

POSTAL SERVICES ACT 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Postal Services Act 2011 which received Royal Assent on 13 June 2011. They have been prepared by the Department for Business, Innovation and Skills in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. Prior to this Act, legislation governing the postal services sector was contained in the Postal Services Act 2000 (“the 2000 Act”). The 2000 Act, amongst other things, established the postal services regulator, the Postal Services Commission (“Postcomm”) and conferred various duties and powers on it, including the duty to ensure the provision of a universal postal service. The 2000 Act also introduced a system of licensing and regulation for postal service operators.

4. The universal postal service set out in both this Act and the 2000 Act is the minimum service that must be made available to all addresses in the United Kingdom, which numbers some 28 million at present. In the United Kingdom, the universal service provides for deliveries of letters six-days-per-week across the national network at uniform affordable prices.

5. In recent times the communications sector has undergone significant changes. The digital media revolution is offering consumers unprecedented choice in how they communicate, with email, text messages and web-based social networking all increasing in popularity.

6. In addition, the liberalisation of postal services across Europe and the introduction of competition have led to new opportunities and challenges for providers of postal services.

7. The Act implements the recommendations of the December 2008 report *Modernise or Decline: policies to maintain the universal postal service in the United Kingdom*¹, an independent review of the postal services sector chaired by Richard Hooper, and the update of this report, *Saving the Royal Mail's Universal Postal Service in the Digital Age*², published on 10 September 2010
8. The 2008 review process included consultation with consumers and their representatives, postal companies, trade unions, political parties, government departments, the devolved administrations and regulators.
9. The Hooper Review identified a number of key challenges facing the postal services sector and Royal Mail Group Ltd ("Royal Mail"). Particular emphasis was placed on Royal Mail as it is the only company currently capable of providing the universal service throughout the United Kingdom.
10. The Hooper Review identified five major factors that are hampering Royal Mail's ability to respond to the changing market:
 - a) Inefficiency: Royal Mail is much less efficient and profitable than its main European peers.
 - b) Pension deficit: Royal Mail's historic pension deficit is one of the largest in the United Kingdom and is a major drain on the company's cash.
 - c) Pricing: Increasing postal prices is no longer guaranteed to generate sufficient revenues to offset falling volumes.
 - d) Labour relations: The relationship between management and the Communication Workers Union is extremely difficult.
 - e) Relationship with the regulator: The relationship between the company and its regulator, Postcomm, is difficult.
11. To address these difficulties, the Hooper Review proposed a package of measures:
 - a) Strategic partnership: Royal Mail should enter into a strategic partnership with one or more private sector companies with demonstrable expertise in transforming a major network business.
 - b) Pensions: Government should tackle the historic pension deficit, to enable Royal Mail to benefit from modernisation.
 - c) New regulatory regime: postal regulation should be placed within the broader context of the communications market, with the primary duty of the regulator in relation to postal services being to maintain the universal service.

¹ *The Stationery Office, CM 7529*. Available to view online at: <http://www.bis.gov.uk/files/file49389.pdf>

² *The Stationery Office, CM 7937*. Available to view online at: <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/s/10-1143-saving-royal-mail-universal-postal-service.pdf>

12. The Hooper Review was updated at the request of Government following the 2010 General Election and published in September 2010. Richard Hooper concluded that the recommendations and analysis of the original 2008 review remained broadly valid, but required some adjustment to take account of developments in the intervening period of time.

13. The update report concluded that Royal Mail has made some progress with modernisation and that its relationships with the Regulator (Postcomm) and the Communication Workers Union had improved. However, the report also concluded that the decline of the letters market would continue and deepen, and that the growing market in fulfilment of online purchases would not provide a substitute for declining letters volumes.

14. The update report concluded with the following three recommendations:

- a) Private sector investment: In order to maintain and sustain the universal postal service, the introduction of private sector capital into Royal Mail is strongly recommended.
- b) Pensions: Government should relieve the Royal Mail of its historic pension deficit as part of the package of measures.
- c) Regulation: The task of regulation should be transferred to the Office of Communications (“OFCOM”) and the primary duty of the regulator in relation to post should be to secure the efficient provision of the universal postal service. OFCOM should be given the tools and duties to focus regulation on providing a sustainable and efficient universal postal service, meeting users’ needs, whilst deregulating more quickly in competitive parts of the market.

15. As with the original review, Hooper was clear that his recommendations were a package and should be implemented as such.

PURPOSE OF THE ACT

16. This Act has four main purposes. First, it makes provisions to allow for an unrestricted sale of shares in Royal Mail, including provisions for an employee share scheme, and for Post Office Ltd to remain in full public ownership except for a possible move to a mutual ownership structure in future. Secondly, it makes provision for the transfer of Royal Mail’s historic pension deficit to Government. Thirdly, it makes provision for a new regulatory regime for the postal services sector, including transferring regulatory responsibility from Postcomm to OFCOM, with the primary duty of OFCOM in relation to postal services being to maintain the universal service. Finally, it makes provision for a special administration regime to protect the continuation of the universal postal service should the universal service provider be at risk of entering insolvency proceedings.

STRUCTURE OF THE ACT

17. The Act is divided into five Parts:

18. Part 1 of the Act deals with the restructuring of the Royal Mail group of companies. In particular, provision is made to lift the restrictions on the sale of shares in Royal Mail. Provision is made for the establishment of an employee share scheme prior to any sale. The restrictions on ownership of Post Office Ltd are modified to provide for it to remain in 100% Government ownership except for a possible move to a mutual ownership structure in future.

19. Part 2 of the Act deals with the Royal Mail pensions scheme. This Part enables historic pension liabilities to be transferred to the Government.

20. Part 3 of the Act is concerned with the regulation of the postal services sector. This Part makes various provisions for the regulatory framework including, but not limited to: giving OFCOM the functions of the regulator for the postal services sector and abolishing Postcomm; making maintenance of the universal service, including its financial sustainability, the primary duty for the regulator in relation to postal services; replacing the current licensing regime for the provision of postal services with a general authorisation scheme; and providing for the regulator to impose conditions aimed at ensuring accounting separation and cost transparency.

21. Part 4 of the Act contains provisions for a special administration regime. The purpose of this is to ensure that the objective of the administrator is to secure the continued provision of the universal postal service in the event that a privately-owned Royal Mail (or other provider of the universal postal service) is at risk of entering insolvency proceedings. This follows precedents in the energy and water industries.

22. Part 5 of the Act contains general provisions relating to orders or regulations made by the Secretary of State, commencement and other general matters.

TERRITORIAL EXTENT

23. This Act extends to the United Kingdom. Any amendment or repeal made by this Act has the same territorial extent as the enactment to which it relates.

24. Postal services are a fully reserved matter. However, Part 4 of the Act (Special Administration) concerns insolvency law, which is partly devolved to the Northern Ireland Assembly. Whilst insolvency law is partly devolved, the provisions under Part 4 are incidental to the policy objective of maintaining the universal postal service, which falls within the reserved field. Therefore, the special administration provisions did not require a Legislative Consent Motion in Northern Ireland.

COMMENTARY ON SECTIONS

Part 1: Restructuring of Royal Mail Group

Summary and Background

25. Part 1 of the Act is concerned with the restructuring of the Royal Mail group of companies, including Post Office Limited which is currently a subsidiary of Royal Mail Group Limited. In particular, the provisions ensure that any Post Office company engaged in the provision of post offices remains wholly owned by the Crown, except where it moves to a mutual ownership structure.

26. Furthermore, this Part of the Act includes provisions to lift all restrictions on the sale of shares in Royal Mail, and provides for an employee ownership scheme to be established prior to a sale of shares in the company.

27. To facilitate the internal group restructuring that will be necessary before any sale of shares in Royal Mail, this Part of the Act contains transfer scheme provisions which enable the transfer of property, rights or liabilities between companies in the Royal Mail group.

28. This Part also contains provisions to ensure that there are no unintended tax consequences resulting from the group restructure, and reporting requirements relating to the post office network and to Royal Mail's activities in relation to the Royal Mail archive and the British Postal Museum collection.

Removal of existing statutory restrictions on ownership

Section 1: Removal of restrictions on ownership of Royal Mail Holdings plc etc

29. Subsection (1) repeals sections 65 to 67 of the Postal Services Act 2000. These sections contain restrictions on the issue and transfer of shares or share rights in Royal Mail Holdings plc and its relevant subsidiaries. Sections 65 and 66 prevent the issue or disposal of shares or share rights to anybody other than the Secretary of State, the Treasury (or either's nominees) or, in the case of a relevant subsidiary, Royal Mail Holdings plc unless approved under section 67. A relevant subsidiary, as defined in the 2000 Act, includes Royal Mail Group Limited and Post Office Limited. Section 67 enables, subject to Parliamentary approval, the issue or disposal of shares or share rights in certain limited circumstances

30. Subsection (2) of this section indicates that new restrictions on the issue and transfer of shares and share rights in Post Office companies (which will cover Post Office Limited) are included in section 4 of the Act.

Ownership of the Royal Mail

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

31. This section places a duty on the Secretary of State to report to Parliament when a decision has been made to undertake a relevant disposal of shares or share rights in a Royal Mail company owned by the Crown. The Secretary of State also has a duty to report if he has decided that another person (e.g. Royal Mail Holdings plc or Royal Mail Group Limited) may undertake such a disposal.

32. The Secretary of State's report must include: the kind of disposal that will be undertaken, e.g. whether it is subject to an auction or an Initial Public Offering; the timescale for the disposal process; and the objective intended to be achieved by the disposal.

33. The Secretary of State's report must also give information about the expected commercial relationship, after the proposed disposal, between the Royal Mail company in question and any Post Office company (as defined in section 6).

34. When shares are proposed to be put into the employee share scheme (as defined in section 3) for the first time, the Secretary of State's report must also give details of the scheme.

35. A relevant disposal is defined in subsection (5) as the issue or transfer of shares or share rights that reduces the proportion of a Royal Mail company owned by the Crown.

36. Subsection (6) defines a Royal Mail company as a company that provides a universal postal service and is or has been in the same group as:

- a) Royal Mail Holdings plc ("the original holding company") or
- b) another company that is or has at any time been a Royal Mail company

37. The latter is intended to ensure that the definition covers any companies providing a universal postal service that may no longer be a subsidiary of Royal Mail Holdings plc when a relevant disposal is made.

Section 3: Establishment of employee share scheme

38. Subsection (1) requires that the Secretary of State must ensure that arrangements have been made for the establishment of an employee share scheme before a relevant disposal is made in relation to a Royal Mail company (as defined in section 2).

39. Subsection (2) requires that the arrangements made under subsection 1 must ensure, either at or before the time the Crown no longer owns any of the company, that the proportion of it owned by or on behalf of the employee share scheme is or has been at least 10%.

40. Subsection (3) clarifies that shares held directly by employees, and shares held by the scheme on behalf of employees, are to be included within the calculation of the percentage set out in Subsection (2).

41. Subsection (4) defines an employee share scheme as being a scheme for encouraging or facilitating the holding of shares or share rights by or for the benefit of persons who are or include employees of a Royal Mail company (or another company in the same group).

Ownership of the Post Office

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

42. This section prohibits a sale of the Post Office by preventing a disposal of the Crown's interest in a Post Office Company (as defined in section 6) save where the disposal is to a relevant mutual (as defined in section 7). Disposals of the Crown's interest in a Post Office company to a relevant mutual may be made as a result of either a transfer of existing shares or share rights or an issue of new shares or share rights by a Post Office company.

43. Under subsection (2) the Secretary of State is given powers to make an order to direct a Post Office company to issue shares or share rights to a relevant mutual or to direct a company that owns shares or share rights in a Post Office company to transfer them to a relevant mutual. Such directions may only be given where the company the subject of the direction is wholly owned by the Crown.

44. Subsection (3) deals with issues and transfers of shares or share rights to a relevant mutual other than as a result of a direction by the Secretary of State. In these circumstances, the Secretary of State's approval by order is required.

45. Subsection (4) provides that any order by the Secretary of State to direct or approve the disposal of the Crown's interest in a Post Office company to a relevant mutual is subject to the affirmative resolution procedure.

46. Subsection (5) ensures that once a relevant mutual has taken ownership of shares or share rights in a Post Office company, it may not transfer them, save where the transfer is to another relevant mutual, the Secretary of State or the Treasury (or a nominee of either of them), or a company wholly owned by the Crown.

47. Should an attempt be made to dispose of the Crown's interest in a Post Office company in contravention of these restrictions (for example a sale to a company that is not wholly owned by the Crown or a relevant mutual), subsection (6) provides that this would have no effect.

48. Subsection (8) explains what is meant by a disposal of a person's interest in a Post Office company. In relation to shares, it means an issue or transfer of shares the effect of which is to reduce the proportion of the Post Office company owned by the person. In relation to share rights, it means an issue or transfer of share rights to a person the effect of which would be, if the shares to which those share rights relate were transferred to the person, to reduce the proportion of a Post Office company owned by the person.

49. Section 14 contains provisions which define what is meant by ownership of a company in these circumstances.

Section 5: Report on a transfer of an interest in a Post Office company to a relevant mutual

50. Section 5 requires the Secretary of State, before making any order directing or approving the disposal of the Crown's interest in a Post Office company to a relevant mutual, whether by the issue or transfer of shares or share rights, to lay a report before Parliament on the issue or transfer in question.

51. Subsection (3) sets out requirements as to the content of the report. A report must give details of the proposed issue or transfer, including the expected time-scale for the issue or transfer. It must also name the body to which shares or share rights are to be issued or transferred. Finally it must explain how that body satisfies the conditions for being a relevant mutual set out in section 7.

Section 6: Meaning of "Post Office company"

52. Subsection (1) defines a Post Office company as one which meets three criteria: the company must be engaged in the provision of post offices (as defined in section 15); the company must also be designated as a Post Office company by order made by the Secretary of State; finally, the company must also be (or have been) either a subsidiary of Royal Mail Holdings plc (referred to in the Act as "the original holding company") or in the same group as a company that is or was designated as a Post Office company by order made by the Secretary of State. Only if all three criteria are satisfied will the company be a Post Office company for the purposes of the Act.

53. Subsection (2) places a limitation on the circumstances in which the Secretary of State can designate a company under subsection (1). This can only happen if the company is wholly owned by the Crown immediately before designation. Subsection (3) provides that a designation order under subsection (1) may not be amended or revoked.

54. Subsection (4) prevents the commencement of section 1 (removal of restrictions on ownership of Royal Mail Holdings plc etc) until the Secretary of State has designated Post Office Limited as a Post Office company. This provision therefore ensures that at all times the Crown's ownership of Post Office Limited is subject either to the restrictions set out in sections 65 to 67 of the Postal Services Act 2000, or those in this legislation.

Section 7: Meaning of "relevant mutual"

55. Section 7 sets out the conditions which the Secretary of State must consider are (and will continue to be) met for a body to be a relevant mutual. Under the ownership restrictions in section 4, a relevant mutual is the only body permitted to own shares or share rights in a Post Office company other than the Crown (directly or indirectly).

56. The first condition, set out in subsection (2), 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.

57. The second condition, set out in subsection (3), is that the members of the body are persons who have an interest in the use by the public of services provided by a Post Office company or at its post offices. This would include employees of the Post Office company and other persons engaged in the provision of the Post Office company's post offices (for example, subpostmasters). Other members of a relevant mutual could include the Crown, or

potentially customers of a Post Office company. Persons who act on behalf of, or represent persons who have an interest in the use by the public of services provided by a Post Office company or at its post offices (for example trustees) are also permitted to be members of a relevant mutual.

58. The third condition, set out in subsection (4), 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.

Transfer of property etc

Section 8: Transfer schemes

59. This section enables the Secretary of State or original holding company (Royal Mail Holdings plc), if wholly owned by the Crown, to make one or more transfer schemes. Transfer schemes may transfer property, rights and liabilities (or create interests, rights and liabilities) between:

- a) the original holding company and a subsidiary of that company, provided they are wholly owned by the Crown,
- b) any of those companies and the Secretary of State, the Treasury, a nominee of either of them or another company that is wholly owned by the Crown.

60. The power to make transfer schemes will enable the Secretary of State to ensure that in any restructuring the appropriate property, rights and liabilities are located in the appropriate company in the group. Transfer schemes made by the original holding company have to be approved by the Secretary of State and can be modified by the Secretary of State (subsection (4)). The Secretary of State must consult the original holding company (Royal Mail Holdings plc) before making a transfer scheme or modifying a scheme made by the company (subsection (5)). Under subsection (6), the Secretary of State may also direct the original holding company (Royal Mail Holdings plc) to make a transfer scheme, provided it is wholly owned by the Crown.

61. Subsection (9) requires a company that could be the subject of a transfer scheme 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 making of a transfer scheme. This duty is enforceable in civil proceedings and overrides any contractual or other requirement to keep information in confidence (subsections (10) and (11)).

62. Further detailed provisions relating to transfer schemes are set out in Schedule 1.

Section 9: Transfer of employees otherwise than under transfer scheme

63. This section ensures that the protections set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (“the TUPE Regulations”) will apply to staff affected by the proposed reorganisation of the Royal Mail group of companies. For example, staff working for Post Office Limited are currently employed by Royal Mail Group Limited and seconded to Post Office Limited. Prior to any disposal of shares in a Royal Mail company those staff will need to transfer across to formal employment arrangements with Post Office Limited. This transfer could be effected by agreement between the relevant companies or by transfer scheme made under section 8. Where the transfer is to

be made by agreement the provisions in this section will ensure that the TUPE Regulations apply to the transfer. Where the transfer is to be made under a transfer scheme the equivalent provisions are set out in paragraphs 15 and 16 of Schedule 1.

