), as to the ground mentioned in that subsection”, and
- (d) after subsection (7) there were inserted—

“(7A) In this section “in postal administration” and “objective of the postal administration” are to be read in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 10 to the Postal Services Act 2011.”

**Commencement Information**

I218 Sch. 10 para. 44 in force at 1.10.2011 by S.I. 2011/2329, art. 3

45 In section 129(1A) (commencement of winding up), the reference to paragraph 13(1)(e) of Schedule B1 is to include section 71(1)(e) of this Act.

**Commencement Information**

I219 Sch. 10 para. 45 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Power to make further modifications*

46 (1) The Secretary of State may by order amend this Part of this Schedule so as to add further modifications.

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- (2) The further modifications that may be made are confined to such modifications of—
- (a) the 1986 Act, or
  - (b) other enactments passed or made before this Act that relate to insolvency or make provision by reference to anything that is or may be done under the 1986 Act,
- as the Secretary of State considers appropriate in relation to any provision made by or under this Part of this Act.
- (3) An order under this paragraph is subject to affirmative resolution procedure.

**Commencement Information**

**I220** Sch. 10 para. 46 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Interpretation of Part 3 of Schedule*

- 47 In this Part of this Schedule—
- “administration order”, “administrator”, “enters administration” and “in administration” are to be read in accordance with Schedule B1 to the 1986 Act (disregarding Part 1 of this Schedule), and
- “enters postal administration” and “in postal administration” are to be read in accordance with Schedule B1 to the 1986 Act (as applied by Part 1 of this Schedule).

**Commencement Information**

**I221** Sch. 10 para. 47 in force at 1.10.2011 by S.I. 2011/2329, art. 3

SCHEDULE 11

Section 73

POSTAL TRANSFER SCHEMES

*Application of Schedule*

- 1 This Schedule applies if—
- (a) the court has made a postal administration order in relation to a company (the “old company”), and
  - (b) it is proposed that a relevant transfer (within the meaning of section 69(3)) be made to another company (or companies) (a “new company”).

**Commencement Information**

**I222** Sch. 11 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 2 While the order is in force, the postal administrator is to act on behalf of the old company in doing anything that it is authorised or required to do by or under this Schedule.



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#### Commencement Information

**I223** Sch. 11 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Making of postal transfer schemes*

- 3
- (1) The old company may for the purpose of giving effect to the proposed transfer make a scheme (a “postal transfer scheme”) for the transfer of property, rights and liabilities from it to the new company (or companies).
  - (2) A postal transfer scheme has effect only if—
    - (a) the new company (or companies) have consented to the making of the scheme, and
    - (b) the Secretary of State has approved the scheme.
  - (3) A postal transfer scheme may be made only at a time when the postal administration order is in force in relation to the old company.
  - (4) A postal transfer scheme takes effect at the time specified in the scheme.
  - (5) In the case of a proposed transfer falling within section 69(4)(a) (transfer to wholly-owned subsidiary), sub-paragraph (2)(a) does not apply.

#### Commencement Information

**I224** Sch. 11 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Approval and modification of scheme by Secretary of State*

- 4
- (1) The Secretary of State may modify a postal transfer scheme before approving it.
  - (2) After a postal transfer scheme has taken effect—
    - (a) the Secretary of State may by notice to the old company and the new company (or companies) modify the scheme, and
    - (b) the scheme as modified is to be treated for all purposes as having come into force at the time specified under paragraph 3(4).
  - (3) The only modifications that may be made by the Secretary of State under this paragraph are ones—
    - (a) to which the old company and the new company (or companies) have consented, or
    - (b) in the case of a proposed transfer falling within section 69(4)(a), to which the old company has consented.
  - (4) In connection with giving effect to modifications under sub-paragraph (2), the Secretary of State may make incidental, supplementary, consequential, transitional, transitory or saving provision (and different provision may be made for different cases or circumstances).
  - (5) In deciding whether to approve or modify a postal transfer scheme, the Secretary of State must have regard to—
    - (a) the public interest, and

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- (b) any effect the scheme or modification is likely to have on the interests of persons other than the old company and a new company.
- (6) Before approving or modifying a postal transfer scheme, the Secretary of State must consult OFCOM.
- (7) The old company and the new company (or companies) each have a duty to provide the Secretary of State with any information or other assistance that the Secretary of State may reasonably require for the purposes of, or in connection with, the exercise of any power under this paragraph.
- (8) That duty overrides a contractual or other requirement to keep information in confidence.
- (9) That duty is enforceable in civil proceedings by the Secretary of State—
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

#### Commencement Information

**I225** Sch. 11 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Identification of property etc to be transferred*

- 5 (1) A postal transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A postal transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

#### Commencement Information

**I226** Sch. 11 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Property, rights and liabilities that may be transferred*

- 6 (1) A postal transfer scheme may transfer—
  - (a) property situated in any part of the world, and
  - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a postal transfer scheme include—
  - (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time at which it takes effect,
  - (b) rights and liabilities arising after that time in respect of matters occurring before that time, and
  - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.

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- (3) The transfers to which effect may be given by a postal transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the old company is entitled or subject to anything to which the transfer relates.
- (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
- (5) Sub-paragraph (3) has effect where shares in a subsidiary of the old company are transferred as if the reference to the terms on which that company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

#### Commencement Information

**I227** Sch. 11 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

#### *Dividing and modifying the old company's property, rights and liabilities*

- 7 (1) A postal transfer scheme may contain provision—
  - (a) for the creation, in favour of the old company or a new company, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
  - (b) for giving effect to a transfer by the creation, in favour of a new company, of an interest or right in or in relation to property or rights retained by the old company, and
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and a new company.
- (2) A postal transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of the old company's undertaking into a contract—
  - (a) between different new companies, or
  - (b) between a new company and the old company.
- (3) A postal transfer scheme may contain provision—
  - (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one new company or by or against both the new company and the old company, and
  - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A postal transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) The reference here to third parties is to persons other than the old company and a new company.

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- (6) Paragraph 6(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

**Commencement Information**

**I228** Sch. 11 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Transfer of regulatory conditions etc*

- 8 (1) A postal transfer scheme may contain provision—
- (a) for a new company to be treated for all purposes as having been designated by OFCOM under section 35 as a universal service provider, and
  - (b) for the transfer to a new company of the whole or part of any obligation contained in a regulatory condition to which the old company was subject.
- (2) The reference to the transfer of a part of any obligation includes the transfer of any obligation so far as relating to an area specified or described in provision made by the scheme.
- (3) A postal transfer scheme may, in consequence of provision made under sub-paragraph (1), make modifications of regulatory conditions to which the old company or new company are subject.

**Commencement Information**

**I229** Sch. 11 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Transfer etc of statutory functions*

- 9 (1) A postal transfer scheme may contain provision—
- (a) for the transfer of relevant statutory functions to a new company, or
  - (b) for relevant statutory functions to be exercisable concurrently by the old company and a new company (or companies).
- (2) For this purpose “relevant statutory functions” means powers and duties conferred or imposed on the old company by or under an enactment so far as they are connected with—
- (a) the undertaking of the old company to which the postal transfer scheme relates, or
  - (b) property, rights or liabilities transferred in accordance with the scheme.
- (3) Provision within sub-paragraph (1) may apply to relevant statutory functions so far as exercisable in an area specified or described in the provision.

**Commencement Information**

**I230** Sch. 11 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Effect of postal transfer scheme: general*

- 10 (1) At the time at which a postal transfer scheme takes effect—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
  - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this paragraph, to vest in the appropriate person.
- (2) For this purpose “the appropriate person” means—
- (a) in the case of property, rights and liabilities to be transferred, the new company (or companies), and
  - (b) in the case of interests, right and liabilities to be created, the person in whose favour, or in relation to whom, they are to be created.

**Commencement Information**

**I231** Sch. 11 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Effect of postal transfer scheme on right to terminate or modify interest etc*

- 11 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a postal transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
  - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
  - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the old company are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.

**Commencement Information**

**I232** Sch. 11 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Supplementary provisions of postal transfer schemes*

- 12 (1) A postal transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 13 to 17 limits sub-paragraph (1).

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- (3) In those paragraphs any reference to a transfer in accordance with a postal transfer scheme includes the creation in accordance with a postal transfer scheme of an interest, right or liability.

**Commencement Information**

**I233** Sch. 11 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 13 (1) A postal transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a new company to be treated as the same person in law as the old company,
  - (b) for agreements made, transactions effected or other things done by or in relation to the old company to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to a new company,
  - (c) for references in any document to the old company, or to an employee or office holder of it, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and
  - (d) for proceedings commenced by or against the old company to be continued by or against a new company.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.

**Commencement Information**

**I234** Sch. 11 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 14 (1) A postal transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities, and
  - (b) the creation of foreign rights, interests and liabilities.
- (2) For this purpose property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.

**Commencement Information**

**I235** Sch. 11 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 15 (1) A postal transfer scheme may contain provision for and in connection with the payment of compensation to persons other than the old company and a new company if their property, rights, interests or liabilities have been affected by (or as a result of) a postal transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.

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**Commencement Information**

**I236** Sch. 11 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 16 A postal transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different new companies, or
  - (b) between the old company and a new company,
- to be referred to such arbitration as may be specified in or determined under the scheme.

**Commencement Information**

**I237** Sch. 11 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 17 (1) This paragraph applies if, in consequence of a postal transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
  - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
  - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
  - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

**Commencement Information**

**I238** Sch. 11 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Proof of title by certificate*

- 18 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a postal transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

**Commencement Information**

**I239** Sch. 11 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Staff*

- 19 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a postal transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

**Commencement Information**

**I240** Sch. 11 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 20 If an employee of the old company becomes an employee of a new company as a result of a postal transfer scheme—
- (a) a period of employment with the old company is to be treated as a period of employment with the new company, and
  - (b) the transfer to the new company is not to be treated as a break in service.