64. Subsections (2) and (3) provide that the section relates to any agreement between companies in the Royal Mail group of companies which are wholly owned by the Crown which provides:

- a) for employees' rights and liabilities under contracts of employment with one company to be transferred to another company in the group; or
- b) for the cessation of arrangements under which one company in the Royal Mail group of companies provides employees to another company in the group in circumstances where that other company now intends to employ those employees.

65. Pursuant to subsection (4) the Secretary of State may, at any time before any agreement comes into force, designate (by specification or wider description – see subsection (5)) any contract of employment the right and liabilities under which it is agreed are to be transferred and any employee of a Royal Mail group company currently provided to another member of the Group. Pursuant to subsection (6) on the coming into force of any agreement covered by this section the TUPE Regulations will apply in relation to the transfer of the designated contracts of employment or cessation of the provision of designated employees whether or not the provision made by the agreement would otherwise constitute a relevant transfer under the TUPE Regulations. Subsection (7) makes provision for continuity of employment.

Section 10: Taxation provisions relating to re-structuring

66. This section introduces Schedule 2 which contains tax provisions relating to the restructuring of the Royal Mail group of companies.

Supplementary provisions

Section 11: Annual report on post office network

67. Subsection (1) requires a Post Office company to submit a report to the Secretary of State on its post office network each year. Under the interpretation provisions in section 15(3), a Post Office company's network of post offices comprises the post offices it is engaged in providing, not just the ones it directly owns. This ensures that, for example, details of sub post offices (which are owned and managed by subpostmasters under contractual arrangement with Post Office Limited) are included in a report.

68. Subsection (2) sets out the details of what that report must contain. Paragraph (a) requires information about the number and location of post offices in England, Wales, Scotland and Northern Ireland. Paragraph (b) specifies that the report must include details of the services offered at those post offices, including in particular the postal services, services provided under arrangements with a government department and other services (which would, for example, include financial services). Under paragraph (c), a Post Office company must also report on the accessibility of the post offices to those who use the services.

69. Subsection (3) clarifies that the report must include details of postal services provided under arrangements between a Post Office company and a universal postal service provider.

70. Under subsection (4) there is a requirement for a Post Office company to provide specific information in the report about the accessibility of post offices to particular groups or individuals. These include individuals living in rural and in urban areas, small businesses, disadvantaged individuals, individuals with low incomes, individuals with disabilities and elderly individuals.

71. Under the power contained in subsection (5) the Secretary of State can also require a Post Office company to include other information in the report.

72. Subsection (6) requires the Secretary of State to lay a copy of the annual report before Parliament.

73. Subsection (7) requires the Secretary of State to give a copy of the report to the Scottish Ministers, the Welsh Ministers and the Office of the First Minister and Deputy First Minister in Northern Ireland.

74. Subsection (8) provides that a Post Office company's duty to provide an annual report on the network of post offices is enforceable by the Secretary of State through civil proceedings.

Section 12: Annual report on postal museum collection and archive

75. Subsection (1) requires a Royal Mail company to report annually to the Secretary of State on its activities in relation to the British Postal Museum Collection and the Royal Mail Archive, and subsection (5) clarifies that this applies irrespective of whether the name of these entities change.

76. Subsection (2) requires that before preparing the report, a Royal Mail company must consult any Post Office company.

77. Subsection (3) requires the Secretary of State to lay a copy of the report before Parliament.

78. Subsection (4) provides that a Royal Mail company's duty to report is enforceable through civil proceedings.

Section 13: Directions

79. This section provides that directions given under this Part of the Act must be in writing and may be varied or revoked by further directions. A person in receipt of a direction has a duty to comply with it and that duty is enforceable in civil proceedings.

80. Powers of direction are contained in sections 4(2) and 8(6) of this Part.

Interpretation

Section 14: Ownership of companies

81. This section sets out what is meant by ownership of a company for the purposes of Part 1.

82. Subsections (2) and (3) clarify that the references to ownership are to the ownership of a company's issued share capital and include indirect ownership. An example of indirect ownership is where a person owns all the shares in a holding company and, therefore, has ownership of that company's subsidiary or subsidiaries. At present, the Crown owns all the shares in Royal Mail Holdings plc and has indirect ownership of its subsidiary, Royal Mail Group Limited.

83. Subsection (4) clarifies that a reduction in the proportion of a company owned by the Crown includes the disposal of all of the issued share capital held by the Crown.

84. Subsection (5) makes it clear that the property and rights of the Secretary of State, the Treasury or a nominee of either of them shall be regarded as those of the Crown.

Part 2: Royal Mail Pension Plan

Summary and background

85. Part 2 of the Act gives power to the Secretary of State to remove historic pension liabilities from the Royal Mail and transfer them to government. In particular, the Secretary of State is given power to:

- a) establish a new statutory scheme which may be used to provide benefits to certain members of the Royal Mail Pension Plan ("RMPP");
- b) transfer rights and remove liabilities from the RMPP;
- c) transfer assets from the RMPP to the government;
- d) divide the RMPP into sections and to allocate assets and liabilities between those sections.

86. When exercising the powers conferred by this Part, the Secretary of State must ensure that the pension provision in respect of anyone in the RMPP (or who has benefits transferred to the new statutory scheme) is in all material respects at least as good immediately after the power has been used as it was before that use of the power (section 20). This protection covers existing members of the plan, their dependants and contingent beneficiaries and beneficiaries who are already in receipt of death benefits. In addition, where the Secretary of State transfers assets to the government the ratio of assets to liabilities in the scheme after the transfer must be at least as good as the ratio before any assets transfer and attendant transfer of benefits (section 22).

Introduction

Section 16: Introduction

87. Subsection (1) defines the three main concepts in this Part of the Act.

88. The first concept is “qualifying member of the RMPP”. This means a group of persons who are or have been members of the RMPP specified by the Secretary of State by an order under this Part.

89. The second concept is “qualifying time”. This is the cut off date by reference to which it is determined what rights or entitlements under the RMPP scheme are “qualifying accrued rights”.

90. The third concept is “qualifying accrued rights”. These are the entitlements under the RMPP scheme that may be transferred to the new scheme under section 17. Qualifying accrued rights will cover

- a) rights of qualifying members or their beneficiaries to future benefits under the RMPP;
- b) rights of qualifying members or their beneficiaries to the current payment of a pension, or other benefit.

91. Subsection (2) provides that “qualifying accrued rights” exclude money purchase benefits, but include other benefits related to additional voluntary contributions (for example those relating to the purchase of added years of service), and also include pension credit rights, which are pension rights provided to the ex-spouse of a member if that member’s pension benefit is divided between them pursuant to a pension sharing order on divorce.

92. Subsection (3) provides that, if “qualifying members” include members who are in service after the qualifying time, their “qualifying accrued rights” will be calculated as if they had left the scheme at the qualifying time. So, in the case of current or active (rather than retired) members, the right that is transferred is to be calculated by reference to service up to the qualifying time and by reference to the member’s salary at or near the qualifying time, in accordance with the RMPP rules. If further rights accrue in respect of service before the qualifying time (e.g. where the pension is linked to the member’s final salary), amendments to the RMPP scheme will make it clear that these further rights will remain in the RMPP scheme. The Secretary of State has power to amend the RMPP scheme under section 19 to achieve this.

Powers exercisable

Section 17: Transfer of qualifying accrued rights to new public scheme

93. Subsection (1) confers power on the Secretary of State to establish a new scheme for pensionable service in the RMPP up to the qualifying time in respect of members designated as qualifying members.

94. Subsection (2) allows the Secretary of State to transfer “qualifying accrued rights” of such members to this new scheme.

95. Subsection (3) allows for the discharge of liabilities of the RMPP trustees in respect of the qualifying accrued rights which are transferred to the new scheme.

96. Subsection (4) provides that the benefits payable by a new scheme may be increased on such basis as the Secretary of State may determine and gives the Secretary of State power to pay a transfer value in respect of a member's qualifying accrued rights. It also enables the Secretary of State to include provision in the scheme for further payments to active members of greater value than a deferred pension. In addition it provides that the new scheme can accept transfers from the RMPP scheme. This provision will enable members of the RMPP who have bought money purchase additional voluntary contributions (AVCs) to transfer a proportion of their AVC fund from the RMPP to the new Government scheme immediately prior to their retirement so as to ensure that members can take as much of their AVCs in cash as they could immediately before the exercise of the power to set up a new scheme under section 17(1). Without this flexibility members may not be able to take as much of their AVCs as a lump sum from the RMPP due to the HMRC limit on lump sums as 25 per cent of benefit value.

97. A new scheme established under this section will not otherwise come within the definition of an occupational pension scheme in section 1(1) of the Pension Schemes Act 1993. Subsection (5) therefore provides that a new scheme may be deemed to be an occupational pension scheme for the purposes of applying any legislation to the scheme as may be prescribed by the Secretary of State.

98. Subsection (6) provides that an order by the Secretary of State may provide for a new scheme to be treated as a contracted-out scheme and as capable of providing contracted-out benefits for the purposes of Part 3 of the Pension Schemes Act 1993. This will allow benefits which are contracted out under the RMPP scheme to transfer to the new scheme.

99. Subsection (7) permits an order to have retrospective effect. This power may be used to enable the new scheme to be established with effect from a date before an order is made under this section. This may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order. In addition this power would enable the Secretary of State to amend the new scheme rules to have retrospective effect, for example, to ensure that the rules complied with changes in legislation.

100. Under subsection (8) the Secretary of State may provide for a new scheme to be administered by any person and may delegate to any person any functions exercisable by the Secretary of State under a new scheme.

Section 18: Division of the RMPP into different sections

101. Subsection (1) allows the Secretary of State by order to divide the RMPP into sections and to allocate assets, rights, liabilities and obligations between different sections, and to provide for different companies to participate in different sections. The Government expects to use this power in order to create a section in the RMPP for Post Office Limited.

102. Subsection (2) allows an order under this section to have retrospective effect. As with a new scheme established under section 17, this may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order.

Section 19: Amendments of the RMPP

103. Subsection (1) provides that the Secretary of State may by order make amendments to the RMPP in such a way as the Secretary of State considers appropriate in connection with an order under section 17 or 18.

104. Subsection (2) provides that these amendments can cover benefits payable in respect of pensionable service before and after the qualifying time. This would enable amendments to the scheme rules in relation to benefits payable in addition to the qualifying accrued rights, so that it was clear whether these benefits were met from the RMPP scheme or from the new scheme established under section 17. It would also enable amendments to be made to any other documents governing or relating to the financial support provided to the RMPP, to address the effect of dividing the RMPP into sections.

105. Subsection (3) allows an order under this section to have retrospective effect. As with sections 17 and 18, this may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order.

Section 20: Protection against adverse treatment

106. This section provides two forms of protection against RMPP members' benefits being adversely affected.

107. Subsections (1) to (3) provide that the Secretary of State must secure that the pension provision for current and past members of the RMPP (including any such persons in a new scheme established under section 17) accrued under the RMPP is, in all material respects, at least as good immediately after the exercise of any power provided under this Part to transfer liabilities from the RMPP to the new scheme, divide the RMPP into sections, and/or amend the RMPP, as such provision was immediately before the power was exercised. These provisions only apply to the Secretary of State when exercising those powers, and are not intended to constrain the ability of Royal Mail and the trustees of the RMPP to make amendments to the RMPP. Nor do the provisions affect the ability of the Secretary of State to make any changes that may be required to the new scheme in the future, which is instead constrained by subsection (6).

108. Subsection (4) makes clear that subsections (1) to (3) do not require the Secretary of State to include any provision in a new scheme established under section 18 that would be incompatible with any UK or EU law, should any questions concerning compatibility arise.

109. Subsection (5) provides that the section is not to be read as requiring the RMPP trustees or the Secretary of State (as regards the new scheme) to exercise their powers or perform their duties in a particular way, or as affecting their power to make future amendments to their respective scheme's rules. It also makes clear that the new scheme need not be in the same form as the RMPP (for example it is not required to have trustees).

110. Subsection (6) provides that the power of the Secretary of State to make any changes that may be required to the new scheme in the future may not be exercised in any manner which would, or might, adversely affect any provision of the scheme in respect of qualifying accrued rights, unless any member affected has given consent in accordance with requirements prescribed under subsection (7), or the modification has been made in a prescribed manner. This reflects the current protection for RMPP members under section 67 of the Pensions Act 1995.

Section 21: Transfer of assets of the RMPP

111. This section enables the Secretary of State to provide by order for the transfer of assets from the RMPP to the Secretary of State, or the Treasury, or a fund established by the Secretary of State to hold the assets before they are disposed of and the proceeds paid into the Consolidated Fund.

112. Subsection (2) provides that this power can only be exercised where there has been an order under section 17 (transferring accrued rights to a new scheme) or such an order is being made.

113. Subsection (3) allows the Secretary of State to delegate the management and administration of the fund referred to in subsection (1) and to make arrangements for the payment of investment income from assets or the proceeds of sales of assets into the Consolidated Fund.

Section 22: Restriction on power to transfer assets

114. This section places a limit on the assets that the Secretary of State may transfer out of the RMPP using the powers under section 21.

115. Subsection (1) requires that the ratio of assets to liabilities in the RMPP is no worse immediately after the transfer of assets under section 21 than it was immediately before the transfer.

116. Under subsection (3) the valuation of assets and liabilities are to be made by a person, and in a manner, determined by the Secretary of State.

117. Subsection (4) disapplies any provision in the RMPP which limits the calculation of the scheme's liabilities by reference to the scheme assets. This has been included because pension scheme rules typically include provisions limiting the scheme's liabilities by reference to the assets available in the event that the scheme is wound up.

118. Subsection (5) ensures that, where assets are moved from the RMPP to government in multiple transfers, the effective date of transfer is the same date. Any adjustments made to account for investment and market movement in the time since the initial transfer are to be disregarded when assessing the ratio of assets to liabilities in the RMPP under subsection (1).

Supplementary provisions

Section 23: Taxation

119. Subsections (1) and (4) of this section allow the Treasury by regulations to modify the way in which any relevant tax would otherwise have effect in relation to the new scheme, the members of the new scheme or a fund within section 21(1)(c).

120. Subsection (2) allows the Treasury to make regulations providing for the new scheme to be treated as a registered pension scheme under Part 4 of the Finance Act 2004

121. Subsections (3) and (4) allow the Treasury by regulations to modify the taxation treatment that could otherwise arise as a consequence of the changes effected by an order under Part 2 of this Act. This will allow tax provision to be made in respect of the RMPP, members of the RMPP, and Royal Mail group companies in relation to payments made, directly or indirectly, in relation to the RMPP or its members. These subsections will enable tax provision to be made mitigating the tax charges that might otherwise have arisen in respect of transfers of assets and in respect of tax consequences for the Royal Mail group companies of the changes to the pension arrangements.

122. Subsection (5) provides that regulations under subsections (1) and (3) can have retrospective effect provided that the regulations do not impose a charge to tax or withdraw a tax relief.

123. Subsection (6) enables the Treasury to make regulations to extinguish trade losses, made by companies in the Royal Mail group, in a qualifying accounting period, that the Treasury consider are attributable to deductions relating to contributions in respect of qualifying members of the RMPP. Such regulations would prevent companies in the Royal Mail group from using the losses to offset future tax liabilities.

124. Subsection (7) defines a qualifying accounting period for the purpose of subsection (6).

125. Subsection (8) ensures that regulations under subsection (6) only have effect if the company is wholly owned by the Crown on the day before an order is made establishing a new public scheme or transferring qualified accrued rights to a new public scheme.

126. Subsection (9) lists the taxes for which provision can be made and defines terms used in the section

Section 24: Information

127. Subsection (1) enables the Secretary of State to make provision, by order, requiring prescribed persons to disclose information required by the Secretary of State for any purpose under Part 2 of the Act.

128. Subsection (2) ensures that information relating to pensions or other benefits under the RMPP or the new public scheme may be shared among the relevant persons defined in subsection (3), which includes the Secretary of State, the administrators of the new public scheme, the Trustee of the RMPP and any of the Trustee's administrators, and the employer of qualifying members of the RMPP.

129. Subsection (4) ensures that the information sharing arrangements also apply to any section of the RMPP that is constituted as a separate pension scheme, where that separate scheme consists of or includes persons who are qualifying members of the RMPP.

Section 25: Orders and regulations

130. Subsection (1) of this section provides that before the Secretary of State exercises his powers under section 17(1) or (2) to establish a new scheme or transfer qualifying accrued rights, or exercises his powers under any other section in this Part, the RMPP trustees and a Royal Mail company (as defined in section 2(5)) must be consulted.

131. Subsection (2) provides that the Secretary of State may not make an order under this Part, other than under section 24, without the consent of the Treasury.

132. Subsection (4) allows the Secretary of State to commence any order (or any provision of any order) made under this Part of the Act on a specified day.

Section 26: Interpretation of Part 2

133. This section sets the meanings and definitions of terms used in Part 2 of the Act. In subsection (2) it is made clear that the power of the Secretary of State to amend the rules of the RMPP (section 19) also applies to related documents put in place to provide financial support to the RMPP (a specific example being the escrow agreement put in place at the time of the March 2006 triennial valuation).

Part 3: Regulation of postal services

Summary and Background

134. Part 3 of the Act provides for a new regulatory framework that will apply to all postal operators. This new regulatory framework provides for the implementation of the amended Postal Service Directive 97/67 EC (“the Directive”).

135. The Act abolishes the criminal offence of conveying certain letters without a licence currently contained in the Postal Services Act 2000. In the new regulatory framework for postal services, there is no need to apply for a licence. Persons are automatically entitled to provide postal services provided that, if required, they notify OFCOM of this intention and comply with certain regulatory conditions set by OFCOM.

Postal services

Section 27: Postal services, postal packets and postal operators

136. This section defines terms which are used in Part 3 of the Act: “postal services”, “postal packet” and “postal operator”.

137. Subsection (4) excludes from the definition of “postal operator” a person who only receives packets on behalf of another (either as agent or otherwise), and subsection (5) confers a power on the Secretary of State to prescribe by regulations circumstances in which that exclusion does not apply.

138. Subsection (6) provides that the regulations made by the Secretary of State under subsection (5) are subject to affirmative resolution procedure.

Section 28: General authorisation to provide postal services

139. This section enables the shift from a licensing regime as established under the Postal Services Act 2000 to a regulatory framework based on general authorisation.

140. Subsection (1) provides that persons may provide postal services without the need for a licence or authorisation, but that OFCOM may impose regulatory conditions on postal operators who do provide postal services.

141. Subsection (2) lists the conditions that can be imposed: designated USP conditions (sections 36 and 37), USP access conditions (section 38 and Schedule 3), USP accounting conditions (section 39), notification condition (section 41), general universal service conditions (section 42), essential conditions (section 49), general access conditions (section 50 and Schedule 3) and consumer protection conditions (sections 51 and 52).

The universal postal service

Section 29: Duty to secure provision of universal postal service

142. Subsection (1) of this section provides that the primary duty of OFCOM in relation to postal services is to secure the provision of a universal postal service. This section should be read in conjunction with paragraph 57 of Schedule 12 to the Act, which amends the Communications Act 2003 to provide that, in pursuing their duties in relation to postal services, OFCOM must give priority to the duty under this section to secure the provision of a universal postal service.

143. Subsection (2) makes it clear that OFCOM's duty to impose access conditions, and other regulatory conditions, is subject to their duty under subsection (1) to secure the provision of a universal postal service.

144. Subsection (3) sets out that OFCOM must have regard to both the need for the provision of a universal postal service to be financially sustainable and to the need for the provision of a universal postal service to be efficient before the end of a reasonable period of time when performing their duty under subsection (1).

145. Subsection (4) provides that, when having regard to the need for the universal service to be financially sustainable under subsection (3)(a), OFCOM must include the need for a reasonable commercial rate of return for a universal service provider on any expenditure incurred for the purpose of, or in connection with, providing the universal postal service.

146. Subsection (5) defines "reasonable period" in subsection (3)(b) as a period beginning on the day that the provisions in this Part of the Act come into force and which OFCOM consider, in all the circumstances, to be reasonable.

147. Subsection (6) requires OFCOM 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.

148. Subsection (7) enables the Secretary of State to direct OFCOM to take, or refrain from taking, action to ensure that sufficient access points are provided throughout the United Kingdom to meet the interests of the public. "Interests of the public" in this subsection may be distinct from "user needs" in subsection (6). Subsection (10) requires the Secretary of State to consult OFCOM before making such a direction.

149. Subsection (11) defines the meaning of "access points" in this Part of the Act.

Section 30: The universal postal service

150. Subsection (1) provides that OFCOM must set out in an order, which will be known as the "universal postal service order", a description of services that they consider must be provided in the United Kingdom as a universal postal service. This subsection also provides that they must set out the standards with which those services must comply.

151. Subsection (2) introduces section 31 which contains the minimum requirements for a universal postal service.

152. Subsection (3) provides that before making or modifying the universal postal service order, OFCOM must assess the extent to which the postal market in the United Kingdom is meeting the reasonable needs of users. This "market testing" is to enable OFCOM to determine what services (if any), other than those specified in section 31, should be provided as part of the universal service in the United Kingdom, in order to meet the reasonable needs of users.

153. Subsection (4) waives the requirement for OFCOM to carry out an assessment described in subsection (3) for their first universal postal service order. It requires that OFCOM must have carried out such an assessment within 18 months of Part 3 coming generally into force.

154. Subsection (5) allows the Secretary of State to direct OFCOM to exclude certain types of postal services from their first universal postal service order.

155. In Part 3 of the Act, the universal postal service means the universal postal service as defined by OFCOM in their order.

Section 31: Minimum requirements

156. This section sets out the services that must as a minimum be included in a universal postal service. These minimum requirements are broadly similar to those set out previously in the Postal Services Act 2000 (section 4) and comply with the requirements of Article 3 of the Directive defining the universal postal service. They are subject to certain exceptions as set out in Section 33.

157. "Requirement 1" is that, as a minimum, the universal postal service must include at least one delivery of letters every Monday to Saturday and one delivery of other postal packets every Monday to Friday. It makes clear that international mail is part of this minimum requirement.

158. “Requirement 2” is that at least one collection of letters every Monday to Saturday from every access point in the United Kingdom, and at least one collection of other postal packets every Monday to Friday. It makes clear that international mail is part of this minimum requirement.

159. “Requirement 3” is that there must be a service of conveying postal packets at affordable prices determined in accordance with a uniform public tariff. It makes clear that international mail is part of this minimum requirement.

160. “Requirement 4” is that there must be a registered items service at affordable prices determined in accordance with a uniform public tariff.

161. “Requirement 5” is that there must be an insured items service at affordable prices determined in accordance with a uniform public tariff.

162. “Requirement 6” is that specified services for blind or partially sighted persons are provided free of charge.

163. “Requirement 7” is that there must be a service of conveying qualifying legislative petitions to Parliament and devolved legislatures free of charge.

Section 32: Section 31: definitions

164. This section gives the definitions of “insured items service”, “legislative petitions and addresses” and “registered items service” for the purposes of section 31.

165. Subsection (1) introduces the term “insured items service”, defined by Article 2(10) of the Directive, which makes specific provision for the payment of an amount up to the value declared by the sender in the event of theft, loss or damage of a postal packet.

166. The definition of “legislative petitions and addresses” broadly reproduces the description of Parliamentary petitions and addresses given in the Postal Services Act 2000 at section 100.

167. Subsections (2) and (3) clarify that legislative petitions and addresses are those petitions to Her Majesty sent to a member of a legislative body (which includes either House of Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly); or those addressed to a legislative body and sent to a member of such a body or to the Clerk of the Scottish Parliament; or those forwarded to Her Majesty (or in Northern Ireland the Secretary of State).

168. Subsection (3) clarifies that petitions and addresses (other than those forwarded to Her Majesty or, in Northern Ireland, the Secretary of State) fall within the definition only if they do not exceed 1kg and are sent without covers or in covers open at the side.

169. Subsection (4) defines the meaning of “registered items service”, which is similar to that in section 125 of the Postal Services Act 2000.

170. Subsection (5) clarifies that references made in the section to conveying postal packets from one place to another include conveying them to places outside the United Kingdom.

Section 33: Exceptions to minimum requirements

171. This section sets out when the minimum requirements described in section 31 need not be met.

172. Subsection (1) sets out the maximum weight and dimensions of postal packets (as defined in section 27(2) to include letters) to which the minimum requirements apply. This definition is similar to the definition of “relevant postal packets” in the section 4(7) Postal Services Act 2000 and implements Article 3(5) and (6) of the Directive.

173. Subsection (2) removes UK public holidays from the requirements of section 31. It further provides that the minimum requirements do not need to be met in geographical conditions or other circumstances that OFCOM consider to be exceptional.

174. Subsection (3) provides that the services required by section 31 do not need necessarily to continue uninterrupted during an emergency. It further provides that nothing in section 31 prevents individual agreements with customers on prices.

Section 34: Review of minimum requirements

175. This section gives OFCOM the power to review the needs of users of postal services and the extent to which the minimum requirements specified in section 31 meet those needs. Subsection (2) allows such a review to consider whether the minimum requirements could be changed better to reflect those needs.

176. Under subsection (3) a copy of any review of this nature that OFCOM does conduct must be sent to the Secretary of State and subsection (4) gives the Secretary of State the power to direct OFCOM to undertake such a review at any time.

177. Subsection (5) gives the Secretary of State the power to amend, by order, the minimum requirements for a universal service, provided that OFCOM have carried out a review under subsection (1). An order to amend is to be subject to the affirmative resolution procedure. No order can result in the service being non-uniform throughout the United Kingdom in respect of the tariffs, number of days' collection or number of days' delivery.

Universal service providers

Section 35: Designation of universal service providers

178. OFCOM may designate one or more postal operators as universal service providers. They may only designate more than one universal service provider in two situations. The first situation is following a procurement determination under section 45. The second situation is following a postal administration order under Part 4. OFCOM must publish each designation. OFCOM may also review the designation(s) and consider what (if any) designated USP conditions (see section 36) should continue to apply to the designated universal service provider(s).

179. The procedure for making designations must be provided in regulations made by OFCOM. The procedures must be efficient, objective, proportionate, and transparent and should not give rise to any undue discrimination. These regulations must provide that if all of the universal service conditions that apply to a designated universal service provider are revoked then the designation should cease to have effect.

180. Subsection (11) specifies that OFCOM must notify the European Commission of each designation and the identity of each person designated. They must also notify the European Commission when designations cease to have effect. Article 4 of the Directive provides that each Member State must ensure the provision of the universal service and that member States may designate one or more undertakings as universal service providers so that the whole of the country is covered.

181. Article 4 of the Directive also provides that member States must notify the European Commission of the identity of universal service providers that they designate and that designations shall be subject to periodic review. This section therefore implements these provisions of the Directive.

Section 36: Designated USP conditions

182. Subsections (1) and (2) describe the designated USP conditions that OFCOM may impose on a universal service provider designated under section 35. OFCOM may impose one or more of the following types of requirement on the designated universal service provider. The first, under sub-section (2)(a), is a requirement to provide a universal service or part of such a service, throughout or in a specified part of the UK, in accordance with the standards set out in the universal postal service order. The second is to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service. The third is to provide, to other postal operators and postal services users, specified information about the services it is required to provide under subsection (2)(a). OFCOM may also impose a requirement to do anything else that they consider appropriate for the purposes of or in consequence of the preceding requirements.

183. Subsection (3) provides that a designated USP condition may only be imposed if it appears to OFCOM it is necessary to do so in order to secure the provision of the universal service in accordance with the standards as set out in the universal service order (made under section 30).

184. Subsections (4) and (5) provide that a designated USP condition may also set tariffs (price controls) for the provision of a universal service or part of a universal service. OFCOM must ensure that the prices that are set are affordable, take account of the costs of providing the service or part of a service, and that they incentivise the service to be provided efficiently.

185. Subsection (6) provides that a designated USP condition may also impose performance targets.

186. Subsection (7) provides that where there is more than one universal service provider, OFCOM must ensure that universal service obligations imposed on the providers do not overlap, and designated universal service provider conditions can include requirements on providers to make arrangements that will help ensure a uniform and effective universal postal service throughout the UK.

Section 37: Publication of information about performance

187. This section provides that designated USP conditions must include provision requiring a designated universal service provider to publish information about its provision of a universal service in accordance with specified standards, and may include other conditions requiring information to be published in relation to its performance in complying with specified requirements. “Specified” means specified in the condition. These conditions must also include a requirement for the provider to publish an annual performance report which must be audited by a person who is independent of both OFCOM and universal service providers for accuracy and, if there are two or more universal service providers, for its usefulness in comparing information published by another provider. Information previously published must be updated and published again. When and where it is published may also be specified.

188. The Directive requires Member States to ensure that universal service providers publish annual reports which have been independently audited (Article 16 and 19). These provisions implement the publication requirements of those Articles.

Section 38: USP Access conditions

189. This section provides for OFCOM to set a condition which enables other postal operators or users to access the network of the universal service provider and to require the universal service provider to maintain separate accounts so that costs of access can be accurately calculated.

190. Subsection (2) describes the access condition that OFCOM may impose on the universal service provider requiring it to give access to other postal operators, or users of postal services, and/or to maintain accounting separation relating to access to its postal network. Access may be required to the postal network of the universal service provider and this is defined in subsection (3) as the systems and all the resources used for the purpose of complying with its universal service obligations, including arrangements made with others for the provision of any service. This is in line with Article 11a of the Directive which gives Member States the right to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

191. Subsection (4) provides that OFCOM may not impose a USP access condition unless it appears to them that it is appropriate to promote efficiency, effective competition and to confer significant benefits on the users of postal services.

192. Subsection (5) provides that OFCOM may not impose any price controls on the universal service provider unless it appears to them that the USP might charge excessively high prices or impose a price squeeze.

193. Subsection (6) provides that in imposing price controls in a USP access condition, 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. This will allow OFCOM to consider both actual and efficient costs.

194. Subsection (7) provides that when imposing price controls, OFCOM may have regard to the prices at which services are available in comparable competitive markets and determine what they consider to be efficiency by using cost accounting methods.

195. Subsection (8) provides that in deciding what obligations to impose in a USP access condition, OFCOM must take account of a number of factors in addition to their overarching duty to secure the provision of the universal postal service set out in section 29. These include technical and economic viability, feasibility, investment made by the universal service provider, the need to secure effective competition in the long term, and intellectual property rights.

196. Subsection (9) clarifies that the giving of access to the postal network includes giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in that network.

197. This section is supplemented by the provisions in Schedule 3, which provide for the kind of matters that may be included in USP access conditions and the resolution of access disputes by OFCOM.

Section 39: USP accounting conditions

198. Subsections (1) and (2) of this section describe the USP accounting conditions that OFCOM may impose on a universal service provider to maintain separate accounts between different matters as directed by OFCOM, to comply with rules about cost identification and orientation or the use of accounting systems in relation to those matters and to have compliance with those systems audited annually by a qualified independent auditor. This is in line with Article 14 of the Directive on the separation of accounts of universal service providers.

199. Subsection (3) provides that when OFCOM imposes a USP accounting obligation that requires accounting separation, the obligation may provide for accounting separation to be maintained for different services, facilities or products (including in different areas) and may impose requirements about the accounting methods to be used.

200. Subsection (4) provides that when OFCOM imposes a USP accounting obligation that requires compliance with rules about cost identification or the use of accounting systems, the obligation may include the application of presumptions on fixing or determining costs and charges and may require publication of the accounts and other information related to the condition. Additionally, when the USP accounting condition relates to the use of cost accounting systems, subsections (6) and (7) provide that OFCOM may require a description of the accounting system be made publicly available, including details of the cost categories and rules of cost allocation.

201. Subsection (5) provides that when OFCOM imposes a USP accounting condition requiring the auditing of a provider's compliance with accounting systems, OFCOM may require the universal service provider concerned to meet the costs of the audit.

202. Subsection (8) provides that the reference to a 'qualified independent auditor' in subsection (2) means a person qualified to act as a statutory auditor under the Companies Act 2006 and one who can be classified as independent under that Act.

Persons providing services within scope of universal postal service

Section 40: Services within scope of the universal postal service

203. This section defines the meaning of “services within the scope of the universal postal service”. This definition is relevant to those who may be subject to general universal service conditions under section 42. This definition is also relevant to those who may be subject to the recovery of administrative charges incurred by OFCOM (section 43) and to general access conditions (section 50).

204. Subsection (1) sets out that a service is within the scope of the universal service, first, if it falls within the description of a service set out in the universal postal service order made under section 30. Second, a service is within the scope of the universal service if it would fall within the description of a service set out in the universal postal service order, but collection and delivery are not provided on each of the days required under section 31, or the service is not provided throughout the UK, or the service is not provided at an affordable uniform price. Finally, a service is also within the scope of the universal postal service if OFCOM believe it is inter-changeable from users’ point of view with one set out in the universal postal service order.

Section 41: Notification condition

205. This section provides that OFCOM may impose a notification condition on any person providing or intending to provide a service within the scope of the universal postal service. A notification condition requires the person to give OFCOM advance notice of their intention to provide a letters business on a specified scale, or to expand the business by a specified extent.

206. Subsection (4) enables the Secretary of State to direct OFCOM to impose a notification condition.

Section 42: General universal service conditions

207. Subsection (1) provides that OFCOM may impose a general universal service condition on every postal operator providing a service within the scope of the universal service or to specified descriptions of such operators.

208. Subsection (2) of this section describes a general universal service condition. It is either a condition OFCOM consider necessary for the purpose of securing that a universal service is provided in accordance with the standards set out in the universal postal service order, or it is a condition imposed for the purposes of sharing the financial burden of universal service obligations.

209. Subsection (3) sets out some of the things that general universal service conditions may require postal operators providing services within the scope of the universal service to do. Subsection (3) also provides that the conditions may require persons to make contributions towards the costs of complying with designated USP conditions, in accordance with section 46.

210. Subsection (4) provides that, where there is a designated universal service provider, OFCOM cannot impose a general universal service condition requiring a person to provide services required by section 31.