**Commencement Information**

**I241** Sch. 11 para. 20 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Transfers in case of foreign companies*

- 21 (1) This paragraph applies if the old company is a foreign company.
- (2) The property, rights and liabilities which may be transferred by a postal transfer scheme, or in or in relation to which interests, rights or liabilities may be created by a postal transfer scheme, are confined to—
- (a) property of the old company in the United Kingdom,
  - (b) rights and liabilities arising in relation to its property in the United Kingdom, and
  - (c) rights and liabilities arising in connection with its affairs and business so far as carried on in the United Kingdom.

**Commencement Information**

**I242** Sch. 11 para. 21 in force at 1.10.2011 by S.I. 2011/2329, art. 3



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*Transfers by two or more postal transfer schemes*

- 22 (1) This paragraph applies if there are two or more postal transfer schemes making transfers to new companies.
- (2) Paragraph 7 has effect as if—
- (a) in sub-paragraph (1)(a) the reference to property or rights transferred in accordance with a postal transfer scheme included property or rights transferred in accordance with another postal transfer scheme, and
  - (b) in sub-paragraphs (2)(a) and (3) references to a new company included a company that is a new company for the purposes of another postal transfer scheme.
- (3) Accordingly, in relation to anything done by a postal transfer scheme as a result of this paragraph, any reference to a new company in paragraphs 13 to 16 includes a company that is a new company for the purposes of another postal transfer scheme.

**Commencement Information**

I243 Sch. 11 para. 22 in force at 1.10.2011 by S.I. 2011/2329, art. 3

SCHEDULE 12

Section 91

MINOR AND CONSEQUENTIAL AMENDMENTS

**PART 1**

POSTAL SERVICES ACT 2000

- 1 The Postal Services Act 2000 is amended as follows.

**Commencement Information**

I244 Sch. 12 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 2 Omit sections 1 and 3 to 5 (introductory).

**Commencement Information**

I245 Sch. 12 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 3 Omit sections 6 to 41 (licences for postal services).

**Commencement Information**

I246 Sch. 12 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 4 Omit sections 42 to 50 (the Postal Services Commission).

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**Commencement Information**

**I247** Sch. 12 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

5 Omit sections 60 to 61A (the Postal Services Commission and the Council).

**Commencement Information**

**I248** Sch. 12 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

6 In section 62 (transfer of property etc to nominated company), omit subsections (1) to (5), (7) and (8).

**Commencement Information**

**I249** Sch. 12 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

7 For section 63 substitute—

**“63 Power to direct issue of certain securities etc**

- (1) This section applies to—
  - (a) a Post Office company,
  - (b) a Royal Mail company, or
  - (c) a company in the same group as a company within paragraph (a) or (b),
 that is wholly owned by the Crown.
- (2) The Secretary of State may direct a company to which this section applies to issue securities to—
  - (a) the Secretary of State or the Treasury (or to a nominee of either of them), or
  - (b) a parent company that is wholly owned by the Crown.
- (3) A direction must specify—
  - (a) the kind and amount of securities to be issued,
  - (b) the terms of issue, and
  - (c) the date at or by which the securities must be issued.
- (4) Any shares issued in pursuance of a direction under this section are to be—
  - (a) issued as fully paid, and
  - (b) treated for the purposes of the Companies Acts as if they had been paid up by virtue of payment of their nominal value in cash.
- (5) A direction under this section may be given only with the consent of the Treasury.
- (6) Before giving a direction under this section, the Secretary of State must consult—
  - (a) the company to whom the direction is to be given, and

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- (b) if the company has a parent company, its parent company (or, if it has more than one parent company, the parent company that does not itself have a parent company).”

**Commencement Information**

**I250** Sch. 12 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 8 (1) Section 64 (government investment in certain securities) is amended as follows.
- (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**certain companies**”.
  - (3) In subsection (1), for “the Post Office company or of any of its subsidiaries” substitute “—
    - (a) a Post Office company,
    - (b) a Royal Mail company, or
    - (c) a company in the same group as a company within paragraph (a) or (b).”
  - (4) After that subsection insert—

“(1A) Securities acquired under this section may be held by a nominee.”
  - (5) Omit subsection (3).

**Commencement Information**

**I251** Sch. 12 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 (1) Section 68 (loans by the Secretary of State to the Post Office company etc) is amended as follows.
- (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
  - (3) In subsection (1), for “the Post Office company or any of its subsidiaries” substitute “a relevant company”.
  - (4) After that subsection insert—

“(1A) In this Part “relevant company” means—
    - (a) a Post Office company,
    - (b) a Royal Mail company, or
    - (c) a company that is, or has at any time been, in the same group as a company within paragraph (a) or (b).”

**Commencement Information**

**I252** Sch. 12 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) Section 69 (guarantees by the Secretary of State for the Post Office company etc) is amended as follows.

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- (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
- (3) In subsection (1), for “the Post Office company or any of its subsidiaries” substitute “a relevant company”.
- (4) In subsection (3), for “the Post Office company or the subsidiary concerned” substitute “the relevant company”.

**Commencement Information**

**I253** Sch. 12 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 11 (1) Section 70 (extinguishment of certain liabilities) is amended as follows.
  - (2) In subsections (1) and (2), for “the Post Office company or of any of its subsidiaries” substitute “a relevant company”.
  - (3) For subsections (3) and (4) substitute—
    - “(3) Before exercising a power under subsection (1) or (2), the Secretary of State must consult—
      - (a) the relevant company, and
      - (b) if the relevant company has a parent company, its parent company (or, if it has more than one parent company, the parent company that does not itself have a parent company).”

**Commencement Information**

**I254** Sch. 12 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 12 In section 71(1) and (2) (limit on loans and other arrangements with government), for “the Post Office company and any of its subsidiaries” substitute “relevant companies”.

**Commencement Information**

**I255** Sch. 12 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 13 (1) Section 72 (reserves of the Post Office company and its subsidiaries) is amended as follows.
  - (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
  - (3) In subsection (1)—
    - (a) for “the Post Office company”, in the first place, substitute “a relevant company that does not have a parent company (“the relevant company”)”, and
    - (b) in paragraphs (a), (b) and (c), for “the Post Office company” substitute “the relevant company”.
  - (4) For subsection (6) substitute—

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“(5A) No direction under this section may be given to, or in respect of, a company that is not wholly owned by the Crown.

(6) Before giving a direction under this section to a company, the Secretary of State must consult the company.”

**Commencement Information**

**I256** Sch. 12 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

14 In section 73 (statutory accounts of the Post Office company), for “the Post Office company”, in each place, substitute “ the original holding company ”.

**Commencement Information**

**I257** Sch. 12 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

15 (1) Section 74 (further provisions relating to the capital structure of the Post Office company) is amended as follows.

(2) In the heading, for “**the Post Office company**” substitute “ **certain relevant companies** ”.

(3) In subsection (1), for “the Post Office company” substitute “ a company within subsection (1A) ”.

(4) After that subsection insert—

“(1A) A company is within this subsection if—

- (a) it is a relevant company,
- (b) it is wholly owned by the Crown, and
- (c) it does not have a parent company.”

(5) In subsection (3)—

- (a) for “The Post Office company” substitute “ A company within subsection (1A) ”, and
- (b) at the end insert “ (or their nominees) ”.

(6) In subsection (4), after “the Secretary of State” insert “ (or a nominee of the Secretary of State) ”.

(7) In subsection (7)(b), for “the Post Office company” substitute “ the relevant company ”.

**Commencement Information**

**I258** Sch. 12 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

16 Omit section 75 (dissolution of the Post Office).

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**Commencement Information**

**I259** Sch. 12 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 17 (1) Section 77 (publicity requirements for certain accounts and reports of the Post Office company) is amended as follows.
- (2) In the heading, omit “**of the Post Office company**”.
- (3) Before subsection (1) insert—
- “(A1) This section applies to—
- (a) a relevant company that is wholly owned by the Crown and does not have a parent company, and
- (b) the original holding company if it is wholly owned by the Crown.”
- (4) In subsections (1) and (2), for “The Post Office company” substitute “ A company to which this section applies ”.

**Commencement Information**

**I260** Sch. 12 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 18 (1) Section 78 (information requirements on the Post Office company) is amended as follows.
- (2) In the heading, for “**the Post Office company**” substitute “ **certain relevant companies** ”.
- (3) Before subsection (1) insert—
- “(A1) This section applies to—
- (a) a relevant company that is wholly owned by the Crown and does not have a parent company, and
- (b) the original holding company if it is wholly owned by the Crown.”
- (4) In subsection (1), for “, on or after the appointed day, serve notice on the Post Office company” substitute “ serve notice on a company to which this section applies ”.

**Commencement Information**

**I261** Sch. 12 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 19 Omit section 79 (exercise of functions through nominees).

**Commencement Information**

**I262** Sch. 12 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 20 In section 80(1) (shadow directors), for “the Post Office company” substitute “ a relevant company any part of which is owned by the Crown ”.

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#### Commencement Information

**I263** Sch. 12 para. 20 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 21 In section 82(1) (interpretation of Part 4)—
- (a) after the definition of “the appointed day” insert—
- ““the Companies Acts” has the meaning given by section 2 of the Companies Act 2006,
- “company” includes any body corporate,”
- (b) for the definitions of “the Post Office company” and “relevant subsidiary” substitute—
- “any reference to a company being in the same “group” as another company is to be read in accordance with section 15(4) of the Postal Services Act 2011,
- “the original holding company” has the meaning given by section 15 of the Postal Services Act 2011,
- any reference to a company being a “parent” of another company is to be read in accordance with section 1162 of the Companies Act 2006,
- “Post Office company” has the meaning given by section 6 of the Postal Services Act 2011,
- “relevant company” has the meaning given by section 68(1A) of this Act,
- “Royal Mail company” has the meaning given by section 2 of the Postal Services Act 2011,”
- (c) omit the definition of “share rights”, and
- (d) for the definition of “wholly owned by the Crown” substitute—
- ““wholly owned by the Crown” has the meaning given by section 15 of the Postal Services Act 2011.”