Section 43: Recovery of administrative charges incurred by OFCOM

211. OFCOM may impose charges on postal operators providing services within the scope of the universal postal service to meet OFCOM's costs in regulating postal services. Schedule 4 contains further provision about these charges.

Financial support for universal postal service

Section 44: Review of costs of universal service obligations

212. Section 44 provides that OFCOM may from time to time review the extent of the financial burden for a universal service provider of complying with its universal service obligations. These are defined as the obligations imposed on it by a designated USP condition. As part of any such review OFCOM must consider the extent to which the universal service provider is complying with those obligations cost-efficiently. No review under this section may be carried out for five years from the day this section comes into force unless the Secretary of State directs otherwise.

213. OFCOM must apply the method of calculating the burden set out in designation regulations (section 35), where those regulations require the financial burden to be taken into account in the designation decision and provide for a particular method of calculation. Where the regulations under section 35 do not provide for a particular method of calculation of the financial burden, subsection (4) provides that the financial burden shall be taken to be the net cost of compliance after allowing for market benefits of being the designated universal service provider. The conclusions of this review, and a summary of the audit, must be published.

214. This section together with section 46 transposes new Article 7 of the Directive. This new article expands the provision of former Article 9(4) to clarify a range of alternatives available to Member States when there is a need for external financing of the universal service obligations. The financing alternatives include the establishment of a compensation fund with contributions from service providers (and user's fees), where the Member State has determined that universal services obligations entail a net cost which represents an unfair financial burden on the universal service provider(s).

Section 45: Fairness of bearing burden of universal service obligations

215. This section requires OFCOM, where they have concluded from a section 44 review that universal service obligations impose a financial burden on a universal service provider, and published that conclusion, to determine whether they consider it would be unfair for that provider to bear the whole or part of the burden.

216. OFCOM must determine whether the burden would be unfair for a provider to bear or continue to bear, and the extent (if any) to which the burden would be unfair, in accordance with regulations they have made under subsection (3). They must publish the determination.

217. If OFCOM make such a determination, they must submit a report to the Secretary of State with a recommendation for what action (if any) they consider necessary to deal with the burden. The report may make recommendations about the order in which action should be taken and whether certain actions should be contingent on other actions. The recommended action may consist of one or more of: a review under section 34 (review of minimum

requirements); requiring contributions to be made in accordance with section 46; and making a procurement determination.

218. Subsection (9) sets out that a procurement determination is a determination by OFCOM as to whether any particular postal operator or operators (including the provider) could meet the universal service obligations in such a way that would mean no unfair burden or less of an unfair burden than the burden identified in OFCOM's determination in subsection (6). Any such determination must be made in accordance with regulations made by OFCOM. Subsection (14) prevents OFCOM from making a procurement determination within ten years from the day that this Part of the Act comes into force, unless the universal service provider agrees to such a determination.

219. After receiving the report, the Secretary of State must determine what action (if any) ought to be taken to deal with the burden and can then direct OFCOM to take that action.

Section 46: Contributions for meeting burden

220. 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.

221. OFCOM may then determine that contributions for meeting that financial burden are to be made by postal operators providing services within the scope of the universal service, and/or through the charges paid by users for using a service, as provided by the Directive.

222. Subsection (3) provides that OFCOM may require contributions only from a description of postal operator or user.

223. Subsection (4) provides that the assessment, collection and distribution of contributions can only be made if it is in accordance with a mechanism in a scheme contained in regulations made by OFCOM.

224. Subsection (5) provides that in making any regulations under this section, OFCOM must seek to ensure that the assessment, collection and distribution of contributions is objective, proportionate and transparent, does not involve (or tend to give rise to) any undue discrimination, and avoids or minimises distortion of competition.

225. Subsections (6) and (7) provide that a scheme can be administered by OFCOM or an independent person specified by OFCOM in their regulations. An independent person means independent of both universal service providers and postal operators providing postal services within the scope of the universal postal service.

226. Subsection (8) provides that Regulations setting out such a scheme are subject to consent by the Secretary of State, and to the affirmative resolution procedure.

Section 47: Report on sharing mechanism

227. This section requires that, where regulations provide for a scheme to share the burden of the universal service (section 46), OFCOM must report annually on the sharing mechanism and for the reports to be published. OFCOM are not required to publish confidential information.

Postal operators generally

Section 48: Notification by postal operators

228. Under the new authorisation system established by section 28, postal operators are not required to notify OFCOM prior to providing postal services. However, this section provides that the Secretary of State may make regulations (subject to the negative resolution procedure) requiring them to do so. The Secretary of State must consult OFCOM before making regulations. Regulations may make provisions corresponding to any of the provisions of sections 33 to 37 of the Communications Act 2003.

229. Subsection (4) provides that the maximum penalty that can be imposed by the regulations for failure to comply must not exceed the maximum under section 37(6) of the Communications Act 2003 (currently £10,000).

230. Subsections (5) to (9) provide that if the Secretary of State makes such regulations, OFCOM must establish and maintain a register to record every notification. OFCOM must publish the times when the register can be seen by the public and what fees, if any, must be paid for doing so.

Section 49: Essential conditions

231. Section 28 allows OFCOM to impose regulatory conditions on those providing postal services, which may include an “essential condition”. This section describes what “essential condition” can be imposed and on whom.

232. Subsection (1) provides that these conditions may be applied to every postal operator or to those of a particular description specified in the condition.

233. Subsection (2) provides that the essential conditions may be imposed for one of five reasons: to safeguard confidentiality of sending, conveying and delivery of letters, to safeguard security where dangerous goods are transported; to safeguard confidentiality of information conveyed; to guard against theft or loss of or damage to postal packets; and to secure the delivery of postal packets to the intended addresses.

Section 50: General access conditions

234. This section describes the general access conditions that OFCOM may impose on any postal operator requiring it to give access to other postal operators, or users of postal services, and/or to maintain accounting separation relating to this access. Access may be required to the postal operator’s postal infrastructure, including both physical infrastructure (such as letter boxes) and non-physical infrastructure (such as information relating to postcodes), or any service which the postal operator provides within the scope of the universal postal service. This section transposes the first part of Article 11a of the Directive.

235. Subsection (4) provides that a general access condition may only be imposed if it appears to OFCOM that it is necessary to protect the interests of the users of postal services and/or to promote effective competition.

236. Subsection (5) provides that in deciding what obligations to impose in general access conditions, OFCOM must take account of a number of factors, in addition to their overarching duty to secure the provision of the universal postal service set out in section 29.

These include technical and economic viability, feasibility, investment made by the postal operator, the need to secure effective competition in the long term, and any relevant intellectual property rights.

237. Subsection (6) provides that for the purposes of this section, 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.

238. This section is supplemented by the provisions in Schedule 3, which set out the kind of matters that may be included in general access conditions and the resolution of access disputes by OFCOM.

Section 51: Consumer protection conditions

239. Section 28 allows OFCOM to impose regulatory conditions on those providing postal services, which may include "a consumer protection condition". This and section 52 describe what consumer protection condition may be imposed.

240. Subsection (1) provides that the condition may be applied to every postal operator or to those of a particular description specified in the condition.

241. Subsection (2) describes the consumer protection condition that OFCOM may impose on any postal operator. It may include requiring the postal operator to assume specified liability for loss of, or damage to, postal packets, to establish and maintain procedures, standards and policies for consumer protection matters, and to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading. Subsection (3) provides that "consumer protection matters" include the handling of complaints, resolution of disputes, provision of remedies and redress, and information to users about service standards and users' rights.

242. Subsection (4) provides that the reference to "qualifying consumer expenses" of the National Consumer Council or the Office of Fair Trading is to such of their expenses as the Secretary of State considers reasonable, having regard to their functions exercisable in relation to users of postal services.

243. Subsection (5) provides that in imposing a consumer protection condition, OFCOM must, as far as they consider appropriate, secure that the procedures for handling complaints and resolving disputes are easy to use, transparent, effective and facilitate the settling of disputes fairly and promptly; that they are free of charge to users; and that where postal operators contravene the condition the operator follows the procedure as may be required by the condition.

244. Subsection (6) provides that the Secretary of State may direct OFCOM to include provision within consumer protection conditions relating to the payment of expenses of the National Consumer Council or the Office of Fair Trading.

245. This section implements Article 19 of the Postal Services Directive (Directive 2008/6/EC) which provides that Member States must ensure that transparent, simple and inexpensive procedures are made available for dealing with postal users' complaints.

Section 52: Provision that may be made by consumer protection conditions

246. This section provides that postal operators may be required by a consumer protection condition to be members of a redress scheme under which complaints may be made to and investigated by an independent person. Redress schemes are approved in accordance with Schedule 5. Postal operators may be required to publish information about the number of complaints made about them, how they were dealt with, and to provide OFCOM with information about their compliance with standards for handling complaints. In the case of the designated universal service provider, a consumer protection condition must include a requirement to publish information about the number of complaints made about them. This is required by and implements Article 19.2 of the Postal Services Directive (Directive 2008/6/EC).

General provisions

Section 53: Imposition, modification or revocation of regulatory conditions

247. This section introduces Schedule 6, which provides for the imposition, modification or revocation of regulatory conditions.

Section 54: Enforcement of regulatory requirements

248. This section introduces Schedule 7, which provides for the enforcement of regulatory requirements imposed on postal operators by OFCOM.

Section 55: Information

249. This section introduces Schedule 8, which provides for requirements to provide information to OFCOM, the enforcement of those requirements and supplementary provisions.

250. Subsection (3) provides that nothing in Schedule 7 of 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.

Section 56: General restriction on disclosure of information

251. This section prohibits the disclosure of information obtained by virtue of Part 3 that relates to an individual or particular business during their lifetime or so long as the business is carried on, except as permitted by the section.

252. Subsection (2) provides that disclosure is permitted: with the consent of those concerned; to facilitate the carrying out of functions of OFCOM, the Secretary of State, the Treasury or the Competition Commission or to facilitate the carrying out by a person prescribed (by order of the Secretary of State) of functions under an enactment prescribed (by order of the Secretary of State); in relation to criminal investigations or proceedings; in relation to civil proceedings brought by virtue of Part 3 of the Act or any enactment prescribed (by the Secretary of State by order); to meet EU obligations; or other circumstances or purposes prescribed by the Secretary of State by order. Subsection (4) provides that an order by the Secretary of State is subject to the affirmative resolution procedure.

253. Subsection (5) provides that this section does not apply to information made public in circumstances in which, or for a purpose for which, disclosure is not precluded by this section.

254. Subsection (6) provides that the section does not apply either to information obtained by OFCOM for its competition functions or to information obtained by the National Consumer Council, as this information is subject to the disclosure regime in Part 9 of the Enterprise Act 2002 (c. 40).

255. Subsections (7) and (8) provide that it is an offence to disclose information in contravention of the prohibition in this section, punishable by a fine or imprisonment of no more than two years.

Appeals

Section 57: Decisions by OFCOM to impose regulatory conditions, impose penalties etc

256. Subsection (1) defines a 'qualifying decision' for the purposes of this section as a decision by OFCOM that:

- a) imposes or modifies a regulatory condition;
- b) gives, modifies or withdraws a direction, consent or approval to impose a regulatory condition as set out in paragraph 2 of Schedule 6;
- c) imposes a penalty or gives or modifies a direction under Schedules 4, 7 or 8 (which relate to recovery of administrative charges, enforcement of regulatory requirements and information provisions respectively);
- d) gives or modifies a direction under section 89A or 116(2A) of the Postal Services Act 2000 (terms and conditions for provision of postal services and the Postcode Address File); or
- e) gives 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 - which is now part of Consumer Focus).

257. Subsection (2) provides that a person affected by a qualifying decision (as defined in subsection 1) may appeal against it to the Competition Appeal Tribunal (the CAT).

258. Subsection (3) specifies that an appeal must be made by sending a notice of appeal to the CAT in accordance with rules made under section 15 of the Enterprise Act 2002. These rules are set out in a Statutory Instrument and can be found on the CAT website www.catribunal.org.uk. Subsection (4) requires that the notice of appeal must be sent within the period set out in the rules.

259. Subsection (5) requires the CAT, in determining an appeal under this section, to apply the same principles as would be applied by a court on an application for judicial review.

260. Subsection (6) provides that the CAT may either dismiss the appeal or quash all or part of the decision against which the appeal was made. If the CAT quashes all or part of the decision, subsection (7) provides that it may refer the matter back to the decision maker (OFCOM) directing them to reconsider and make a new decision which takes account of the ruling. Subsection (8) ensures that the CAT, in making such a direction, cannot

require OFCOM to take action which they would not otherwise have the powers to take in relation to the decision.

261. Subsection (9) provides that the decision of the Regulator stands while an appeal is being made. The exception to this is in cases concerning a penalty of the imposition or enforcement of a regulatory condition.

Section 58: Appeals from the CAT

262. Subsection (1) provides that an appeal on a point of law may be made to the appropriate court (as set out in subsection (4) this is the Court of Appeal in England and Wales and in Northern Ireland, and the Court of Session in Scotland).

263. Subsection (2) provides that such an appeal may be brought by a party to the proceedings in the original appeal or by any other person who has a sufficient interest in the matter.

264. Subsection (3) provides that an appeal may be made only with the permission of the CAT or the appropriate court.

Section 59: Price control decisions

265. This section provides for an appeal to the Competition Commission against a price control decision on the grounds that OFCOM has made a material error (or errors). It also sets out the timeframe in which appeals must be determined.

266. An appeal must be made within two months of the original decision and must be made in accordance with the requirements of the Commission on the form of appeals or the way in which they must be made. The Commission must determine the appeal within four months of the day on which OFCOM refer the appeal or 6 months in exceptional circumstances. The making of an appeal against a decision does not suspend the effect of the decision whilst the appeal is being considered.

267. Subsection (6) provides that on determining the appeal, the Commission must dismiss the appeal, allow the appeal and make its own decision on the subject matter of the appeal or quash all or part of the price control decision to which the appeal relates.

268. The Commission may only allow the appeal, or quash all or part of the price control decision to which it relates, if it considers that OFCOM made a material error. Subsection (8) provides that, on quashing all or part of the price control decision, the Commission may refer the matter back to OFCOM with a direction to make a new decision in accordance with its ruling. The Commission may not direct OFCOM to take any action which they would not otherwise have the power to take.

269. Subsection (10) provides that OFCOM must give effect to any decision of the Commission as soon as is reasonably practicable after it is made.

270. Subsection (11) provides that the Commission may investigate any matter or do any other thing in order to allow the appeal or reach its own decision.

271. Subsection (12) provides that decisions made by the Competition Commission in respect of this section may be appealed to the CAT as provided for under section 55.

272. Subsection (13) defines a price control decision for the purposes of this section.

Section 60: section 59 supplementary

273. This section provides a power for the Competition Commission to make rules regulating the conduct of appeals under section 59.

274. Subsection (2) provides that the rules may impose time limits and other restrictions on the taking of evidence and the making of representations or observations at an oral hearing.

275. Subsection (5) provides that the Commission must consult in the making of its rules, and subsection (4) provides that the Commission must publish the rules that it makes.

276. Subsection (6) provides for the Secretary of State by order to apply the investigation powers the Commission currently has under the Enterprise Act 2002 in relation to its appeal function under section 59 and make provision for extending the period within which appeals must be determined when requirements as to attendance of witnesses and production of documents have not been complied with.

277. Subsection (7) ensures that an order made by the Secretary of State under subsection (6) cannot impose civil or criminal penalties at greater levels than those specified in the Enterprise Act 2002.

Supplementary and consequential provisions

Section 61: Duties in relation to social and environmental matters

278. This section enables the Secretary of State to give guidance to OFCOM, in respect of carrying out their functions relating to postal services, on its contribution to social or environmental policies set out in the guidance, in which case OFCOM must have regard to that guidance. The Secretary of State must consult OFCOM, the National Consumer Council and other persons as considered appropriate on any proposed guidance and a draft must be laid before Parliament. Parliament may resolve that the guidance should not be given. The Secretary of State must publish any guidance given under subsection (1).

Section 62: UK postage stamps bearing image of Her Majesty

279. This section provides that the Secretary of State may give a direction to a universal service provider requiring the provider to issue postage stamps bearing the image of Her Majesty. A direction may also relate to the subject matter and frequency of stamp issues and the process for design approval. If given, a direction must require stamps bearing the image of Her Majesty not to be issued without Her Majesty's approval. The person to whom the direction is given has a duty to comply with the detail of direction. The duty can be enforced in civil proceedings by the Secretary of State.

Section 63: Orders, schemes and regulations made by OFCOM

280. This section provides for section 403 of the Communications Act 2003 to apply to any power of OFCOM under Part 3 to make an order, a scheme or regulations. This means that orders, scheme and regulations are made by statutory instrument. OFCOM are required to

give notice to those likely to be affected by an order scheme or regulations and invite their representations before making the instrument.

Section 64: Abolition of Postal Services Commission etc

281. This section abolishes the Postal Services Commission, and applies the provisions of the Communications Act 2003 applicable to pre-commencement regulators under that Act in respect of transfers of property, rights and liabilities to the transfer from Postcomm to OFCOM. It makes provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply to the transfer of staff from Postcomm to OFCOM. It also provides that the transfer of functions, assets or liabilities from Postcomm to OFCOM under or by virtue of this Act is not to be treated as a merger for accounting purposes.

Section 65: Interpretation of Part 3

282. Subsection (1) defines various terms used in Part 3 of the Act.

283. Subsection (2) defines references to a universal postal service.

284. Subsection (3) applies references to a universal service provider to a person who provides part of a universal service or universal service provision in a specified area of the country.

285. Subsection (4) defines contravention and other references relating to contraventions (for example, remedying the consequences of a contravention).

286. Subsection (5) provides that any directions made under this Part of the Act must be in writing and may be varied or revoked by a further direction.

Section 66: Transitional provisions for Part 3

287. This section introduces Schedule 9, which contains transitional provisions in relation to the coming into force of Part 3 of the Act.

Section 67: Review of Part 3

288. This section provides for there to be a review of the provisions of Part 3 within 5 years after the provisions of the Part generally come into force. The Secretary of State must set out the conclusions of the review in a report and lay the report before Parliament. The report must, in particular, set out the objectives intended to be achieved by the regulatory system established by the provisions; assess the extent to which the objectives have been achieved; and assess whether those objectives remain appropriate and, if so, whether they could be achieved by a system that imposed less regulation.

Part 4: Special Administration

Summary and background

289. Part 4 of the Act contains provisions for a special administration regime, the purpose of which is to ensure that the objective of the administrator is to secure the continued provision of the universal postal service should a privately-owned Royal Mail (or any other universal service provider) be at risk of entering insolvency proceedings.

290. This follows precedents in the water and energy sectors.

Postal administration orders

Section 68: Postal administration orders

291. A postal administration may only be commenced by an order of the court. Subsection (1) sets out the meaning of a postal administration order. The order appoints a person (the “postal administrator” - see subsection (2)) to manage the affairs, business and property of a company which is a universal service provider for the duration of the postal administration.

292. Subsection (3) gives the postal administrator an overarching objective by requiring them to manage the company’s affairs, business and property and exercise their functions to achieve the objective of the postal administration which is set out in section 69.

293. Subsection (4) clarifies that for a postal administration order applying to a foreign company, the references in this section to affairs, business and property are references to those conducted and located in the UK.

Section 69: Objective of a postal administration

294. This section sets out the objective of a postal administration.

295. Subsection (1) states that the objective is to secure that:

- a) a universal postal service is provided in accordance with the standards set out in the universal postal service order (issued by OFCOM under section 30); and
- b) the postal administration is brought to an end by one or more of two specified means.

296. Those means are expressed in subsection (2) as

- a) the rescue as a going concern of the company subject to the postal administration order; and
- b) relevant transfers.

297. A relevant transfer, as stated in subsection (3), is a transfer as a going concern of so much of the business of the company as is appropriate for the purpose of achieving the objective of the postal administration order. The transfer can be to a single company or, as respects different parts of the business, there may be transfers to more than one company.

298. Subsection (4) provides that one of the ways by which relevant transfers can be effected is through a “hive down”. A hive down is:

- a) a transfer of the undertaking (or part of the undertaking) of the company subject to the postal administration order, 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 in paragraph (a).

299. Subsection (5) places limits on the extent to which relevant transfers can be used to achieve the objective of the postal administration. These emphasise that, where practicable and consistent with the objective of the postal administration, a rescue of the company as a going concern is to be preferred to transfers. Transfers can only be used to extent 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 a 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.

300. In deciding on what course of action to adopt, the postal administrator will be under a duty to act in a way which, so far as it is consistent with the objective of protecting provision of the universal service, best protects the creditors (see section 72 (3)).

Section 70: Applications for postal administration orders

301. This section sets out the process for applications to the court for postal administration orders.

302. Subsection (1) makes it clear that only the Secretary of State or OFCOM (with the consent of the Secretary of State) can make an application for a postal administration order.

303. When applying for such an order the applicant must give notice, as soon as is practicable, of the application to a number of people as follows:

- 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 appoint an administrator because they hold a floating charge over the company (as permitted under paragraph 14 of Schedule B1 to the Insolvency Act 1986); and
- d) other persons who may be prescribed by the postal administration rules (these are rules that can be made under section 411 of the Insolvency Act 1986 – see section 73(3)).

Section 71: Powers of the court

304. The section sets out the powers of the court on hearing an application from the Secretary of State or OFCOM for a postal administration order. Subsection (1) states that the Court may:

- a) make the order;
- b) dismiss the application;
- c) adjourn the hearing conditionally or unconditionally;
- d) make an interim order;

- e) treat the application as a winding-up petition and make any order of the court could make under section 125 of the Insolvency Act 1986; and
- f) make any other order which it thinks appropriate.

305. The powers in subsection (1) mirror those for a normal administration as set out in paragraph 13(1) of Schedule B1 to the Insolvency Act 1986.

306. Under subsection (2), the court may only make a postal administration order if it is satisfied that:

- a) the company is unable, or is likely to be unable, to pay its debts; or
- b) it would be just and equitable (disregarding the objective set out in section 69) to wind up the company in the public interest on a petition from the Secretary of State under section 124A of the Insolvency Act 1986 (and the Secretary of State has certified that (disregarding that objective) a petition for such a winding up would be appropriate – see subsection (3)).

307. Section 124A(1) of the Insolvency Act 1986 states:

“(1) Where it appears to the Secretary of State from -

- (a) any report made or information obtained under Part XIV of the Companies Act 1985 (company investigations, etc.),
- (b) any report made under section 94 or 177 of the Financial Services Act 1986 or any information obtained under section 105 of that Act.
- (c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or
- (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.”

308. Subsection (4) makes it clear that the court cannot make a postal administration order if the company is already in administration (under Schedule B1 to the Insolvency Act 1986) or has gone into liquidation (as defined in section 247(2) of the Insolvency Act 1986).

309. Subsection (6) explains that where the court makes an interim order it may restrict the exercise of a power of the company or its directors, or make provision to confer discretion on a person qualified to act as an insolvency practitioner in relation to the company.

310. Subsection (7) sets out that in the case of a foreign company, the restrictions would relate to powers of the company or the directors within the UK or in relation to the company’s UK affairs, business and property.

311. Subsection (8) sets out that for the purposes of this section, the test for whether a company (registered or unregistered) is unable to pay its debts is the same as that which applies under the Insolvency Act 1986.

Section 72: Postal administrators

312. This section sets out the status of a postal administrator of a company and how that administrator should exercise his or her powers.

313. Subsection (1) states that a postal administrator is an officer of the court, and in exercising and performing powers and duties in relation to the company, is the company's agent.

314. Subsection (2) provides that the postal administrator is under a duty to perform their functions as quickly and as efficiently as is reasonably practicable.

315. Subsection (3) states that 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.

316. Subsection (4) clarifies that the postal administrator has to be qualified to act as an insolvency practitioner in relation to the company.

317. Subsection (5) deals with a situation where the court appoints two or more persons as the postal administrator of a company.

Section 73: Conduct of administration, transfer schemes etc

318. This section introduces Schedule 10 which contains provisions applying the provisions of Schedule B1 to the Insolvency Act 1986, and certain other enactments, to postal administration orders and Schedule 11 which contains provisions for transfer schemes to achieve the objective of a postal administration. A version of Schedule B1 to the Insolvency 1986 Act as modified to apply to postal administration is available on the BIS website³.

319. Subsection (3) applies the power to make rules under section 411 of the Insolvency Act 1986 to Part 4 of the Act so that detailed procedural rules for a postal administration can be made in the same way that they are for a normal administration.

320. However, under subsection (4) the duty to consult the Insolvency Rules Committee about the rules is disapplied in the case of a postal administration.

Restrictions on other insolvency procedures

321. Sections 74 to 78 prevent a postal administration from being frustrated by prior orders of various kinds being granted before the Secretary of State or OFCOM have been given an opportunity to apply for a postal administration order, or by other steps being taken when a postal administration order has been made or an application is outstanding.

³<http://www.bis.gov.uk/policies/business-sectors/postal-services/postal-services-bill-2010>

Section 74: Winding up orders

322. This section applies if a person other than the Secretary of State petitions for the winding-up of a universal service provider and sets out how the court should act in certain circumstances.

323. Subsection (2) provides that the court is not to exercise its powers on a winding-up petition (for example, the power to grant the winding up order – see subsection (4)) 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.

324. The notice and 14 day period are intended to avoid a winding up order being granted before the Secretary of State and OFCOM have been given an opportunity seek a postal administration order.

325. If an application for a postal administration order is made before the winding-up order is made (that is, within the 14 day period), subsection (3) allows the court to exercise its powers under section 71 (for example, to make a postal administration order) instead of exercising its powers on the petition for the winding up order.

326. Subsection (4) clarifies that references in this section to the court's powers on a winding-up petition are to:

- a) its powers under section 125 of the Insolvency Act 1986 (for example, to make a winding up order or dismiss the petition etc.) other than its power of adjournment, and
- b) its powers under section 135 of the Insolvency Act 1986 (for example, to appoint a provisional liquidator).

Section 75: Voluntary winding up

327. This section prevents a universal service provider passing a resolution for voluntary winding up without the permission of the court and sets out conditions on which the court could give permission to allow the voluntary winding up of the company.

328. Subsection (3) stipulates that the court is not to grant permission unless:

- 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.

329. If an application for a postal administration order is subsequently made before permission is granted, subsection (4) allows the court to exercise its powers under section 71 to make a postal administration order (instead of granting permission).

Section 76: Making of ordinary administration orders

330. 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. It sets out how the court should act in such circumstances.

331. Subsection (2) states that the court must dismiss the application for ordinary administration if a postal administration order is in force in relation to the company, or has been made in relation to the company but is not yet in force.

332. If a postal administration order has not been made, subsection (3) requires that, on hearing the ordinary administration application, the court must not exercise its powers under paragraph 13 of schedule B1 to the Insolvency Act 1986 (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.

333. Paragraph 13 of Schedule B1 relates to the powers of the court on hearing an ordinary administration application (for example, to make an administration order, dismiss the application etc.).

334. Subsection (4) explains that paragraph 44 of Schedule B1 to the Insolvency Act 1986 Act (which provides for an interim moratorium under which legal proceedings cannot be taken against the company except with the permission of the court) does not prevent, or require the permission of the court for, the making of an application for a postal administration order.

335. On the making of a postal administration order in relation to a company, subsection (5) requires the court to dismiss any outstanding ordinary administration application made in relation to the company.

Section 77: Administrator appointments by creditors etc

336. This section deals with circumstances where secured creditors or directors of a universal service provider or the company itself seek to appoint an administrator under paragraphs 14 or 22 of Schedule B1 to the Insolvency Act 1986 (powers to appoint administrators).

337. Subsection (2) states that a person may not take any step to make such an appointment when:

- 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.

338. Subsection (3) sets out that in any other case, an appointment of an administrator takes effect only if each of the conditions in subsection (4) are met. The conditions are:

- a) that a copy of every document in relation to the appointment that is filed or lodged with the court 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.

339. Subsection (5) makes it clear that paragraph 44 of Schedule B1 to the Insolvency Act 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.

Section 78: Enforcement of security

340. This section prevents a person taking 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.

341. In the case of a foreign company which is a universal service provider, subsection (2) clarifies that the reference to the property of the company is to its property in the United Kingdom.

Financial support for companies in administration

Section 79: Grants and Loans

342. This section sets out the conditions on which the Secretary of State can make grants or loans to a universal services provider in postal administration.

343. Subsection (2) enables the Secretary of State, with the consent of the Treasury, to make grants or loans to the universal service provider of amounts that the Secretary of State considers to be appropriate for achieving the objective of the postal administration.

344. Subsection (3) provides in general terms that the grants or loans may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate. Subsections (4) and (5) specify some of the terms which may be included, namely terms requiring:

- a) 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;

- b) 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
- c) 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.

Section 80: Indemnities

345. This section applies if a postal administration order has been made in relation to a company that is a universal service provider. It enables the Secretary of State, with the consent of the Treasury, to indemnify specified “relevant persons”, for example the postal administrator, his employees, partners, fellow employees (see subsection (11)) in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the postal administrator’s powers and duties.

346. Subsection (4) requires the Secretary of State to lay a statement before Parliament as soon as practicable after agreeing an indemnity under this section.

347. Subsection (5) provides for repayment by the company of any sums paid by the Secretary of State in consequence of the indemnity and for the payment of interest on outstanding sums.

348. Subsection (7) clarifies that the company does not have to repay sums paid by the Secretary of State for indemnifying a person in respect of a liability to the company.

349. If a sum has been paid out under an indemnity agreed under this section, the Secretary of State must lay a statement relating to that sum before Parliament as soon as practicable after the end of the financial year in which the sum is paid out; and, where there is an obligation on the company to repay the relevant sums, after the end of each subsequent financial year until the company has discharged the liability (including interest).

350. Subsection (10) provides that the Secretary of State can only agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as “relevant persons”; but can agree to indemnify persons who subsequently become “relevant persons” for example by becoming an employee of the postal administrator.

351. Subsection (11) defines the meaning of “relevant persons” for the purposes of this section, namely:

- 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 (as defined in section 85) which is the employer of the postal administrator or of which the postal administrator is a partner.

Section 81: Guarantees where postal administration order is made

352. This section enables the Secretary of State, with the consent of the Treasury, to give guarantees in relation to a universal service provider in postal administration.

353. Subsection (2) states that the Secretary of State may guarantee while a postal administration order is in force:

- a) the repayment of any sum borrowed by the company;
- b) the payment of interest on any sum borrowed by the company; and
- c) the discharge of any other financial obligation of the company in connection with the borrowing of any sum.

354. Subsection (4) requires the Secretary of State to lay a statement of the guarantee before Parliament as soon as practicable after giving a guarantee under this section.

355. If sums are paid out by the Secretary of State under a guarantee given under this section, subsection (5) requires that 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.

356. If a sum has been paid out under a guarantee given under this section, under subsections (7) and (8), the Secretary of State must lay a statement relating to that sum before Parliament as soon as practicable after the end of the financial year in which the sum is paid out; and after the end of each subsequent financial year until the company has discharged the liability (including interest).

Modifications of regulatory conditions etc

Section 82: Regulatory powers exercisable during postal administration

357. This section sets out the regulatory powers available to the Secretary of State during a postal administration.

358. Subsection (1) provides that the section applies only if a postal administration order has been made.

359. Subsections (2) and (3) provide that the Secretary of State can make an order to modify the universal postal order made by OFCOM under section 30 following consultation with OFCOM and anyone else the Secretary of State considers appropriate and under subsection (4), if such an order is made, the Secretary of State rather than OFCOM must notify the European Commission of the modification.

360. Subsections (5) and (6) provide that, in a special administration situation, the Secretary of State can amend the minimum requirements for the universal postal service in section 31. The order is subject to approval after being made (which means it must be laid before Parliament after being made and ceases to have effect unless it is approved by a

resolution of each House of Parliament within 28 days – see section 89 for further details) and may include necessary or expedient consequential amendments to Part 3.

361. Subsection (7) provides that the Secretary of State can modify or revoke any regulatory condition on any postal operator if the Secretary of State considers it appropriate to do so for, or in connection with, achieving the objective of the postal administration.

362. Subsection (8) extends the power under subsection (7) to include the making of incidental, consequential or transitional modifications.

363. Subsection (9) requires the Secretary of State to consult the person whose condition is being modified or revoked, OFCOM and anyone else he thinks appropriate before making a modification.

364. Subsections (10) and (11) provide that any modification or revocation of a regulatory condition must be published by the Secretary of State in such a manner as the Secretary of State considers appropriate.

365. Subsection (12) provides that the provisions in Part 3 (including the duty to secure the provision of universal postal service) apply in relation to the modification or revocation by the Secretary of State of regulatory conditions, with the exception of paragraph 3 of Schedule 6 (which relates to the publication by OFCOM of modifications etc) and sections 57 to 60 (which relate to appeals). In a special administration situation, decisions by the Secretary of State modifying or revoking regulatory conditions would be subject to judicial review by the courts.

366. Subsection (13) provides that the power conferred by subsection (2) (to modify the universal postal order) or (5) (to amend section 31) may only be exercised when a postal administration order is in force.

367. Subsection (14) provides that any duty to consult under this section may be met by consultation that took place prior to the making of the postal administration order.

Section 83: Regulatory conditions to secure funding of postal administration order

368. This section outlines how the Secretary of State can modify regulatory conditions to secure the funding of a postal administration.

369. Subsection (1) provides that a modification made under section 82 can include a modification to a price control provision contained in a regulatory condition for the purpose of raising funds.

370. Subsection (2) specifies that the modified condition may require the person on whom it is imposed to pay funds to specified persons for the purpose of making good any shortfall (as defined in subsection (5)) in the property available to meet the expenses of the postal administration.

371. Subsection (3) provides that the modified condition may require that the person in receipt of the funds as result of this section uses those funds towards discharging any shortfall.

372. For the purposes of this section, subsection (4) defines a price control provision as a provision as to the tariffs as mentioned in section 36(4) (designated USP condition: tariffs), or a provision as to prices that may be charged for or in connection with the giving of access under an access condition (within the meaning of Part 3 of this Act).

373. For the purposes of this section, subsection (5) defines a 'shortfall' in meeting the expenses of postal administration as the property of the company being insufficient to meet the costs of the administration. It also defines making payment to make good the shortfall as discharging 'relevant debts' which cannot otherwise be met out of the available property.