#### Commencement Information

**I264** Sch. 12 para. 21 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 22 For the heading of Part 6 substitute “ POSTAL SERVICES: SUPPLEMENTARY ”.

#### Commencement Information

**I265** Sch. 12 para. 22 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 23 (1) Section 89 (schemes as to terms and conditions for provision of a universal postal service) is amended as follows.
- (2) In the heading, for “a universal postal service” substitute “ postal services ”.

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(3) For subsection (1) substitute—

“(1) A postal operator may make a scheme under this section in relation to any or all of the postal services provided by the operator.”

(4) In subsection (2)—

- (a) at the end of paragraph (a), insert “ and ”, and
- (b) omit paragraph (c) (together with the “and” before it).

(5) In subsections (3)(a), (4)(a) and (7), for “the universal service provider concerned” substitute “ the postal operator ”.

**Commencement Information**

**I266** Sch. 12 para. 23 in force at 1.10.2011 by S.I. 2011/2329, art. 3

24 After section 89 insert—

**“89A Powers of OFCOM in relation to schemes**

- (1) A postal operator may not make a scheme under section 89 unless—
  - (a) the operator has notified OFCOM of the scheme that the operator is proposing to make, and
  - (b) the operator has carried out a consultation exercise in relation to the proposed scheme in accordance with requirements contained in a notification published by OFCOM.
- (2) OFCOM may give a direction to a postal operator who has notified a scheme to them under subsection (1)(a) requiring the operator to make such modifications of the scheme as are specified in the direction.
- (3) Before giving a direction under subsection (2), OFCOM must publish a notification—
  - (a) setting out the terms of the scheme that the operator proposes to make,
  - (b) stating that OFCOM are proposing to give a direction under subsection (2) modifying the scheme,
  - (c) setting out the effect of the proposed modification,
  - (d) giving reasons for making the proposed modification, and
  - (e) specifying the period within which representations may be made to them about the proposed modification.
- (4) The specified period must be at least one month beginning with the day after the day the notification under subsection (3) is published.
- (5) OFCOM may not give a direction under subsection (2) unless they have considered every representation and proposal made to them during the period specified in that notification.
- (6) If the scheme is not in force at the time at which that notification is published, the operator may not bring the scheme into force until such time as OFCOM may direct.



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- (7) OFCOM must publish a notification of any direction that they make under subsection (2).
- (8) The publication of a notification under this section must be in such manner as OFCOM consider appropriate for bringing its contents to the attention of such persons as they consider appropriate.
- (9) An obligation imposed on a postal operator by a direction under subsection (2) is enforceable by OFCOM under Schedule 7 to the Postal Services Act 2011 (enforcement of regulatory requirements).”

#### Commencement Information

**I267** Sch. 12 para. 24 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 25 (1) Section 90 (exclusion of liability) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies in relation to—
- (a) the provision by a universal service provider of a universal postal service, and
  - (b) the provision by a postal operator of a service in relation to which a scheme under section 89 (made by the operator) applies.
- (A2) In this section—
- (a) “the operator” means the universal service provider or the postal operator concerned, and
  - (b) “the service” means the service mentioned in subsection (A1)(a) or (b) (as the case may be).”
- (3) In subsection (1)—
- (a) for “a universal service provider” substitute “ the operator ”, and
  - (b) for “a universal postal service” substitute “ the service ”.
- (4) In subsection (2)—
- (a) for “a universal service provider” substitute “ the operator ”,
  - (b) for “the provider”, in both places, substitute “ the operator ”, and
  - (c) in paragraph (b), for “an inland packet” substitute “ a postal packet ”.
- (5) In subsection (3)—
- (a) for “the universal service provider concerned” substitute “ the operator ”,
  - (b) for “the provider” substitute “ the operator ”, and
  - (c) in paragraph (b), for “an inland packet” substitute “ a postal packet ”.

#### Commencement Information

**I268** Sch. 12 para. 25 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 26 (1) Section 91 (limited liability for registered inland packets) is amended as follows.
- (2) In the heading, for “**registered inland packets**” substitute “**postal packets** .”.

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- (3) In subsection (1)—
- (a) for “a universal service provider” substitute “ a postal operator ”,
  - (b) for “an inland packet” substitute “ a postal packet ”, and
  - (c) for “the universal service provider” substitute “ the operator ”.
- (4) In subsection (2), for “the universal service provider” substitute “ the postal operator ”.
- (5) In subsection (4), for “universal service provider” substitute “ postal operator ”.
- (6) Omit subsection (6).

**Commencement Information**

**I269** Sch. 12 para. 26 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 27 In section 93(2) (power to modify sections 89 to 92 of that Act), for “the Commission” substitute “ OFCOM ”.

**Commencement Information**

**I270** Sch. 12 para. 27 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 28 (1) Section 97 (harbour charges on mail-bags) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “a universal service provider in connection with the provision of a universal postal service” substitute “ a postal operator in connection with the provision of postal services ”, and
  - (b) in paragraphs (b) and (c), for “such a provider in connection with the provision of such a service” substitute “ a postal operator in connection with the provision of postal services ”.
- (3) In subsection (2)(b), for “a universal service provider in connection with the provision of a universal postal service” substitute “ a postal operator in connection with the provision of postal services ”.

**Commencement Information**

**I271** Sch. 12 para. 28 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 29 In section 98 (mail-bags not to be subject to control by harbour authorities)—
- (a) in paragraph (a), for “a universal service provider in connection with the provision of a universal postal service” substitute “ a postal operator in connection with the provision of postal services ”,
  - (b) in paragraph (b), for “such a provider in the provision of such a service” substitute “ a postal operator in connection with the provision of postal services ”,
  - (c) in paragraph (c), for “such a provider in connection with the provision of such a service” substitute “ a postal operator in connection with the provision of postal services ”, and

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- (d) in paragraph (d), for “a universal service provider in connection with the provision of a universal postal service” substitute “ a postal operator in connection with the provision of postal services ”.

**Commencement Information**

**I272** Sch. 12 para. 29 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 30 In section 99 (common carriers)—
- (a) for “universal service provider” substitute “ postal operator ”, and
- (b) for “a universal postal service” substitute “ postal services ”.

**Commencement Information**

**I273** Sch. 12 para. 30 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 31 (1) Section 100 (certain exemptions from postage etc.) is amended as follows.
- (2) Omit subsections (1) to (3).
- (3) In subsection (4)—
- (a) for “universal service provider” substitute “ postal operator ”, and
- (b) for “a universal postal service” substitute “ postal services ”.
- (4) In subsection (5), for “universal service provider” substitute “ postal operator ”.

**Commencement Information**

**I274** Sch. 12 para. 31 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 32 (1) Section 101 (directions in interests of national security etc) is amended as follows.
- (2) In subsection (1), for the words from “such directions” to “functions” substitute “ a direction to OFCOM in connection with the exercise of their functions relating to postal services ”.
- (3) In subsection (2), for “the Commission” substitute “ OFCOM ”.
- (4) In subsection (3), for the words from “such directions” to the end substitute “ a direction (relating to the provision of postal services) to—
- (a) a postal operator,
- (b) a description of postal operators, or
- (c) all postal operators.”
- (5) In subsection (4), for “licence holder” substitute “ postal operator ”.
- (6) In subsection (5), for “the Commission” substitute “ OFCOM ”.
- (7) For subsection (6) substitute—
- “(6) Before giving a direction under subsection (3) to a particular postal operator (as opposed to all postal operators or a description of them), the Secretary of State must consult the operator.”

*Status: Point in time view as at 06/04/2012. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)*

(8) In subsection (7)(a), for “the Commission” substitute “ OFCOM ”.

**Commencement Information**

**I275** Sch. 12 para. 32 in force at 1.10.2011 by S.I. 2011/2329, art. 3

33 (1) Section 102 (power to ensure compliance with the Postal Services Directive) is amended as follows.

(2) In subsection (1)(a)(i), for “a Community obligation” substitute “ an EU obligation ”.

(3) In subsection (3)(a), for “the Commission” substitute “ OFCOM ”.

**Commencement Information**

**I276** Sch. 12 para. 33 in force at 1.10.2011 by S.I. 2011/2329, art. 3

34 In section 104(3) (inviolability of mails)—

(a) omit paragraphs (a) and (b), and

(b) before paragraph (c) insert—

“(ba) a power conferred by section 104A,”.

**Commencement Information**

**I277** Sch. 12 para. 34 in force at 1.10.2011 by S.I. 2011/2329, art. 3

35 After section 104 insert—

**“104A Power to detain packets in respect of unpaid or underpaid postage**

(1) A postal operator—

(a) may detain any postal packet in respect of which there has been no payment, or an underpayment, for postage, and

(b) may impose a surcharge in respect of that non-payment or underpayment.

(2) A postal operator may detain the packet until the correct postage and any surcharge have been paid.

(3) OFCOM may give a direction to a postal operator—

(a) limiting the amount of any surcharge, and

(b) limiting the length of time for which a postal packet may be detained under subsection (2) (and, if a direction is given under this paragraph, that subsection has effect subject to the direction).

(4) Where a direction is given to an operator limiting the amount of a surcharge, subsection (2) has effect in relation to the operator (in any case where the surcharge would otherwise exceed the amount specified in the direction) as if the surcharge were equal to the amount specified in the direction.

(5) Before giving a direction to a postal operator under this section, OFCOM must—

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- (a) inform the operator that they propose to give it a direction, and
- (b) allow the operator an opportunity to make representations about the proposal.”

**Commencement Information**

**I278** Sch. 12 para. 35 in force at 1.10.2011 by S.I. 2011/2329, art. 3

36 In section 105 (application of customs and excise enactments to certain postal packets), after subsection (4) insert—

“(4A) A postal operator may detain a postal packet to which this section applies until any duties and charges in respect of the packet that are recoverable by virtue of subsection (3) have been paid.”

**Commencement Information**

**I279** Sch. 12 para. 36 in force at 1.10.2011 by S.I. 2011/2329, art. 3

37 After section 105 insert—

**“105A Section 105: limit on handling charges etc**

- (1) OFCOM may give a direction to a postal operator—
  - (a) limiting the amount of any handling charge, and
  - (b) limiting the length of time for which a postal packet may be detained under section 105(4A) (and, if a direction is given under this paragraph, that subsection has effect subject to the direction).
- (2) Where a direction is given to an operator limiting the amount of a handling charge, section 105(3) to (4A) have effect in relation to the operator (in any case where the charge would otherwise exceed the amount specified in the direction) as if the charge were equal to the amount specified in the direction.
- (3) Before giving a direction to a postal operator under this section, OFCOM must—
  - (a) inform the operator that they propose to give it a direction, and
  - (b) allow the operator an opportunity to make representations about the proposal.
- (4) In this section “handling charge” means a charge payable to a postal operator, in respect of a postal packet, for the performance by the operator of all or any of the duties mentioned in section 105(2)(c).”

**Commencement Information**

**I280** Sch. 12 para. 37 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**Status:** Point in time view as at 06/04/2012. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

VALID FROM 23/04/2012

- 38 (1) Section 111 (exclusion of liability in relation to postal and money orders) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Post Office company”, in the first place, substitute “ a Post Office company ”, and
  - (b) in paragraphs (a) and (b), for “the Post Office company” substitute “ the company ”.
- (3) In subsections (2) and (3), for “the Post Office company” substitute “ a Post Office company ”.
- (4) In subsection (4)—
- (a) for “the Post Office company”, in the first place, substitute “ a Post Office company ”, and
  - (b) for “the Post Office company”, in the second place, substitute “ the company ”.
- (5) In subsection (5)—
- (a) for “the Post Office company”, in the first place, substitute “ a Post Office company ”, and
  - (b) for “the Post Office company”, in the second place, substitute “ the company ”.
- (6) In subsection (6)—
- (a) for “the Post Office company”, in the first place, substitute “ a Post Office company ”, and
  - (b) for “the Post Office company”, in the second and third places, substitute “ the company ”.
- (7) In subsection (7), for “the Post Office company” substitute “ a Post Office company ”.
- (8) After subsection (8) insert—
- “(8A) In this section and sections 112 to 114 “Post Office company” has the meaning given by section 6 of the Postal Services Act 2011.”

VALID FROM 23/04/2012

- 39 (1) Section 112 (schemes in relation to postal and money orders) is amended as follows.
- (2) In subsections (1) and (2), for “The Post Office company” substitute “ A Post Office company ”.
- (3) In subsections (5) and (8), for “the Post Office company” substitute “ a Post Office company ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

VALID FROM 23/04/2012

- 40 (1) Section 113 (recoupment of losses on wrongly paid money orders) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “the Post Office company” substitute “ a Post Office company ”, and
  - (b) in paragraph (b), for “the Post Office company” substitute “ a Post Office company (“the company”) ”.
- (3) In subsection (2), for “the Post Office company” substitute “ the company ”.

VALID FROM 23/04/2012

- 41 (1) Section 114 (special arrangements with other countries or territories) is amended as follows.
- (2) In subsection (1), for “the Post Office company” substitute “ a Post Office company ”.
- (3) In subsection (2)—
- (a) for “the Post Office company”, in the first place, substitute “ a Post Office company ”, and
  - (b) for “the Post Office company”, in the second place, substitute “ the company ”.

- 42 (1) Section 116 (the Postcode Address File) is amended as follows.
- (2) In subsection (2), for “the Commission” substitute “ OFCOM ”.
- (3) After that subsection insert—
- “(2A) OFCOM may give a direction to the owner for the time being of the Postcode Address File requiring the owner—
- (a) to issue, and comply with, a code of practice dealing with the making of revisions to the File, or
  - (b) to make such modifications of the code as are specified in the direction.
- (2B) A direction under subsection (2A) is enforceable under Schedule 7 to the Postal Services Act 2011; but, where it is given to a person who is not providing a postal service, that Schedule has effect with the omission of paragraphs 7(2) and (3), 8(4) and 11.”
- (4) After subsection (4) insert—
- “(5) OFCOM may give a direction to the owner of the Postcode Address File as to the terms that may be imposed under subsection (1)(b).
- (6) If it does so, no term that contravenes the direction may be imposed under that provision.”

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**Commencement Information**

**I281** Sch. 12 para. 42 in force at 1.10.2011 by S.I. 2011/2329, art. 3

43 Omit section 117 (records of the former Postmaster General's department).

**Commencement Information**

**I282** Sch. 12 para. 43 in force at 1.10.2011 by S.I. 2011/2329, art. 3

44 Omit section 118 (supplementary provisions about the Council).

**Commencement Information**

**I283** Sch. 12 para. 44 in force at 1.10.2011 by S.I. 2011/2329, art. 3

45 Omit section 119 (general restriction on disclosure of information).

**Commencement Information**

**I284** Sch. 12 para. 45 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 46 (1) Section 122 (orders and regulations) is amended as follows.
- (2) In subsection (3), omit “9, 10,”.
- (3) In subsection (5), omit “8,”.
- (4) In subsection (10), omit “10, 38(8), 58(7), 59(2),” and “, paragraph 4 of Schedule 7”.
- (5) In subsection (12), omit “8, 9, 30(2),”.

**Commencement Information**

**I285** Sch. 12 para. 46 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 47 In section 123 (directions), at the end insert—
- “(4) OFCOM may give a direction under this Act only if they are satisfied that the direction—
- (a) is objectively justifiable,
- (b) does not discriminate unduly against particular persons or a particular description of persons,
- (c) is proportionate to what it is intended to achieve, and
- (d) is transparent in relation to what it is intended to achieve.”

**Commencement Information**

**I286** Sch. 12 para. 47 in force at 1.10.2011 by S.I. 2011/2329, art. 3

48 In section 124(1) (general financial provision), omit paragraph (a).



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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

**Commencement Information**

**I287** Sch. 12 para. 48 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 49 (1) Section 125(1) (interpretation) is amended as follows.
- (2) After the definition of “notice” insert—
- ““OFCOM” means the Office of Communications,”.
- (3) For the definition of “postal operator” substitute—
- ““postal operator” has the same meaning as in Part 3 of the Postal Services Act 2011 (see section 27(3) to (5) of that Act),”.
- (4) In the definition of “the Postal Services Directive”, for the words from “implementation” to the end substitute “improvement of quality of service, as amended from time to time,”.
- (5) After the definition of “public holiday” insert—
- ““public post office” means any post office from which any postal services are provided directly to the public (whether or not together with other services),”.
- (6) After the definition of “subordinate legislation” insert—
- “references to the provision of a “universal postal service” are to be read in accordance with sections 30 to 33 and section 65(3) of the Postal Services Act 2011,
- “universal postal service letter box” has the meaning given by section 86 of this Act,
- “universal postal service post office” has the meaning given by that section,
- “universal service provider” has the meaning given by section 65(1) of the Postal Services Act 2011,”.

**Commencement Information**

**I288** Sch. 12 para. 49 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 50 Omit section 126 (index).

**Commencement Information**

**I289** Sch. 12 para. 50 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 51 Omit Schedule 1 (the Postal Services Commission).

**Commencement Information**

**I290** Sch. 12 para. 51 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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- 52 (1) Schedule 3 (transfer to the Post Office company: supplementary provisions) is amended as follows.
- (2) Omit paragraphs 6(1), 7, 9 and 10.
- (3) In the other provisions, for “the Post Office company”, in each place, substitute “ the original holding company ”.

**Commencement Information**

**I291** Sch. 12 para. 52 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 53 In Schedule 4 (transfer to the Post Office company: tax), omit paragraphs 5 and 9.

**Commencement Information**

**I292** Sch. 12 para. 53 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 54 (1) Schedule 5 (acquisition of land) is amended as follows.
- (2) In paragraph 1(1), for “required for any purpose in connection with the provision of a universal postal service” substitute “ where it is necessary to do so for the purpose of providing a universal postal service ”.
- (3) In paragraph 2(1), for “required for any purpose in connection with the provision of a universal postal service” substitute “ where it is necessary to do so for the purpose of providing a universal postal service ”.
- (4) In paragraph 3(1), for paragraphs (a) and (b) substitute—
- “(a) which it is necessary to acquire for the purpose of providing a universal postal service, or
  - (b) as to which it can reasonably be foreseen that it will be so necessary,”.

**Commencement Information**

**I293** Sch. 12 para. 54 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 55 Omit Schedule 7 (disclosure of information).

**Commencement Information**

**I294** Sch. 12 para. 55 in force at 1.10.2011 by S.I. 2011/2329, art. 3

## PART 2

### COMMUNICATIONS ACT 2003

- 56 The Communications Act 2003 is amended as follows.

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

**Commencement Information**

**I295** Sch. 12 para. 56 in force at 1.10.2011 by S.I. 2011/2329, art. 3

57 In section 3 (general duties of OFCOM), after subsection (6) insert—

“(6A) Where it appears to OFCOM, in relation to the carrying out of any of their functions in relation to postal services, that any of their general duties conflict with their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service), priority must be given to their duty under that section.”