374. Subsection (6) defines 'relevant debts'. These include obligations to repay the grants, loans, sums paid out under indemnity and sums paid out under guarantees under sections 79, 80 and 81.

Supplemental provision of Part 4

Section 84: Modification of this Part under Enterprise Act 2002

375. This section provides that 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 consequential modifications of this Part of the Act. The Secretary of State can make such modifications as he or she considers appropriate in connection with any other provision made under any of the specified sections of the Enterprise Act. (The Enterprise Act 2002 made substantial changes to the regime for ordinary administration and inserted Schedule B1 into the Insolvency Act 1986.)

Section 86: Partnerships

376. Subsection (1) gives a power to the Lord Chancellor to make an order with the concurrence of the Secretary of State and the Lord Chief Justice (or a nominee), to apply (with or without modifications) any provision of Part 4 to partnerships (excluding Scottish firms). Subsection (5) gives the Secretary of State a power to make such an order in relation to Scottish firms. (Partnerships in Northern Ireland are dealt with under section 87).

Section 87: Northern Ireland

377. This section contains provision about the application of this Part to Northern Ireland.

Section 88: Review of Part 4

378. This section provides for there to be a review of the provisions of Part 4 within 5 years after the provisions of the Part generally come into force. The Secretary of State must set out the conclusions of the review in a report and lay the report before Parliament. The report must, in particular, set out the objectives intended to be achieved by the regulatory system established by the provisions; assess the extent to which the objectives have been achieved; and assess whether those objectives remain appropriate and, if so, whether they could be achieved by a system that imposed less regulation.

Part 5: General

Section 89: Orders and regulations made by Ministers of the Crown

379. This section requires that orders and regulations made under provisions of the Act by the Secretary of State, the Treasury or the Lord Chancellor must be made by statutory instrument.

380. Subsection (2) provides that any orders or regulations may contain incidental, supplementary, consequential, transitional, transitory or saving provision and may make different provision for different cases or circumstances or areas.

381. Subsections (4) to (8) define “affirmative resolution procedure”, “approval after being made” and “negative resolution procedure”

382. Subsection (9) gives the flexibility to include provisions requiring negative resolution procedure within a statutory instrument which is subject to an affirmative resolution procedure.

Section 90: Minor definitions

383. This section defines “enactment” and “OFCOM”. OFCOM is the independent regulator and competition authority for the UK communications industries.

Section 91: Minor and consequential amendments

384. This section introduces Schedule 12 of the Act, which contains some minor and consequential amendments and repeals.

385. Subsection (3) gives the Secretary of State or the Treasury the power by order to make any further consequential amendments, repeals, revocations or modifications to any enactment as considered necessary in consequence of provisions of the Act.

386. Subsection (4) stipulates that any order made under this section is to be subject to the negative resolution procedure.

Section 92: Financial Provisions

387. This section is a general financial provision that allows there to be money provided by Parliament for activities under the Act.

388. Paragraph (a) allows for money to be provided by Parliament in relation to any expenditure incurred by a Minister of the Crown or the Postal Services Commission by virtue of the Act. Paragraph (b) allows for money to be provided from Parliament in relation to any increase attributable to the Act in any moneys that are payable under any other Acts.

Section 93: Short title, commencement and extent

389. Subsection (2) of this section provides for certain specified provisions of the Act to come into force on the day after the Act is passed.

390. Subsection (3) provides that any other provisions of the Act will come into force on such day as the Secretary of State or the Treasury may by order appoint (and that different days may be appointed for different purposes).

391. Subsection (4) provides that the Secretary of State or the Treasury may by order make any transitional and savings provisions as necessary in connection with the commencement of any provision of the Act.

392. Subsections (5) and (6) provide that any amendment or repeal made by the Act has the same extent as the enactment to which it relates and that, subject to that, the provisions of the Act will extend throughout the United Kingdom.

Schedules

Schedule 1: Transfer Schemes

393. This Schedule contains further provision about transfer schemes under section 8.

394. Paragraph 1 defines various terms used in Schedule 1.

395. Paragraph 2 provides that a transfer scheme may identify property, rights and liabilities to be transferred by specifying or describing them, and may specify the way in which property, rights or liabilities of any description may be identified.

396. Paragraph 3 contains further provisions as to the property, rights and liabilities that may be transferred under a scheme and the basis on which they are to be transferred.

397. Paragraph 4 provides that the transfer scheme may contain provision for the creation or transfer of an interest or a right in, or in relation to, property transferred and property retained. It may also contain provision for the creation of new rights and liabilities between different transferees and as between a transferee and a transferor. It also allows for the transfer scheme to contain provision to cover the interests, rights or liabilities of third parties.

398. Paragraph 5 provides that an obligation may be imposed on a transferee or transferor to enter into an agreement to effect the transfer(s) and allows for this to be enforced by an injunction or any other appropriate remedy.

399. Paragraph 6 provides that the transfer and creation of the relevant property, interests, rights and liabilities vest in the transferee at the time specified in the scheme, save where it is to be effected by an agreement or instrument entered into or executed pursuant to an obligation imposed under paragraph 5(1).

400. Paragraph 7 provides that where a person would be entitled to terminate, modify, acquire or claim an interest or right, or treat an interest or right as modified or terminated by virtue of anything done or likely to be done in connection with a transfer scheme, then that right is not enforceable until after the transfer of the interest or right under the scheme and only to the extent that the scheme provides for the interest or right to have been transferred subject to that person's entitlement.

401. Paragraph 8 provides that a transfer scheme may contain incidental, supplementary, consequential and transitional provision, and that different provision may be made for different purposes.

402. Under Paragraph 9, a transfer scheme may provide, in relation to transfers in accordance with the scheme, that the transferee is treated as the same person in law as the transferor, for things done by the transferor to be treated as done by the transferee and for proceedings commenced by or against the transferor to be continued by or against the transferee.

403. Paragraph 10 makes provision for the transfer of foreign property. Paragraph 11 provides that a transfer scheme may make provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or by virtue of) a transfer scheme. It also provides for the appointment of an arbitrator to determine disputes about compensation.

404. Paragraph 12 provides that a transfer scheme may make provision for certain disputes to be resolved by arbitration.

405. Paragraph 13 makes provision for persons entitled, in consequence of a transfer scheme, to possession of a document relating in part to the title to land or other property or the management of such property or land to have been treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it.

406. Paragraph 14 provides for proof of title by certificate issued by the Secretary of State.

407. Paragraph 15 provides that the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the transfer under a transfer scheme of rights or liabilities under a contract of employment. Paragraph 16 provides that where an employee of the transferor becomes an employee of the transferee the period of employment with the transferor is to be treated as a period of employment of the transferee and the transfer is not to be treated as a break in service.

408. Paragraph 17 allows for modification of a transfer scheme within three years of the vesting of a transfer, provided it is agreed by the transferor and transferee and approved by the Secretary of State.

409. Paragraph 18 disapplies certain provisions of the Companies Act 2006 (distributions), together with rules of law relating to distributions or the maintenance of capital by companies, in relation to transfers by or under a transfer scheme.

410. Paragraph 19 provides that in relation to anything done by or under a transfer scheme the Secretary of State, the Treasury, anyone employed by or acting on their behalf or their nominees are not to be regarded as shadow directors of a transferor or transferee.

Schedule 2: Taxation provisions relating to re-structuring etc

411. The purpose of this schedule is to ensure that the restructuring of the Royal Mail group enabled by Part 1 of the Act does not give rise to unintended tax consequences. Paragraphs 1 and 2 refer to the transfer of securities of subsidiaries of Royal Mail Holdings to the Secretary of State, the Treasury, a nominee of either of them, or a company wholly owned by the Crown. Paragraphs 3-6 apply to the transfers of property, rights and liabilities under the transfer schemes as set out in Schedule 1. Paragraphs 7 and 8 refer to the transfer of

securities of Royal Mail Holdings or a subsidiary of Royal Mail Holdings where the Crown owns 51% of the company immediately before the disposal.

412. Paragraph 1(1) sets out the circumstances in which paragraph 1 applies and paragraph 1(2) provides that such a disposal will be treated as a no gain/no loss disposal for capital gains purposes. Paragraphs 1(3) and 1(4) prevent degrouping charges arising for the purposes of corporation tax on chargeable gains and stamp duty land tax, as a result of such a disposal. Paragraph 1(5) ensures that stamp duty will not be chargeable as a result of the disposal.

413. Paragraph 2 ensures that the effect of paragraph 1 will not prevent a degrouping charge arising if the subsidiary leaves a new group as a result of a subsequent disposal of securities of the subsidiary.

414. Paragraph 3 defines a “relevant transfer”, “transferor” and “transferee” with regard to the provisions in paragraphs 4-6 which relate to the transfer of property, rights and liabilities by Schedule 1 transfer schemes

415. Paragraph 4 ensures that a relevant transfer is treated as a no gain/no loss transfer for capital gains purposes.

416. Paragraph 5 provides continuity of treatment for corporation tax purposes in relation to the transfer of loans.

417. Paragraph 6(1) treats a transfer of a chargeable intangible asset as tax neutral for corporation tax purposes. Paragraph 6(2) disapplies transfer pricing rules in relation to the transfer. Paragraph 6(3) prevents an asset created or acquired before 1 April 2002 from becoming a chargeable intangible asset of the transferee.

418. Paragraph 7(1) sets out the circumstances in which paragraph 7(2) applies and paragraph 7(2) prevents degrouping charges arising for the purposes of corporation tax on chargeable gains and stamp duty land tax, as a result of such a disposal.

419. Paragraph 8 ensures that the effect of paragraph 7 will not prevent a degrouping charge arising if Royal Mail Holdings or a subsidiary leaves a new group as a result of a subsequent disposal of securities of Royal Mail Holdings or the subsidiary

Schedule 3: Access conditions

Part 1 Provision that may be made by access conditions

420. Paragraph 1 introduces Part 1 of the Schedule and states that access conditions of the kind set out in Part 1 may be imposed.

421. Paragraph 2 provides that an access condition may include provision relating to the terms and conditions, on which a person is willing to offer access, or require such modifications as OFCOM may direct to any offer of access.

422. Paragraph 3 provides that an access condition may include provision imposing such price controls as OFCOM may direct. An access condition may also impose rules about the identification of costs and rules about the use of cost accounting systems. An access condition may also impose an obligation to have compliance with those systems audited annually by a qualified independent auditor, including meeting the costs of the audit, and an obligation to adjust prices following a direction from OFCOM.

423. Paragraph 4 provides that an access condition may include provision requiring the application of presumptions in the fixing or determining costs and charges for the purposes of price control set out in paragraph 3.

424. Paragraph 5 sets out the publication and information requirements that may form part of an access condition which imposes rules on the use of cost accounting systems.

425. Paragraph 6 makes provision for access requirements to be imposed on another person, other than the postal operator, where the access required is subject to an arrangement between the postal operator and that person and the access requires that person's agreement. However, such requirements can not have the effect of requiring that person to do more than they would otherwise be required to do.

426. Paragraph 7 provides that, where an access condition requires accounting separation, the condition may provide for the separation to be maintained for different services, facilities or products (including those provided in different areas) and may impose requirements about the accounting methods to be used.

427. Paragraph 8 provides that an access condition may include a restriction on the use for any other purpose of information which is obtained in connection with the giving of access.

428. Paragraph 9 provides that an access condition may set time limits for compliance.

429. Paragraph 10 provides that an access condition may include provision for securing fairness and reasonableness when dealing with requests for access.

430. Paragraph 11 provides that an access condition may include a requirement of non-discrimination in relation to the giving of access.

431. Paragraph 12 provides that an access condition may include a requirement to publish all such information as OFCOM directs, for transparency in access matters, or the terms and condition on which the person is willing to offer access.

Part 2 Resolution of access disputes by OFCOM

432. Under Paragraphs 13 to 15, postal operators and users may refer disputes concerning the terms and conditions of access, including price, to OFCOM who will decide if it is appropriate from them to handle the dispute. If OFCOM does handle the dispute it must consider the dispute and make a binding determination for resolving it as soon as reasonably practicable.

433. Paragraph 16 sets out the powers that may be exercised by OFCOM when making a determination. OFCOM's powers include: (a) setting out the rights and obligations of parties (b) fixing the terms or conditions of transactions between parties (c) imposing an obligation on parties to enter into a transaction on the terms and conditions fixed by OFCOM (d) requiring the payment, by way of an adjustment, of an underpayment or overpayment (e) requiring a party to a dispute to pay another parties costs and expenses incurred in connection with the dispute (f)) requiring a party to a dispute to pay OFCOM's costs in frivolous or vexatious cases.

434. Paragraph 17 stipulates that the resolution of access dispute procedure is the procedure OFCOM considers appropriate. OFCOM must send a copy of their determination, and statement of reasons, to every party to the dispute and must publish so much of their determination as they consider appropriate (having regard in particular to commercial confidentiality).

435. Paragraph 18 provides that a reference to OFCOM does not prevent a person from bringing other legal proceedings. OFCOM is not prevented by a reference from exercising their powers.

436. Paragraph 19 provides that, where a dispute has been referred to OFCOM, OFCOM may require information to be provided to them.

Schedule 4: Recovery of administrative charges incurred by OFCOM

437. Paragraph 1 provides that a postal operator providing services within the scope of the universal postal service must pay OFCOM any applicable administrative charge fixed by OFCOM. OFCOM can only fix an administrative charge if they have set out in a statement the principles they propose to apply in determining charges. The principles must be such that on OFCOM's estimates the total amount payable (from all operators combined) each year meets but does not exceed OFCOM's costs of carrying out their postal functions. OFCOM may impose different charges on different operators.

438. Paragraph 1 further provides that at the end of each charging year OFCOM must publish a financial statement setting out total charges received that year, total charges outstanding that year, and cost to OFCOM of carrying out their postal service functions. Any surplus or deficit is to be carried forward and taken into account in determining charges for the following year.

439. Paragraph 2 defines OFCOM's postal services functions for the purposes of paragraph 1. Those functions extend to incidental functions (as defined by paragraph 2(3)), including any preparatory or facilitatory steps taken by OFCOM before as well as after the Act comes into force (as provided for in paragraph 2(4)).

440. Paragraph 3 provides for the procedure under which a charge is to be fixed by OFCOM under paragraph 1.

441. Paragraph 4 provides that OFCOM may only bring proceedings against a person for recovery of a charge imposed under paragraph 1 if they have given the person notification, in accordance with the procedure set out, of the amount they are seeking to recover. OFCOM must also specify the period that the person has to make representations about the notification

and to pay the outstanding amount. The period must be at least one month, but it can be shorter if the two parties agree. It can also be shorter if OFCOM believe the contravention is a repeated one and they have determined that under such circumstances a shorter period would be appropriate. OFCOM may also allow a longer period.

442. Under paragraph 6, OFCOM may impose a penalty on a person acting in contravention of a requirement to pay a charge as outlined under paragraph 1 and the procedures detailed under paragraph 4 have been followed, and the person has still not paid the outstanding amount.

443. The amount of the penalty is to be determined by OFCOM and must be appropriate and proportionate to the contravention. It cannot be more than twice the charge fixed for the year in relation to which the contravention occurred. In determining the amount OFCOM must have regard to representations made by the person and to any steps the person has taken towards paying the outstanding amounts.

444. If OFCOM decide to impose a penalty they must notify the person within one week of making their decision and fix a period by which the penalty is to be paid.

445. Under paragraph 7 OFCOM may give a direction to a contravening operator to suspend or restrict their services.

446. For this to happen four conditions must be met. The first is that the contravening operator is or has been in serious and repeated (as provided for in paragraph 8(7)) contravention of requirements to pay charges. The second is that the bringing of proceedings for the recovery of amounts outstanding has not secured compliance by the contravening operator and has no reasonable prospect of doing so. The third is that the imposition of penalties under paragraph 6 failed to secure compliance. And the fourth is that giving the direction is appropriate and proportionate to the seriousness of the contraventions.

447. Paragraph 8 explains that such a direction will be for an indefinite period unless otherwise stated.

448. A direction may also impose such conditions on the operator as appear to OFCOM to be appropriate to protect users of the operator's services. These may require making compensation payments for loss or damage, or for inconvenience. OFCOM may only give the direction if they have notified the contravening operator, provided the operator with an opportunity of making representations and proposals as to how to remedy the situation, and considered those representations. The period for this must be at least one month.

449. OFCOM may revoke a direction if they consider it appropriate.

450. Under paragraph 9 a person commits an offence if they provide a service while the entitlement to do so is suspended by a direction under paragraph 7 or in contravention of restriction contained in that direction.

451. If a person is guilty of an offence then they are liable to a fine on conviction.

Schedule 5: Approval of redress schemes

452. This Schedule sets out the considerations OFCOM must have regard to deciding whether to approve a redress scheme for the purposes of section 52. These include the scheme's provisions, how it will operate, the interests of users of postal services, and best practice in relation to schemes for providing redress to consumers. It further sets out certain requirements for a redress scheme, namely that it must be open to all postal operators, that the independent adjudicator may require members to provide complainants with the minimum types of redress (which include apologies and compensation), and that it must make satisfactory provision about other matters including what complaints may be considered and the independent adjudicator's powers. Redress schemes may make provision for the expulsion of their members. OFCOM may determine the manner for approval of a redress scheme and OFCOM must be notified of any changes to the scheme. There are also provisions regarding applications for approval and the processes that OFCOM must follow in refusing or withdrawing approval of a redress scheme.

Schedule 6: Imposition, modification or revocation

453. Paragraph 1 provides that OFCOM can only impose or modify a regulatory condition if they are satisfied that this is objectively justifiable, non-discriminatory, proportionate to the intent, and transparent.

454. Paragraph 2 states that the power of OFCOM to impose a regulatory condition includes powers to make directions, consent, approvals and recommendations, discretions, different provisions for different cases, and revocation and modification.

455. Paragraph 3 sets out that the procedure for imposing, modifying or revoking a regulatory condition. OFCOM must publish a notification setting out its intention to impose, modify or revoke a regulatory condition, setting out the effect and giving its reasons for making the proposal and giving at least one month for the making of representations. OFCOM must consider every representation about the proposal and have regard to every international obligation notified to them by the Secretary of State. The publication of the notification must be in a manner which brings its contents to the attention of the persons who are likely to be affected by its contents, in the case of a designated USP condition, a USP access condition or USP accounting condition, or to the attention of such persons as OFCOM consider appropriate, in any other case.

456. Paragraph 4 provides that directions, approvals or consents for the purpose of imposing a regulatory condition are subject to similar provisions as apply to the imposition of conditions, as set out in paragraphs 1 to 3.

457. Paragraph 5 deals with the delivery of copies of notifications, directions, approvals or consents or modifications and withdrawals. The Secretary of State must receive a copy of any publication required under either paragraph 3 or 4. Additionally, with respect to a designated USP condition or general universal service condition, a copy of must be sent to the European Commission. The responsibility of sending any copy rests with the person who has published it or has given, modified or withdrawn it unless it relates to a proposal published by OFCOM under paragraph 4, in which case OFCOM have the duty.

Schedule 7: Enforcement of regulatory requirements

458. This Schedule provides for the enforcement of regulatory requirements imposed on postal operators (or those party to an arrangement through which access is required as a result of paragraph 6 of Schedule 3) by OFCOM. A regulatory requirement means any regulatory conditions imposed under Part 3 of the Act, as well as directions in relation to schemes about the terms and conditions for the provision of postal services (section 89A of the Postal Services Act 2000), directions in relation to the Postcode Address File (under section 116(2A) of the Postal Services Act 2000) and in relation to the enforcement of requirements to give information to the National Consumer Council (section 25(5) of the Consumers, Estate Agents and Redress Act 2007).

459. Paragraphs 2 to 4 provide for contravention notifications. OFCOM may give a notification that they have reasonable grounds to believe a person is contravening or has contravened a regulatory requirement. A notification must specify a period giving the person notified the opportunity to make representations, comply and remedy the consequences. That period must be one month, or less than a month by agreement, because of repeated contravention, or because the case is urgent, and OFCOM may also specify a longer period. OFCOM may give a further notification for the same contravention only if certain conditions are met. OFCOM may not give a notification if they decide that the more appropriate way of proceeding would be under the Competition Act 1998.

460. The Schedule provides for various sanctions for contraventions and a power to deal with urgent cases in case of contravention.

461. Paragraph 5 provide for enforcement notifications, where a contravention notification has been given, OFCOM have allowed an opportunity for representations, and the period for representations has ended. OFCOM may give an enforcement notification if they are satisfied that the person is in contravention and steps have not been taken for complying with the requirement and remedying the consequences of the contravention. This requires the person notified to comply with requirements and/or take remedial steps. There is a duty to comply with the notification, which is enforceable in civil proceedings.

462. As set out in paragraphs 6 and 7, OFCOM may impose, in addition to an enforcement notification, a penalty on a person who has been given a contravention notification, when OFCOM have allowed an opportunity for representations, and the period for representations has ended. Penalties must be appropriate, proportionate and not more than 10% of turnover of the person's postal services business for the relevant period, calculated in accordance with rules made in order by the Secretary of State. Such an order is subject to affirmative resolution procedure. OFCOM must have regard to representations made by that person and any steps taken to comply or remedy the consequences of the contravention.

463. Paragraphs 8 to 10 relate to the power to deal with urgent cases. A case is urgent if the contravention results in or creates a serious threat to the safety of the public, to public health or to national security, or serious economic or operational problems for other postal operators or users. OFCOM can give a direction suspending or restricting the entitlement of the contravening person to provide postal services. In doing so, OFCOM may also impose conditions appropriate to protect users of the contravening person, including making payments for compensation. If there is a direction in an urgent case, an opportunity for making representations and for proposing remedial steps must be given as soon as reasonably

practicable after making the direction. At the end of that period, OFCOM must determine whether there was a contravention and whether treating the case as urgent was justified. If so, then OFCOM may then confirm the direction. If not OFCOM must modify or revoke the direction.

464. Under paragraphs 11 to 14, OFCOM may give a direction to suspend or restrict the entitlement of a contravening person to provide postal services. OFCOM may give a direction under these paragraphs only if: (a) the contravening person has been or is in serious or repeated breach, (b) a previous attempt (through an enforcement notification or penalty) to secure compliance has failed and (c) it is appropriate and proportionate. A direction may impose conditions, including payments for compensation. Before giving a direction OFCOM must notify the contravening person, give an opportunity to make representations and propose remedying the situation, and must consider every representation. OFCOM must give one month's minimum notice, except in urgent cases.

465. In relation to urgent cases or suspension or restriction of the entitlement of providing postal services, a person is guilty of an offence if it provides any service while it is suspended or in contravention of the restrictions imposed.

466. The duty to comply with regulatory requirements or requirements imposed by an enforcement notification, a suspension direction or a direction for urgent cases is owed to every person who may be affected by a contravention of it. A breach of that duty that causes loss or damage, or an act which intentionally causes the breach of that duty and results in loss and damages, is actionable. It is a defence for the contravening persons to show they took all reasonable steps and exercised all due diligence. Bringing proceedings for contravening the underlying regulatory obligation requires the consent of OFCOM.

Schedule 8: Information provisions

Part 1 Requirements to provide information to OFCOM

467. Paragraph 1 enables OFCOM to require information necessary to carry out their functions from current or former postal operators, those providing facilities or access points or who have provided them, or any other persons who appear to OFCOM to have information required by OFCOM to pursue their functions in relation to postal services. It gives examples of the purposes for which the information would be required.

468. Paragraph 2 limits the circumstances where OFCOM may require information for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application, which are defined as a regulatory condition other than a designated USP condition, a USP condition or a USP accounting condition. OFCOM must have had a complaint, have decided to carry out an investigation, have reason to suspect a contravention, or be considering universal service burden sharing directions.

469. Paragraph 3 enables OFCOM to require information to carry out comparative overviews of the quality and prices of postal services, and for statistical purposes.

470. Information required by OFCOM to carry out their functions or related purposes must be provided in the manner and within a reasonable period specified by OFCOM, and OFCOM must describe what the information is and why it is required. Such demand for information must be contained in a notice, except where information is required by OFCOM to ascertain who is liable to administrative charges payable as a result of Schedule 4.

Part 2 Enforcement

471. Under paragraphs 5 and 6, if OFCOM have reasonable grounds for believing that a person is contravening an information demand, they may give that person a notification. The notification must set out the determination and the requirement and contravention in question, and specify the period for making representations and for complying. This period must be at least one month, unless OFCOM and the person notified agree a shorter period, or OFCOM believes there is a repeated contravention and OFCOM considers a shorter period is appropriate. OFCOM may also extend this period. A notification may deal with more than one contravention. OFCOM may give a further notification in respect of the same contravention only in certain circumstances.

472. Paragraph 7 enables OFCOM to impose a penalty when a notification of contravention of information requirements has been given and not complied with. The penalty can be up to £50,000. The Secretary of State may substitute a different maximum amount by order. This order is subject to affirmative resolution procedure.

473. Paragraphs 8 to 11 enable OFCOM to give a direction to suspend or restrict the entitlement of a contravening person to provide postal services. OFCOM may give a direction only if: (a) the contravening person has been or is in serious or repeated breach (b) a previous attempt to secure compliance has failed and (c) it is appropriate and proportionate. A direction may impose conditions, including payments for compensation. Before giving a direction OFCOM must notify the contravening person, give an opportunity to make representations and propose remedying the situation, and consider every representation and give one month's minimum notice, except in urgent cases (which are provided for in paragraph 11).

474. Under paragraph 12, it is an offence for a person to provide a service when entitlement to do so is suspended or restricted, punishable by a fine.

475. Paragraph 13 provides that it is an offence to fail to provide information in accordance with a requirement, punishable by a fine. An offence is not committed if it was not reasonably practicable to comply or reasonable steps have been taken. It is an offence to provide false information knowingly or recklessly, punishable by a fine and to imprisonment for no more than two years.

Part 3 Supplementary provisions

476. Paragraph 14 requires OFCOM to publish a statement of their general policy on the exercise of their information powers and the uses to which they propose to put information obtained by them.

477. Under paragraph 15, OFCOM must comply within one week with requests by persons as to whether they need to notify OFCOM before they carry on postal services, whether the person's notification satisfies the relevant requirements, and information about the person's rights in relation to access negotiation.

Schedule 9: Transitional provisions for Part 3

478. Schedule 9 enables OFCOM to carry out certain functions during the transitional period. The transitional period is the period between the day the Act is passed and the date when OFCOM take on responsibility for postal regulation, when the provisions of Part 3 of the Act generally come into force.

479. Paragraph 2 provides that until the first universal postal service order is made by OFCOM, the universal service is defined by reference to section 4 of the Postal Services Act 2000 (defining the universal service), and services within the scope of the universal service are decided by reference to section 7A of the Postal Services Act 2000, which describes the services not outside the scope of the universal postal service prior to the day the Act is passed. Paragraph 2 also makes clear that, during the transitional period, the duty to secure the provision of the universal postal service (section 28) applies to Postcomm as well as OFCOM.

480. Under paragraph 3 OFCOM may designate provisionally one or more universal service provider, but any such designation ceases to have effect when the first designation is made under section 35.

481. Under paragraph 4, OFCOM must determine before the end of the transitional period the regulatory conditions applying to postal operators when Part 3 of the Act generally comes into force. These "initial conditions" must be similar to the current licence conditions for either the designated universal service provider or other operators, save where they appear to OFCOM unnecessary to maintain the current conditions. The general test for imposing regulatory conditions (paragraph 1 of Schedule 6) applies subject to this requirement that initial conditions must be similar to those in place before the Act comes into force generally, save where they appear unnecessary.

482. Paragraph 5 provides that OFCOM may impose conditions ("transitory conditions") which replicate existing licence conditions, which they would otherwise not be able to do under Part 3. This paragraph also provides that transitory conditions are automatically revoked when the first universal service order is made, and that references to 'initial conditions' in paragraph 4 includes 'transitory conditions'.

483. Paragraph 6 provides that any modifications to initial conditions must not result in conditions that could not have been imposed under Part 2 of the Postal Services Act 2000. The procedures under Schedule 6 (relating to the imposition, modification or revocation of conditions), Schedule 7 (enforcement of regulatory conditions) and under sections 57-59 (appeals) apply to the imposition of initial conditions. This paragraph, other than when revoking a transitory condition, also generally applies to transitory conditions.

484. Paragraph 7 provides that, in the first year that OFCOM recovers its charges under Schedule 4, OFCOM must prepare a statement of principles that they are proposing to apply in fixing administrative charges but that, for that first year, there is no requirement for

OFCOM to have the statement in place at the start of the year or at the time the charges are fixed.

485. Paragraph 8 gives the Secretary of State power to make an order amending a provision in the universal service provider's licence to extend a volume adjuster mechanism to allow a volume forecast index to continue to an index year ending 31 March 2012. The order made by the Secretary of State may adopt a forecast figure which has been produced by Postcomm using the same methods as used by it to determine the forecast figures for the index years currently set out in the licence condition. Before making the Order, the Secretary of State must consult the universal service provider and such other persons as he considers appropriate for a period of 21 days, and consider representations that might be received.

486. Paragraphs 9, 10 and 11 provide that, during the transitional period, the provisions relating to the universal postal service order, the designation of a universal service provider, and the imposition of conditions apply to the extent necessary for OFCOM to be able to work on those matters. This work includes market assessment and consultation. The provisions in relation to information provision (section 55 and Schedule 8) also apply to the extent necessary for OFCOM to carry out their functions during or after the transitional period. The provisions of section 56 (general restriction on disclosure of information) have effect accordingly.

487. Paragraphs 12 and 13 provide that OFCOM can rely on any work conducted by or in relation to Postcomm prior to the passing of the Act and that, during the transitional period, Postcomm must consult OFCOM before doing anything with a view to modifying or revoking a licence condition.

488. Paragraph 14 gives OFCOM the power to take forward in any way they see fit (including discontinuing) legal proceedings or other action begun by Postcomm in respect of licence condition contraventions (or anything that Postcomm considered might be a contravention) under Part 2 of the Postal Services Act 2000. Furthermore, Paragraph 15 gives OFCOM the power, after repeal of that Part, to begin legal proceedings themselves (or to do anything else they consider appropriate) if they believe a person contravened a licence condition prior to that repeal.

Schedule 10: Conduct of postal administration

489. This Schedule contains provisions applying the provisions of Schedule B1 to the Insolvency Act 1986, and certain other enactments, to a postal administration (see Section 73). Schedule B1 of the Insolvency Act 1986 sets out the framework for administrations conducted under that Act. Schedule 10 is divided into 3 parts:

a) Part 1: Modifications of Schedule B1 to 1986 Act

This Part makes modifications to a number of paragraphs in Schedule B1 to adapt them to the postal administration regime established by Part 4 of the Act. It makes general modifications e.g. where the Schedule B1 uses the term "administrator", that is to be read as "postal administrator", and further specific modifications where a simple substitution of words is not sufficient.

b) Part 2: Further modifications of Schedule B1 to 1986 Act: foreign companies

This part makes further modifications to Schedule B1 to adapt that Schedule as it applies to foreign companies. In particular, section 68(4) provides that a postal administration in respect of a foreign company only affects that company's UK affairs, business and property. This Part makes modification to Schedule B1 to give effect to that limitation.

c) Part 3: Other modifications

This Part makes further modifications, both general and specific to provisions elsewhere in the Insolvency Act and in other legislation that refers to administrations. Specific modifications are made to the provisions of the Insolvency Act 1986 relating to company voluntary arrangements so that these do not interfere with the conduct of a postal administration.

490. Paragraph 32 grants the Secretary of State a power to amend Schedule 10 by adding further modifications to the provisions of insolvency law having effect in the case of foreign companies (defined in section 85(1) as a company incorporated outside the United Kingdom).

491. Paragraph 46 grants the Secretary of State the power to amend Part 3 of Schedule 10 by adding further modifications of insolvency law where the Secretary of State considers the modifications appropriate in relation to the postal administration regime in Part 4.

Schedule 11: Postal transfer schemes

492. This Schedule contains provisions for transfer schemes to achieve the objective of a postal administration (see Section 73).

493. The Schedule sets out the content, effect and process for transfer schemes that can be made under section 69(3) where the postal administrator transfers a universal service provider's undertaking or part of their undertaking to another company or several companies. The transfer may include any of the property, rights or liabilities of the universal service provider. This could include mail operations such as mail centres or delivery offices as well as the transfer of contracts or leases involving vehicles and machinery. It may be the case that all the property etc is transferred to one company (or divided up between several). All transfers are subject to veto or amendment by the Secretary of State.

494. Paragraphs 1 to 3 of Schedule 11 enable a universal service provider (through its postal administrator) to make a scheme or schemes for the transfer of property, rights and liabilities to a new company subject to the approval of the Secretary of State, who in turn must consult OFCOM. The Secretary of State can also modify transfer schemes (paragraph 4).

495. Paragraphs 5 and 6 set out what is covered by property, rights and liabilities and paragraph 7 allows for dividing these so that those relating to the universal postal service could, where appropriate, be split from those for non-universal postal services. It also allows for the creation of new rights and liabilities.

496. Paragraph 8 permits the new company to be treated as having been designated by OFCOM as a universal service provider and provides for the transfer of obligations under regulatory conditions from the old company to the new company.

497. Paragraph 9 permits the transfer of statutory functions, e.g. those relating to the acquisition of land, to a new company or for those functions to be carried out concurrently by the old and the new company.

498. Paragraphs 11 to 18 deal with a number of matters which provide for the smooth transition of property, rights etc from the universal service provider to the new company. These set out for example that the new company may be treated as the same person in law as the old company and references in agreements, instruments etc in relation to the old company can be treated as if these were to the new company. They include (at paragraph 15) a provision that a postal transfer scheme may contain provision for the payment of compensation to third parties if their property, rights, interests or liabilities have been affected by (or as a result of) a postal transfer scheme.

499. Paragraphs 19 and 20 deal with the transfer of employees and paragraph 21 deals with the case where the old company is a foreign company.

500. Paragraph 22 deals with the situation where there are two or more postal transfer schemes making transfers to new companies.

Schedule 12: Minor and consequential amendments

501. Part 1 of this Schedule contains minor and consequential amendments to the Postal Services Act 2000.

502. Part 2 of this Schedule contains minor and consequential amendments to the Communications Act 2003.

503. Part 3 of this Schedule contains minor and consequential amendments to other enactments.

TRANSPOSITION OF EUROPEAN DIRECTIVES

504. This Act includes provision giving effect to Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, which amends Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services. Directive 97/67/EC was previously amended by Directive 2002/39/EC. References are to the consolidated version of the Directive. A Transposition Note setting out how the Government will transpose into UK law the main elements of the Directive is annexed to these Explanatory Notes.