**Commencement Information**

**I296** Sch. 12 para. 57 in force at 1.10.2011 by S.I. 2011/2329, art. 3

58 In section 14 (consumer research), after subsection (6) insert—

“(6A) OFCOM must make arrangements for ascertaining—

- (a) the state of public opinion from time to time about the way in which postal services are provided;
- (b) the experiences of consumers in the markets for postal services, in relation to the way in which those services are provided;
- (c) the experiences of such consumers in relation to the handling, by persons providing postal services, of complaints made to them by such consumers;
- (d) the experiences of such consumers in relation to the resolution of disputes with persons providing postal services;
- (e) the interests and experiences of such consumers in relation to matters that are incidental to or otherwise connected with their experiences of the provision of postal services.”

**Commencement Information**

**I297** Sch. 12 para. 58 in force at 1.10.2011 by S.I. 2011/2329, art. 3

59 (1) Section 16 (consumer consultation) is amended as follows.

(2) In subsection (1)(b), at the end insert “ (other than postal services) ”.

(3) In subsection (3)—

- (a) in paragraph (c), for “any such services or facilities” substitute “ a service or facility mentioned in subsection (4)(a) to (e) ”, and
- (b) in paragraph (e), for “such services or facilities” substitute “ services or facilities mentioned in subsection (4) ”.

(4) In subsection (4)—

- (a) omit “and” at the end of paragraph (d), and
- (b) after paragraph (e) insert—  
“(f) postal services.”

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- (5) In subsection (13), in paragraph (a) of the definition of “domestic and small business consumer”, for “any such services or facilities” substitute “ a service or facility mentioned in subsection (4)(a) to (e) ”.

**Commencement Information**

**I298** Sch. 12 para. 59 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 60 (1) Section 22(5) (representation on international and other bodies) is amended as follows.
- (2) In the definition of “communication functions”, omit the “and” at the end of paragraph and after that paragraph insert—
- “(ba) functions relating to postal services; and”.
- (3) In the definition of “international meetings about communication”, after paragraph (b) insert—
- “(ba) the regulation of postal services;”.

**Commencement Information**

**I299** Sch. 12 para. 60 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 61 (1) Section 26 (publication of information and advice for consumers etc) is amended as follows.
- (2) In subsection (2)—
- (a) omit the “and” at the end of paragraph (c), and
- (b) after paragraph (d) insert—
- “(e) the customers of persons who provide postal services.”
- (3) After that subsection insert—
- “(2A) In subsection (2)(e) the reference to customers of persons who provide postal services includes—
- (a) persons who wish to be provided with such services,
- (b) persons who are likely to seek to be provided with such services, and
- (c) addressees.”

**Commencement Information**

**I300** Sch. 12 para. 61 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 62 In section 369(1) (matters in relation to which OFCOM have competition functions), after paragraph (e) insert—
- “(f) the provision of postal services.”

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**Commencement Information**

**I301** Sch. 12 para. 62 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 63 (1) Section 370 (OFCOM's functions under Part 4 of the Enterprise Act 2002) is amended as follows.
- (2) In subsection (11), for “section 3 does not” substitute “ section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not ”.
- (3) In subsection (12), for “section 3(1) to (4)” substitute “ section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011 ”.

**Commencement Information**

**I302** Sch. 12 para. 63 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 64 (1) Section 371 (OFCOM's functions under Competition Act 1998) is amended as follows.
- (2) In subsection (11), for “section 3 does not” substitute “ section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not ”.
- (3) In subsection (12), for “section 3(1) to (4)” substitute “ section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011 ”.

**Commencement Information**

**I303** Sch. 12 para. 64 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 65 In section 394(2) (service of notifications and other documents)—
- (a) omit the “and” at the end of paragraph (e), and
- (b) at the end insert—
- “(g) Part 3 of the Postal Services Act 2011.”

**Commencement Information**

**I304** Sch. 12 para. 65 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 66 In section 400(1) (destination of licence fees and penalties), at the end insert—
- “(i) an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011.”

**Commencement Information**

**I305** Sch. 12 para. 66 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 67 In section 404(4) (criminal liability of company directors etc.)—
- (a) omit the “or” at the end of paragraph (d), and

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- (b) at the end insert “; or  
(f) Part 3 of the Postal Services Act 2011.”

**Commencement Information**

**I306** Sch. 12 para. 67 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 68 (1) Section 405 (general interpretation) is amended as follows.  
(2) In subsection (1), after the definition of “other member State” insert—  
““postal services” has the meaning given by section 27 of the Postal Services Act 2011;”  
(3) After subsection (5) insert—  
“(5A) References in this Act to consumers in a market for a service include, where the service is a postal service, addressees.”

**Commencement Information**

**I307** Sch. 12 para. 68 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 69 In Schedule 16, omit paragraph 6 (which made amendments superseded by this Act).

**Commencement Information**

**I308** Sch. 12 para. 69 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 70 In Schedule 17, omit paragraph 162(3) (which made amendments superseded by this Act).

**Commencement Information**

**I309** Sch. 12 para. 70 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### PART 3

#### OTHER ENACTMENTS

##### *Commissioners Clauses Act 1847*

- 71 In section 99 of the Commissioners Clauses Act 1847 (services of notices upon commissioners)—  
(a) omit “(within the meanings given by the Postal Services Act 2000)”, and  
(b) at the end insert—  
““In this section “post office” has the meaning given by section 125(1) of the Postal Services Act 2000 and “postal operator” has the meaning given by section 27 of the Postal Services Act 2011.”

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

**Commencement Information**

**I310** Sch. 12 para. 71 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Improvement of Land Act 1864*

- 72 In section 7 of the Improvement of Land Act 1864 (services of notices on other persons), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I311** Sch. 12 para. 72 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Bills of Exchange Act 1882*

- 73 In section 2 of the Bills of Exchange Act 1882 (interpretation of terms), in the definition of “postal operator”, for “section 125(1) of the Postal Services Act 2000” substitute “ section 27 of the Postal Services Act 2011 ”.

**Commencement Information**

**I312** Sch. 12 para. 73 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Congested Districts (Scotland) Act 1897*

- 74 In section 4(1)(f) of the Congested Districts (Scotland) Act 1897 (application of money at disposal of Commissioners), for the words from “within the power” to “to grant under guarantee” substitute “ within the power of a Post Office company (within the meaning of Part 1 of the Postal Services Act 2011) to grant under guarantee ”.

**Commencement Information**

**I313** Sch. 12 para. 74 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Law of Property Act 1925*

- 75 In section 196(4) of the Law of Property Act 1925 (regulations respecting notices), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I314** Sch. 12 para. 75 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Execution of Diligence (Scotland) Act 1926*

- 76 In section 2(2)(e) of the Execution of Diligence (Scotland) Act 1926 (execution of arrestment or charge by registered letter in certain cases)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ the Postal Services Act 2000 ”.

**Commencement Information**

**I315** Sch. 12 para. 76 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947*

- 77 In section 7(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (interpretation), in the definition of “statutory undertakers”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I316** Sch. 12 para. 77 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*London County Council (General Powers) Act 1957*

- 78 In section 89 of the London County Council (General Powers) Act 1957 (Crown rights)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”,
  - (b) for “that Act” substitute “ that Part ”, and
  - (c) at the end insert—

“This section applies to a universal service provider only if the provider is a company and at least half of its issued share capital is owned by the Crown (within the meaning of Part 1 of the Postal Services Act 2011).”

**Commencement Information**

**I317** Sch. 12 para. 78 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Opencast Coal Act 1958*

- 79 The Opencast Coal Act 1958 is amended as follows.

**Commencement Information**

**I318** Sch. 12 para. 79 in force at 1.10.2011 by S.I. 2011/2329, art. 3



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- 80 In section 51(1) (interpretation), in the definitions of “statutory undertakers” and “statutory undertaking”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I319** Sch. 12 para. 80 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 81 In section 52(2) (application to Scotland), in the definitions of “statutory undertakers” and “statutory undertaking”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I320** Sch. 12 para. 81 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Public Records Act 1958*

- 82 (1) Schedule 1 to the Public Records Act 1958 (definition of public records) is amended as follows.
- (2) Omit—
- (a) the entry relating to the Post Office, and
  - (b) the entry relating to the Post Office company.
- (3) At the appropriate places insert the following entries— “ The company that was nominated under section 62 of the Postal Services Act 2000 (reorganisation of the Post Office: transfer of property etc to nominated company). ” “ A Post Office company within the meaning of Part 1 of the Postal Services Act 2011. ” “ A Royal Mail company within the meaning of Part 1 of the Postal Services Act 2011. ”

**Commencement Information**

**I321** Sch. 12 para. 82 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 83 (1) A relevant company must consult the Keeper of Public Records before it alters in any significant respect any arrangements it has made for the preservation of any of its public records.
- (2) “Relevant company” means a company an entry for which is inserted (or re-inserted) into Schedule 1 to the Public Records Act 1958 as a result of provision made by or under paragraph 82(3) or 84(1).
- (3) “Public records” means records that are public records for the purposes of that Act.

**Commencement Information**

**I322** Sch. 12 para. 83 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 84 (1) The Lord Chancellor may by order amend Schedule 1 to the Public Records Act 1958 so as—

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- (a) to omit any of the entries inserted into that Schedule by paragraph 82(3) above, or
  - (b) to re-insert any such entry into that Schedule (if it has been omitted as a result of a previous exercise of the power conferred by this sub-paragraph).
- (2) The provision that, as a result of section 89(2)(a), may be made by an order under sub-paragraph (1) that omits an entry for a company includes, in particular, provision for—
- (a) the Public Records Act 1958, and
  - (b) paragraph 83 above,
- to continue to apply to the company in respect of such of its records as were public records for the purposes of that Act immediately before the order comes into force.
- (3) An order under sub-paragraph (1) may be made only if the Secretary of State has consented to the making of the order.
- (4) An order under sub-paragraph (1) is subject to negative resolution procedure.

**Commencement Information**

**I323** Sch. 12 para. 84 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*City of London (Various Powers) Act 1967*

- 85 In section 4 of the City of London (Various Powers) Act 1967 (interpretation of Part 2), in the definition of “statutory undertakers”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I324** Sch. 12 para. 85 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Forestry Act 1967*

- 86 In section 40(2)(e) of the Forestry Act 1967 (descriptions of land not subject to compulsory purchase)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I325** Sch. 12 para. 86 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Parliamentary Commissioner Act 1967*

- 87 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), omit the entry relating to the Postal Services Commission.

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

**Commencement Information**

**I326** Sch. 12 para. 87 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*National Loans Act 1968*

88 In section 12(5)(a) of the National Loans Act 1968 (Treasury's borrowing powers)

- (a) for the words from “the Post Office company”, in the first place, to “the Post Office company”, in the second place, substitute “ a Post Office company (within the meaning of Part 1 of the Postal Services Act 2011) ”, and
- (b) for “the Post Office company or any such subsidiary” substitute “ such a company ”.

**Commencement Information**

**I327** Sch. 12 para. 88 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Greater London Council (General Powers) Act 1969*

89 In section 9 of the Greater London Council (General Powers) Act 1969 (interpretation of Part 3), in the definition of “statutory undertakers”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I328** Sch. 12 para. 89 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Post Office Act 1969*

90 The Post Office Act 1969 is amended as follows.

**Commencement Information**

**I329** Sch. 12 para. 90 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 91 (1) Section 139 (application to Northern Ireland) is amended as follows.
- (2) In subsection (3)—
- (a) omit, in each place, “(within the meaning of the Postal Services Act 2000)”, and
  - (b) omit, in each place, “(within the meaning of that Act)”.
- (3) After that subsection insert—
- “(3A) In subsection (3) “universal service provider” and “universal postal service” have the same meaning as in Part 3 of the Postal Services Act 2011.”

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*Changes to legislation: There are currently no known outstanding effects  
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**Commencement Information**

**I330** [Sch. 12 para. 91](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

- 92 (1) Paragraph 93 of Schedule 4 (adaptation of enactments etc) is amended as follows.
- (2) Omit, in each place, “(within the meaning of the Postal Services Act 2000)”.
- (3) In sub-paragraph (1), omit “(within the meaning of the Act)”.
- (4) After sub-paragraph (4) insert—
- “(4A) In this paragraph “universal service provider” and “universal postal service” have the same meaning as in Part 3 of the Postal Services Act 2011.”

**Commencement Information**

**I331** [Sch. 12 para. 92](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

*Greater London Council (General Powers) Act 1970*

- 93 The Greater London Council (General Powers) Act 1970 is amended as follows.

**Commencement Information**

**I332** [Sch. 12 para. 93](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

- 94 In section 11(6) (miscellaneous amendments), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I333** [Sch. 12 para. 94](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

- 95 In section 15(6)(b) (licence to erect scaffolding), in the definition of “statutory undertakers”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I334** [Sch. 12 para. 95](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

*Pensions (Increase) Act 1971*

- 96 (1) Schedule 3 to the Pensions (Increase) Act 1971 (further administrative, incidental and consequential provisions) is amended as follows.
- (2) In paragraph 3, for “the Post Office company”, in each place, substitute “ the original holding company ”.
- (3) For paragraph 3A substitute—

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“3A In paragraph 3 “the original holding company” has the meaning given by section 15 of the Postal Services Act 2011.”

**Commencement Information**

**I335** Sch. 12 para. 96 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Control of Pollution Act 1974*

- 97 In section 73(1) of the Control of Pollution Act 1974 (interpretation), in the definition of “statutory undertakers”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I336** Sch. 12 para. 97 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Solicitors Act 1974*

- 98 In paragraph 10(8) of Schedule 1 to the Solicitors Act 1974 (mail and other forms of communication), for “section 125(1) of the Postal Services Act 2000” substitute “ section 27 of the Postal Services Act 2011 ”.

**Commencement Information**

**I337** Sch. 12 para. 98 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*House of Commons Disqualification Act 1975*

- 99 (1) Schedule 1 to the House of Commons Disqualification Act 1975 is amended as follows.
- (2) In Part 2 (bodies of which all members are disqualified), omit the entry relating to the Postal Services Commission.
  - (3) In Part 3 (other disqualifying offices), for the entry relating to a director of the Post Office company substitute—

“Director of any of the following, being a director appointed or nominated by a Minister of the Crown or by a person acting on behalf of the Crown—

    - (a) a Post Office company,
    - (b) a Royal Mail company,
    - (c) the original holding company, and
    - (d) a parent company of a company within any of paragraphs (a) to (c).

Expressions used in paragraphs (a) to (d) have the same meaning as in Part 1 of the Postal Services Act 2011. ”

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**Commencement Information**

**I338** Sch. 12 para. 99 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Northern Ireland Assembly Disqualification Act 1975*

100 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), after the entry relating to a director of the National Building Agency insert—

“Director of any of the following, being a director appointed or nominated by a Minister of the Crown or by a person acting on behalf of the Crown—

- (a) a Post Office company,
- (b) a Royal Mail company,
- (c) the original holding company, and
- (d) a parent company of a company within any of paragraphs (a) to (c).

Expressions used in paragraphs (a) to (d) have the same meaning as in Part 1 of the Postal Services Act 2011.”

**Commencement Information**

**I339** Sch. 12 para. 100 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Welsh Development Agency Act 1975*

101 In section 27(1) of the Welsh Development Agency Act 1975 (interpretation), in the definition of “universal service provider”—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I340** Sch. 12 para. 101 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Local Government (Miscellaneous Provisions) Act 1976*

102 In section 44(1) of the Local Government (Miscellaneous Provisions) Act 1976 (interpretation etc of Part 1), in the definition of “universal service provider”—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I341** Sch. 12 para. 102 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

*Ancient Monuments and Archaeological Areas Act 1979*

- 103 In section 61(1) of the Ancient Monuments and Archaeological Areas Act 1979 (interpretation), in the definition of “universal postal service provider”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I342** Sch. 12 para. 103 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Highways Act 1980*

- 104 In section 329(1) of the Highways Act 1980 (further provision as to interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I343** Sch. 12 para. 104 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Local Government, Planning and Land Act 1980*

- 105 The Local Government, Planning and Land Act 1980 is amended as follows.

**Commencement Information**

**I344** Sch. 12 para. 105 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 106 In section 120(3) (compulsory acquisition: exclusion of special parliamentary procedure), in paragraph (b) of the definition of “statutory undertakers”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I345** Sch. 12 para. 106 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 107 In section 141(6A) (vesting by order in corporation), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I346** Sch. 12 para. 107 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 108 In section 170(2B) (interpretation: statutory undertakers etc)—

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- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I347** Sch. 12 para. 108 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 109 In paragraph 11(7) of Schedule 28 (urban development corporations: land)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I348** Sch. 12 para. 109 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Acquisition of Land Act 1981*

- 110 In section 7(1) of the Acquisition of Land Act 1981 (interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I349** Sch. 12 para. 110 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Forgery and Counterfeiting Act 1981*

- 111 In section 8(3A) of the Forgery and Counterfeiting Act 1981 (meaning of “instrument”), for “the same meaning as in the Postal Services Act 2000” substitute “ the meaning given by section 27 of the Postal Services Act 2011 ”.

**Commencement Information**

**I350** Sch. 12 para. 111 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Greater London Council (General Powers) Act 1981*

- 112 In section 18 of the Greater London Council (General Powers) Act 1981 (stopping up of streets), in subsections (3), (8) and (9)(a)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.



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**Commencement Information**

**I351** Sch. 12 para. 112 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*New Towns Act 1981*

113 In section 80(1) of the New Towns Act 1981 (general interpretation provisions), in the definition of “universal postal service provider”—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I352** Sch. 12 para. 113 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Civil Aviation Act 1982*

114 In section 105(1) of the Civil Aviation Act 1982 (general interpretation), in the definition of “universal service provider”—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I353** Sch. 12 para. 114 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Mental Health Act 1983*

115 In section 134(9) of the Mental Health Act 1983 (correspondence of patients), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 (see section 27) ”.

**Commencement Information**

**I354** Sch. 12 para. 115 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Representation of the People Act 1983*

116 The Representation of the People Act 1983 is amended as follows.

**Commencement Information**

**I355** Sch. 12 para. 116 in force at 1.10.2011 by S.I. 2011/2329, art. 3

117 In section 91(candidate's right to send election address post free)—

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- (a) in subsections (1) to (3), in each place, for “universal service provider” substitute “ universal postal service provider ”, and
- (b) omit subsection (5).

**Commencement Information**

**I356** Sch. 12 para. 117 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 118 In section 184(2) (service of notices), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”

**Commencement Information**

**I357** Sch. 12 para. 118 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 119 In section 200A (remuneration for free postal services provided under Act)—
- (a) in subsections (1) to (3), for “universal service provider” substitute “ universal postal service provider ”, and
  - (b) for subsection (4) substitute—
- “(4) In this section “postal services” has the meaning given by section 27 of the Postal Services Act 2011.”

**Commencement Information**

**I358** Sch. 12 para. 119 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 120 In section 202(1) (interpretation), in the definition of “universal postal service provider”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I359** Sch. 12 para. 120 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 121 In paragraph 51(3) of Schedule 1 (return to the writ), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I360** Sch. 12 para. 121 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Building Act 1984*

- 122 In section 126 of the Building Act 1984 (general interpretation), in the definition of “statutory undertakers”, for the words from “(within the meaning of the Postal Services Act 2000)” to the end substitute “ (within the meaning of Part 3 of the Postal Services Act 2011) or a relevant company (within the meaning of Part 4 of the Postal Services Act 2000) ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

**Commencement Information**

**I361** Sch. 12 para. 122 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Administration of Justice Act 1985*

- 123 In paragraph 10(8) of Schedule 5 to the Administration of Justice Act 1985 (redirection of communications), for “section 125(1) of the Postal Services Act 2000” substitute “ section 27 of the Postal Services Act 2011 ”.