505. The Directive provides that member States must ensure the provision of the universal service is guaranteed and must include certain minimum requirements (see Articles 3 and 4 of the Directive). Section 29 provides that the primary duty of OFCOM is to carry out their functions in a way that will secure the provision of a universal postal service. Section 30 provides that OFCOM must by order set out a description of services that should be provided in the United Kingdom as a universal postal service. Section 31 provides that the universal postal service must include the minimum requirements of the universal postal service, as set out in Article 3 of the Directive. The Act enables OFCOM to impose conditions on providers of postal services and it is through these conditions that the relevant obligations of the

Directive will be secured. In particular, section 35 provides for the designation of a universal service provider and sections 28 and 36 to 39 provide for the imposition of conditions on the universal service provider to ensure that Article 6 and parts of Article 11a and Article 14 are implemented.

COMMENCEMENT DATE

506. The following provisions came into force on the day on which the Act was passed:

- Section 43 and Schedule 4 (recovery of administrative charges incurred by OFCOM)
- Section 66 and Schedule 9 (transitional provisions for Part 3) and the provisions mentioned in that schedule (to the extent provided)
- Sections 89 and 90
- Sections 91(3) and (4)
- Sections 92 and 93
- Any other provisions so far as necessary for the purposes any of the provisions mentioned above.

507. The remainder of the provisions will be brought into force on a day or days appointed by commencement order made by the Secretary of State. Different days may be appointed for different provisions.

HANSARD

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
	<u>House of Commons</u>	
Introduction	13 October 2010	Vol. 516 Col. 331
Second Reading	27 October 2010	Vol. 517 Col. 346-433

*These notes refer to the Postal Services Act 2011 (c.5)
which received Royal Assent on 13 June 2011*

Stage	Date	Hansard reference
Committee	9 November 2010, 11 November 2010, 16 November 2010, 18 November 2010, 23 November 2010, 25 November 2010, 30 November 2010, 2 December 2010, 7 December 2010, 9 December 2010	
Report and Third Reading	12 January 2011	Vol. 521 Col. 293-401
<u>House of Lords</u>		
Introduction	13 January 2011	Vol. 723 Col. 1537
Second Reading	16 February 2011	Vol. 725 Col. 699-714, 722-778
Committee	8 March 2011, 14 March 2011, 16 March 2011, 6 April 2011	Vol. 725 Col. 1521-1568, Vol. 726 Col. 41-74, 94-122, Vol. 726 Col. 241-303, 327-345, Vol. 726 Col. 1732-1824
Report	4 May 2011, 17 May 2011	Vol. 727 Col. 462-522, 536-564, Vol. 727 Col. 1261-1268, 1300-1333
Third Reading	24 May 2011	Vol. 727 Col. 1683-1693
Commons consideration of Lords amendments	9 June 2011	Vol. 529 Col.310
Royal Assent	13 June 2011	House of Commons Vol. 529 Col.498 House of Lords Vol. 728 Col. 541

POSTAL SERVICES ACT

EXPLANATORY NOTES

ANNEX

TRANSPOSITION NOTES FOR THE POSTAL SERVICES DIRECTIVE (2008/6/EC)

508. The Act implements provisions of Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

509. This Directive amends Directive 97/67/EC which was previously amended by Directive 2002/39/EC. References are to the consolidated version of the Directive.

Articles 3, 4(1) and 5: Provision of the universal postal service

Objective

510. Article 3 places an obligation on member States to ensure that users enjoy the right to a universal service of a specified quality at all points in their territory at affordable prices. This includes the requirement to ensure that the density of access points takes account of the needs of users. It also sets out the minimum requirements of a universal service.

511. Article 4.1 provides that each Member State shall ensure that the provision of the universal service is guaranteed.

512. Article 5 provides that each Member State must ensure that the universal service provision is such that the “essential requirements” are guaranteed; that there is no discrimination and that it shall not be interrupted except in the case of force majeure.

Implementation

513. These Articles are implemented by sections 29, 30, 31, 36, 42 and 49 of, and Schedule 6 to, the Act.

514. Section 29 provides that OFCOM must carry out their functions in relation to postal services in a way that they consider will secure the provision of a universal service and the provision of sufficient access points to meet the reasonable needs of users of the universal postal service.

515. Section 30 provides that OFCOM must set out in an order a description of the services they consider should be provided in the UK as a universal service. This must include at least the minimum requirements as set out in Article 3 and Section 31. Section 31 sets out the services that must as a minimum be included in a universal service, including the requirement to service the whole UK at affordable prices.

516. Sections 36 and 42 allow OFCOM to impose conditions on postal operators for the purpose of securing the universal service to the required standards.

517. Section 49 allows OFCOM to impose conditions which include those necessary to secure essential requirements.

518. Schedule 6 provides the test that must be met before imposing or modifying regulatory conditions and includes that there must be no undue discrimination.

Responsibility

519. OFCOM.

Article 4.2: Designation of universal service providers

Objective

520. Article 4.2 allows member States to designate universal service providers in order that the whole of the national territory can be covered. When they do so, member States must publish the obligations and rights of universal service providers. They must notify the Commission of the identity of universal service providers. The designation of a universal service provider must be subject to periodic review.

Implementation

521. Section 35 provides that OFCOM may designate one or more postal operators as universal service providers and must publish each designation. It provides for designations to be subject to review in accordance with regulations made by OFCOM. The procedure for designating and reviewing designations must be efficient, objective, proportionate, transparent and not give rise to any unfair discrimination. OFCOM must notify the Commission of designations and of cases where designations ceased to have effect.

Responsibility

522. OFCOM.

Article 6: Provision of information by universal service providers

Objective

523. Article 6 provides that member States must take steps to ensure that users and postal service providers are given sufficiently up to date information regarding the particular features of the universal service offered, including information as to conditions of access to these services and prices and quality standards. This information must be published and member States must notify the Commission of how this information is to be made available.

Implementation

524. Section 36 allows OFCOM to impose a designated USP condition on a designated universal service provider. This may include provisions requiring a universal service provider to provide any information specified in the condition about any service it is required to provide as part of the universal service. Schedule 6 provides that the way in which a regulatory condition is to be imposed or modified is by publication of a notification setting out the condition (or modification). Paragraph 5(2) of Schedule 6 provides that the European Commission must be sent a copy of every notification in respect of a designated USP condition or a general universal service condition.

Responsibility

525. OFCOM.

Article 7 and Parts B and C of Annex I: Financing of universal service

Objective

526. These provide for a range of alternatives available to member States in cases where there is a need for external financing of the universal services. The financing alternatives include public compensation through direct state subsidies or cost sharing mechanisms (Articles 7(3) to (5)), or indirectly, financing through the use of European public procurement procedures (Articles 7(2)).

Implementation

527. Article 7(3)(b) to (5) are implemented through sections 42(3) and 44 to 47 of the Act. These provisions confer powers on OFCOM to set up (by regulations) a cost-sharing mechanism to finance the postal universal services by means of contributions from service providers and/or user's fees. Before a cost-sharing mechanism is set, OFCOM is required to carry out a review of costs of a universal service provider and conclude that the (i) service provider is subject to an unfair financial burden when complying with universal service conditions; and (ii) it would be unfair for that provider to bear the whole or part of that burden.

528. Article 7(2) and (3) (a) do not require implementation.

529. The net cost calculation mechanisms in Part B and the recovery of costs provisions in Part C of Annex I to the Directive only become relevant when OFCOM reviews the financial burden of the universal service and decides whether to set-up a cost sharing mechanism, through regulations made pursuant to these new enabling powers. Accordingly, these provisions only need to be given effect in the regulations made by OFCOM under the new powers.

Responsibility

530. Secretary of State and OFCOM.

Article 9: Conditions governing the provision of postal services: granting of Authorisations

Objective

531. Article 9 allows member States to introduce authorisation procedures. For services which fall outside the scope of the universal service, these may be introduced to the extent necessary to guarantee essential requirements; and for services which fall within the scope of the universal service, to the extent necessary to guarantee the essential requirements and to ensure the provision of the universal postal service. Article 9.2 sets out restrictions on what authorisations may and may not do. Article 9.3 provides that the procedures, obligations and requirements referred to in the preceding paragraphs must be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, be made public in advance and based on objective criteria. There must also be an appeal procedure.

Implementation

532. Section 28 provides a general authorisation for persons to provide postal services without the need for any licence or authorisation but the provision of those services may be subject to regulatory conditions imposed by OFCOM. The types of conditions are listed in Section 28(2).

533. Section 49 provides that “essential conditions” can be imposed on any postal operator if OFCOM consider it necessary for the purposes of safeguarding certain matters, which include some of the essential requirements which might not be secured by other means. Under section 42 general universal service conditions may be imposed on operators providing services within the scope of the universal service (as defined in section 41) to the extent necessary to secure the universal service. Section 36 provides that a designated USP condition may be imposed on a designated universal service provider to secure the provision of the universal service.

534. Schedule 6 provides for the procedure in relation to imposing and modifying regulatory conditions and provides amongst other things that any condition must be objectively justifiable, non-discriminatory, proportionate and transparent. Notifications of conditions must be published.

535. Specific provision is made under section 57 for appeals to the Competition Appeal Tribunal against the imposition of regulatory requirements and the imposition of penalties for breach of a regulatory condition. The grounds for appeal are the same as could be made on judicial review. In addition, price control decisions may be appealed to the Competition Commission under section 59. Any other of OFCOM's decisions can be appealed to the High Court in accordance with the usual rules on judicial review.

Responsibility

536. OFCOM, the Competition Appeal Tribunal, the Competition Commission and the High Court.

Article 11a: Access

Objective

537. This Article provides for member States to ensure, where necessary to protect the interests of users and/or to promote effective competition, transparent, non-discriminatory access conditions are available to postal infrastructure or services provided within the scope of the universal service, without prejudice to member States' right to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

Implementation

538. Article 11a (first limb) is implemented by sections 28(2) and 50 and Schedule 3 to the Act. Section 50 confers power on OFCOM to impose general access conditions on postal operators, which can require access to be given by a postal operator to its infrastructure or to services within the scope of the universal service. An operator may be required to maintain a separation for accounting purposes between different matters for access purposes. Schedule 3 sets out further provision as to the types of access conditions which may be imposed on an operator, including terms of access, price controls, use of accounting methods, non-discrimination and transparency and provides for resolution of access disputes.

539. Article 11a (second limb) is implemented through sections 28(2) and 38 and Schedule 3 to the Act. Section 38 confers powers on OFCOM to impose access conditions on a designated universal service provider requiring it to provide access to its postal network, or to maintain a separation for accounting purposes between matters relating to access to its postal network. Schedule 3 sets out the types of access conditions which may be imposed and provides for resolution of access disputes.

Responsibility

540. OFCOM.

Article 12: Tariff principles and transparency of accounts

Objective

541. Article 12 provides that member States must take steps to ensure that tariffs for each of the services forming part of the universal service are affordable and that prices are cost oriented and give incentives for a universal service provision. The tariffs must be such that all users independent of geographical location and in the light of specific national conditions have access to the service provided. Article 12 goes on to provide that member States may provide for a uniform tariff and may maintain a free postal service for the blind or partially sighted.

542. The requirement for transparency of accounts requires member States to take steps to ensure that tariffs for each of the services forming part of the universal service are transparent and non-discriminatory and that if special tariffs are applied the principles of transparency and non-discrimination are applied.

Implementation

543. Section 31 provides that OFCOM must include in its universal service order the services and standards it considers should be part of the universal postal service in the United Kingdom. Section 32 (read with sections 33 and 34) describes the minimum such services, and includes a service of conveying postal packets at affordable prices in accordance with a uniform public tariff. Section 36(4) provides that a designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which the universal service is provided. Section 36(5) provides that OFCOM must seek to ensure that the prices are affordable, take account of the costs of providing the service and that the prices provide incentives to provide the services efficiently.

544. The requirement for transparency of accounts (Article 12 fourth and fifth indent) is implemented by section 39 of the Act. This confers on OFCOM the power to require a universal service provider to maintain separate accounts between different matters and comply with rules for determining costs and allocating costs, and may require the publication of such accounts and other related information as OFCOM consider appropriate and to submit to regular independent audit of its compliance.

Responsibility

545. OFCOM.

Article 14: Accounting of universal service providers

Objective

546. This requires member States to ensure that universal service providers keep separate accounts to distinguish between services and products within and outside the universal service. It requires consistently applied and objectively justifiable cost accounting principles. It sets requirements for the use of different methods for the allocation of costs to be carried

out by the accounting systems and sets further requirements for verification of compliance and information provision.

547. The Article may be disapplied in certain limited circumstances where there is no state assistance and competition in the market is fully effective.

548. It provides that member States may introduce appropriate accounting separation where there is a compensation fund.

Implementation

549. Article 14(1) to (7) are implemented by sections 28(2)(c) and 39 which confer powers on OFCOM to impose conditions on a universal service provider to maintain accounting separation in a way OFCOM direct and comply with rules in connection with that separation and cost identification and orientation as well as requirements for independent auditing and for the publication of such accounts and of the cost accounting system used. Further, Section 55 of, and Schedule 8 to, the Act implement information requirements which may include accounting information.

550. Article 14(6) and (7) are implemented by a combination of provisions. OFCOM will have the information on cost accounting systems through the above information requirements and section 56(2)(g) provides for information to be provided in pursuance of Community obligations.

551. Article 14(8), (9) and (10) do not require implementation unless member States decide to do so in accordance with the conditions specified.

Responsibility

552. OFCOM.

Article 15: Financial accounts of universal service providers

Objective

553. This requires the financial accounts of all universal service providers to be drawn up, submitted to independent audit and published in accordance with relevant Community and national legislation on commercial undertakings.

Implementation

554. This provision appeared in the original Directive, was implemented by the UK and has not been amended by Directive 2008/6/EC.

Responsibility

555. Secretary of State.

Articles 16, 17 and 19: Quality of services

Objective

556. Article 16 provides that member States must ensure that quality of service standards are set and published in relation to the universal postal service.

557. Article 17 provides that member States must notify their quality standards for national services to the Commission. National regulatory authorities must ensure that annual independent performance monitoring is carried out on universal service providers.

558. Article 19.2 provides that in accordance with Article 16, universal service providers must publish an annual report of the monitoring of their performance.

Implementation

559. Section 30 provides that the universal postal service order must set out the standards to which any service specified under it must comply. OFCOM is required to notify the Commission of the universal postal service order.

560. Section 37 deals with publication of information about performance. It provides that a “performance condition” must include provision requiring a designated universal service provider to publish annually an independently audited performance report.

Responsibility

561. OFCOM.

Article 19: Users complaints

Objective

562. This Article places an obligation on member States to ensure that transparent and inexpensive procedures are made available by all postal service providers for dealing with users’ complaints. The procedures must enable the disputes to be settled fairly and promptly. Member States must ensure that cases where users’ complaints to universal service providers have not been satisfactorily resolved may be brought before the competent national authorities. Member States must also ensure that universal service providers publish information on the number of complaints and how they have been dealt with.

Implementation

563. Section 51 provides that OFCOM may impose a consumer protection provision on postal operators requiring them to assume specified liability in respect of specified loss and damage and to establish and maintain procedures in respect of (amongst other things) the handling of disputes and the resolution of disputes with users. These procedures must be easy to use, transparent and effective and otherwise facilitate the settling of disputes fairly and promptly. These procedures must also be free of charge to the users.

564. Section 52 provides that amongst other things a consumer protection condition may require postal operators and must require a universal service provider to publish information about the number of complaints made about them and the way that complaints were dealt with.

Responsibility

565. OFCOM.

Article 22: National regulatory authorities

Objective

566. This Article requires member States to designate one or more national regulatory authorities that are legally separate from postal operators. The tasks of the authorities must be published in an easily accessible form. Member States must ensure that users or postal service providers affected by the decision of a national regulatory authority has the right to appeal to an appeal body independent of the parties involved.

Implementation

567. OFCOM is an independent regulator, legally separate from postal operators. The Act sets out the tasks of OFCOM in relation to postal services. The Act is accompanied by Explanatory Notes.

568. Decisions of OFCOM regulatory conditions and penalties are appealable to the Competition Appeal Tribunal, its decisions on price control matters are appealable to the Competition Commission and all other decisions of OFCOM are appealable to the High Court, in accordance with the usual rules on judicial review.

Responsibility

569. OFCOM, Competition Appeal Tribunal, the Competition Commission and the High Court.

Article 22a: Provision of information

Objective

570. This Article requires member States to ensure that postal service providers provide all information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, to allow the authorities to ensure conformity with the Directive and for clearly defined statistical purposes. Postal service providers must provide information promptly. A national regulatory authority must give reasons justifying the request for information. The national regulatory authorities must provide the Commission with relevant information, where requested.

Implementation

571. Schedule 8 provides that OFCOM may require a person to provide information they consider necessary for carrying out their functions. This information must be provided within such reasonable period as may be specified by OFCOM.

572. Section 56(2)(g) provides for information to be disclosed in pursuance of Community obligations.

Responsibility

573. OFCOM.

Provisions not requiring implementation

574. Articles 8, 10, 11, 13, 18, 20 and 21 do not require implementation.

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