**Commencement Information**

**I362** Sch. 12 para. 123 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Insolvency Act 1986*

- 124 The Insolvency Act 1986 is amended as follows.

**Commencement Information**

**I363** Sch. 12 para. 124 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 125 In section 371(1) (re-direction of bankrupt's letters etc), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I364** Sch. 12 para. 125 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 126 In paragraph 10(1) of Schedule 2A (exceptions to prohibition on appointment of administrative receiver: supplementary provisions)—
- (a) in paragraph (g), for “given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26)” substitute “ of Part 3 of the Postal Services Act 2011 ”,
  - (b) for paragraph (h) substitute—
    - “(h) by a Post Office company within the meaning of Part 1 of that Act,” and
  - (c) omit paragraph (i).

**Commencement Information**

**I365** Sch. 12 para. 126 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Housing (Scotland) Act 1987*

- 127 In section 338(1) of the Housing (Scotland) Act 1987 (interpretation), in the definition of “public undertakers”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and

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(b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I366** Sch. 12 para. 127 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Housing Act 1988*

128 The Housing Act 1988 is amended as follows.

**Commencement Information**

**I367** Sch. 12 para. 128 in force at 1.10.2011 by S.I. 2011/2329, art. 3

129 In section 76(6A) (vesting by order in housing action trust), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I368** Sch. 12 para. 129 in force at 1.10.2011 by S.I. 2011/2329, art. 3

130 In paragraph 9(7) of Schedule 10 (housing action trusts: land)—  
 (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and  
 (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I369** Sch. 12 para. 130 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Local Government Finance Act 1988*

131 In section 43(6D) of the Local Government Finance Act 1988 (occupied hereditaments: liability)—  
 (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and  
 (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I370** Sch. 12 para. 131 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Planning (Hazardous Substances) Act 1990*

132 In section 39(6) of the Planning (Hazardous Substances) Act 1990 (interpretation)—  
 (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and

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(b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I371** Sch. 12 para. 132 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Planning (Listed Buildings and Conservation Areas) Act 1990*

133 In section 91(3B) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (interpretation)—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I372** Sch. 12 para. 133 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Town and Country Planning Act 1990*

134 In section 336(1) of the Town and Country Planning Act 1990 (interpretation), in the definition of “universal postal service provider”—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I373** Sch. 12 para. 134 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Coal Mining Subsidence Act 1991*

135 In section 52(1) of the Coal Mining Subsidence Act 1991 (interpretation), in the definition of “universal service provider”—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I374** Sch. 12 para. 135 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Land Drainage Act 1991*

136 In paragraph 1(1A) of Schedule 6 to the Land Drainage Act 1991 (protection for particular undertakings)—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and

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(b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I375** Sch. 12 para. 136 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Water Industry Act 1991*

137 In paragraph 1(5A) of Schedule 13 to the Water Industry Act 1991 (protective provisions in respect of certain undertakings)—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I376** Sch. 12 para. 137 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Water Resources Act 1991*

138 In paragraph 1(4A) of Schedule 22 to the Water Resources Act 1991 (protection for particular undertakings)—

- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I377** Sch. 12 para. 138 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Social Security Administration Act 1992*

139 The Social Security Administration Act 1992 is amended as follows.

**Commencement Information**

**I378** Sch. 12 para. 139 in force at 1.10.2011 by S.I. 2011/2329, art. 3

140 In section 182A(1) and (5)(b) (return of social security post), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I379** Sch. 12 para. 140 in force at 1.10.2011 by S.I. 2011/2329, art. 3

141 In section 182B(8) (requirement to supply information about redirection of post)—

- (a) in the definition of “postal operator”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and

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- (b) in the definition of “postal packet”, for the words from “meaning” to the end substitute “ meaning as in that Part ”.

**Commencement Information**

**I380** Sch. 12 para. 141 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Social Security Administration (Northern Ireland) Act 1992*

- 142 The Social Security Administration (Northern Ireland) Act 1992 is amended as follows.

**Commencement Information**

**I381** Sch. 12 para. 142 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 143 In section 158A(1) and (5)(b) (return of social security post), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I382** Sch. 12 para. 143 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 144 In section 158B(8) (requirement to supply information about redirection of post)—
- (a) in the definition of “postal operator”, for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
- (b) in the definition of “postal packet”, for the words from “meaning” to the end substitute “ meaning as in that Part ”.

**Commencement Information**

**I383** Sch. 12 para. 144 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Taxation of Chargeable Gains Act 1992*

- 145 In section 288(3A) of the Taxation of Chargeable Gains Act 1992 (meaning of “the no gain/no loss provisions”), at the end insert—
- “(1) paragraph 1(2) or 4 of Schedule 2 to the Postal Services Act 2011.”

**Commencement Information**

**I384** Sch. 12 para. 145 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Criminal Procedure (Scotland) Act 1995*

- 146 In section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation of terms), in the definition of “postal operator”, for “section 125(1) of the Postal Services Act 2000” substitute “ section 27 of the Postal Services Act 2011 ”.

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*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)*

**Commencement Information**

**I385** Sch. 12 para. 146 in force at 1.10.2011 by S.I. 2011/2329, art. 3

VALID FROM 23/04/2012

*Merchant Shipping Act 1995*

- 147 In section 30(10) of the Merchant Shipping Act 1995 (payment of seamen's wages), for “the Post Office company (within the meaning of Part IV of the Postal Services Act 2000), for that amount was despatched by the recorded delivery service” substitute “ a Post Office company (as defined by section 6 of the Postal Services Act 2011), for that amount was despatched by a recorded delivery service ”.

*Local Government and Rating Act 1997*

- 148 In paragraph 3(4)(a) of Schedule 2 to the Local Government and Rating Act 1997 (relief from non-domestic rates for general stores etc in rural settlements: Scotland)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I386** Sch. 12 para. 148 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Planning (Hazardous Substances) (Scotland) Act 1997*

- 149 In section 38(5) of the Planning (Hazardous Substances) (Scotland) Act 1997 (interpretation)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I387** Sch. 12 para. 149 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997*

- 150 In section 81(3B) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (interpretation)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.



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**Commencement Information**

**I388** Sch. 12 para. 150 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Town and Country Planning (Scotland) Act 1997*

- 151 In section 277(1) of the Town and Country Planning (Scotland) Act 1997 (interpretation), in the definition of “universal postal service provider”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I389** Sch. 12 para. 151 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Competition Act 1998*

- 152 In paragraph 19A(9) of Schedule 7 to the Competition Act 1998 (performance of the Commission's general functions), in the definition of “special reference group”, omit paragraph (l).

**Commencement Information**

**I390** Sch. 12 para. 152 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Northern Ireland Act 1998*

- 153 In section 76(7)(g) of the Northern Ireland Act 1998 (discrimination by public authorities)—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I391** Sch. 12 para. 153 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Regional Development Agencies Act 1998*

- 154 In section 19(8A) of the Regional Development Agencies Act 1998 (vesting of land by order), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I392** Sch. 12 para. 154 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)*

*Greater London Authority Act 1999*

- 155 In section 17A(3) of the Greater London Authority Act 1999 (free delivery of election addresses), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I393** Sch. 12 para. 155 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Countryside and Rights of Way Act 2000*

- 156 In paragraph 14(1) of Schedule 1 to the Countryside and Rights of Way Act 2000 (excepted land for purposes of Part 1: interpretation), in paragraph (e) of the definition of “statutory undertaker” and paragraph (a) of the definition of “statutory undertaking”—
- (a) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and
  - (b) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I394** Sch. 12 para. 156 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Freedom of Information Act 2000*

- 157 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities: other public bodies and offices), omit the entry relating to the Post Office.

**Commencement Information**

**I395** Sch. 12 para. 157 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Political Parties, Elections and Referendums Act 2000*

- 158 In paragraph 1(4) of Schedule 12 to the Political Parties, Elections and Referendums Act 2000 (assistance available to designated organisations: right to send referendum address post free), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I396** Sch. 12 para. 158 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Regulation of Investigatory Powers Act 2000*

- 159 The Regulation of Investigatory Powers Act 2000 is amended as follows.

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

**Commencement Information**

**I397** Sch. 12 para. 159 in force at 1.10.2011 by S.I. 2011/2329, art. 3

160 In section 82(3) (powers of postal operators not affected by Act), for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”.

**Commencement Information**

**I398** Sch. 12 para. 160 in force at 1.10.2011 by S.I. 2011/2329, art. 3

161 In Part 2 of Schedule 1 (relevant authorities for purposes of section 28 only)—  
(a) omit paragraph 28D (together with the heading before it), and  
(b) in paragraph 28E—  
(i) for “the Postal Services Act 2000” substitute “ Part 3 of the Postal Services Act 2011 ”, and  
(ii) for “that Act” substitute “ that Part ”.

**Commencement Information**

**I399** Sch. 12 para. 161 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Anti-terrorism, Crime and Security Act 2001*

162 In Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (enactments to which section 17 of Act applies)—  
(a) omit paragraph 51, and  
(b) at the end insert—  
“53D Section 56(2) of the Postal Services Act 2011.”

**Commencement Information**

**I400** Sch. 12 para. 162 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Enterprise Act 2002*

163 The Enterprise Act 2002 is amended as follows.

**Commencement Information**

**I401** Sch. 12 para. 163 in force at 1.10.2011 by S.I. 2011/2329, art. 3

164 (1) Section 168 (regulated markets) is amended as follows.  
(2) In subsection (3)—  
(a) omit paragraph (l) (together with the “or” at the end of it), and  
(b) at the end insert—

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“(o) modifying regulatory conditions imposed under Part 3 of the Postal Services Act 2011;”.

(3) In subsection (4)—

(a) omit paragraph (n) (together with the “and” at the end of it), and

(b) at the end insert—

“(q) in relation to regulatory conditions imposed under Part 3 of the Postal Services Act 2011, the duty of the Office of Communications under section 29 of that Act;”.

(4) In subsection (5), omit paragraph (h).

**Commencement Information**

**I402** Sch. 12 para. 164 in force at 1.10.2011 by S.I. 2011/2329, art. 3

165 In Schedule 9, omit paragraph 14 (which made an amendment superseded by this Act).

**Commencement Information**

**I403** Sch. 12 para. 165 in force at 1.10.2011 by S.I. 2011/2329, art. 3

166 In Schedule 15 to the Enterprise Act 2002 (information: enactments conferring functions), at the end insert— “ Postal Services Act 2011. ”

**Commencement Information**

**I404** Sch. 12 para. 166 in force at 1.10.2011 by S.I. 2011/2329, art. 3

167 In Schedule 25, omit paragraph 42 (which made an amendment superseded by this Act).

**Commencement Information**

**I405** Sch. 12 para. 167 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Office of Communications Act 2002*

168 In paragraph 12(2) of the Schedule to the Office of Communications Act 2002 (OFCOM's annual report), omit the “and” at the end of paragraph (a) and after that paragraph insert—

“(aa) a report about OFCOM's performance, during that year, of their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service); and”.

**Commencement Information**

**I406** Sch. 12 para. 168 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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**Changes to legislation:** There are currently no known outstanding effects for the Postal Services Act 2011. (See end of Document for details)

### *Railways and Transport Safety Act 2003*

169 In Schedule 2 to the Railways and Transport Safety Act 2003, omit paragraph 19(r) (which made amendments superseded by this Act).

#### **Commencement Information**

**I407** Sch. 12 para. 169 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Water Act 2003*

170 In Schedule 7 to the Water Act 2003, omit paragraph 33 (which made amendments superseded by this Act).

#### **Commencement Information**

**I408** Sch. 12 para. 170 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *London Local Authorities Act 2004*

<sup>F1</sup>171 .....

#### **Textual Amendments**

**F1** Sch. 12 para. 171 repealed (6.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 25 Pt. 19; S.I. 2012/628, art. 8(e) (with arts. 912131618-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

#### **Commencement Information**

**I409** Sch. 12 para. 171 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Gambling Act 2005*

172 In Schedule 16 to the Gambling Act 2005, omit paragraph 15 (which made amendments superseded by this Act).

#### **Commencement Information**

**I410** Sch. 12 para. 172 in force at 1.10.2011 by S.I. 2011/2329, art. 3

### *Railways Act 2005*

173 In Schedule 12 to the Railways Act 2005, omit paragraph 15 (which made amendments superseded by this Act).

#### **Commencement Information**

**I411** Sch. 12 para. 173 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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*Legislative and Regulatory Reform Act 2006*

- 174 In section 24(5) of the Legislative and Regulatory Reform Act 2006 (functions to which sections 21 and 22 apply), omit paragraph (d).

**Commencement Information**

**I412** Sch. 12 para. 174 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Consumer, Estate Agents and Redress Act 2007*

- 175 The Consumers, Estate Agents and Redress Act 2007 is amended as follows.

**Commencement Information**

**I413** Sch. 12 para. 175 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 176 In the following provisions (which relate to postal services in Northern Ireland), for “relevant postal services” substitute “ postal services ”
- section 2(1)(c)(ii),
  - section 3(2)(b) and (4)(a),
  - section 4(1)(b) and (5)(b),
  - section 5(4)(b), and
  - section 38(2)(c).

**Commencement Information**

**I414** Sch. 12 para. 176 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 177 (1) Section 15 (reference of matters to the Postal Services Commission) is amended as follows.
- (2) For the heading substitute “ **Reference of postal matters to OFCOM** ”.
- (3) In subsection (1)—
- (a) in the opening words, for “the Postal Services Commission (“the Commission”)” substitute “ the Office of Communications (“OFCOM”) ”, and
  - (b) in paragraph (a), for “a condition of a licence under Part 2 of the Postal Services Act 2000” substitute “ a regulatory condition imposed under Part 3 of the Postal Services Act 2011 ”.
- (4) In subsection (2), for “the Commission”, in both places, substitute “ OFCOM ”.

**Commencement Information**

**I415** Sch. 12 para. 177 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 178 In section 16(2) (investigations relating to public post offices), for “section 42(3)” substitute “ section 125(1) ”.

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**Commencement Information**

**I416** Sch. 12 para. 178 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 179 In section 24(9) (provision of information: definitions), in the definition of “designated regulator”, for paragraph (b) substitute—  
“(b) the Office of Communications;”.

**Commencement Information**

**I417** Sch. 12 para. 179 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 180 (1) Section 25 (enforcement by regulator of section 24 notice) is amended as follows.  
(2) In subsection (3), in the table, for the entry relating to a person holding a licence under Part 2 of the Postal Services Act 2000 substitute—

“A postal operator.	The Office of Communications.”
---------------------	--------------------------------

- (3) After subsection (6) insert—

“(6A) An obligation imposed by virtue of subsection (5) on a postal operator is enforceable by OFCOM under Schedule 7 to the Postal Services Act 2011 (enforcement of regulatory requirements).”

**Commencement Information**

**I418** Sch. 12 para. 180 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 181 In section 29(3)(b) (disclosure of information: application of Part 9 of the Enterprise Act 2002), for “the Postal Services Act 2000” substitute “ the Postal Services Act 2011 ”.

**Commencement Information**

**I419** Sch. 12 para. 181 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 182 (1) Section 41 (interpretation of Part 1) is amended as follows.  
(2) At the appropriate place insert—  
““postal operator” has the same meaning as in Part 3 of the Postal Services Act 2011 (see section 65 of that Act);”.  
(3) In the definition of “postal services”, for “Postal Services Act 2000 (see section 125(1) of that Act)” substitute “ Part 3 of the Postal Services Act 2011 (see section 65 of that Act) ”.  
(4) Omit the definition of “relevant postal services”.

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**Commencement Information**

**I420** Sch. 12 para. 182 in force at 1.10.2011 by S.I. 2011/2329, art. 3

183 In section 42 (interpretation of Part 2), omit the entry relating to a person holding a licence under Part 2 of the Postal Services Act 2000.

**Commencement Information**

**I421** Sch. 12 para. 183 in force at 1.10.2011 by S.I. 2011/2329, art. 3

184 (1) Section 45 (information with respect to compliance with complaints handling standards) is amended as follows.

(2) After subsection (1) insert—

“(1A) This section also applies in relation to standards for the handling of complaints made about postal operators by users of their services which are contained in consumer protection conditions imposed under Part 3 of the Postal Services Act 2011.”

(3) In subsection (2), after “providers” insert “ or postal operators ”.

**Commencement Information**

**I422** Sch. 12 para. 184 in force at 1.10.2011 by S.I. 2011/2329, art. 3

185 In section 52, omit subsection (4) (which made amendments superseded by this Act).

**Commencement Information**

**I423** Sch. 12 para. 185 in force at 1.10.2011 by S.I. 2011/2329, art. 3

186 In section 60(10) (orders and regulations: meaning of “regulator”), omit paragraph (b) (together with the “or” before it).

**Commencement Information**

**I424** Sch. 12 para. 186 in force at 1.10.2011 by S.I. 2011/2329, art. 3

187 In section 65 (extent), omit subsections (4) and (5).

**Commencement Information**

**I425** Sch. 12 para. 187 in force at 1.10.2011 by S.I. 2011/2329, art. 3

188 Omit the following provisions (which made amendments superseded by this Act)—

- (a) paragraphs 30 and 31 of Schedule 1,
- (b) paragraph 3 of Schedule 2,
- (c) paragraph 3 of Schedule 5, and



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(d) paragraphs 12 to 16 of Schedule 7.

**Commencement Information**

**I426** Sch. 12 para. 188 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Legal Services Act 2007*

189 In paragraph 11(9) of Schedule 14 to the Legal Services Act 2007 (mail and other forms of communication), for “section 125(1) of the Postal Services Act 2000 (c. 26)” substitute “ section 27 of the Postal Services Act 2011 ”.

**Commencement Information**

**I427** Sch. 12 para. 189 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*London Local Authorities Act 2007*

190 In section 75 of the London Local Authorities Act 2007 (mail forwarding businesses), for subsection (11) substitute—

“(11) Nothing in subsection (1) or (6) above shall apply to—

- (a) a postal operator providing a service within the scope of the universal postal service (within the meaning of Part 3 of the Postal Services Act 2011), or
- (b) a Post Office company (within the meaning of Part 1 of that Act).”

**Commencement Information**

**I428** Sch. 12 para. 190 in force at 1.10.2011 by S.I. 2011/2329, art. 3

*Regulatory Enforcement and Sanctions Act 2008*

191 (1) Section 73 of the Regulatory Enforcement and Sanctions Act 2008 (functions to which section 72 applies) is amended as follows.

(2) In subsection (2), for paragraph (d) (together with the “and” at the end of it) substitute—

“(d) the Office of Communications in relation to postal services, and”.

(3) After subsection (10) insert—

“(10A) In subsection (2)(d) “postal services” has the same meaning as in Part 3 of the Postal Services Act 2011.”

**Commencement Information**

**I429** Sch. 12 para. 191 in force at 1.10.2011 by S.I. 2011/2329, art. 3

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Postal Services Act 2011.