

# POSTAL SERVICES ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part III Other Functions of the Commission and the Council

##### *Section 42: Duties in relation to public post offices*

60. *Section 42* imposes a duty on the Commission, in consultation with the Council, to provide advice and information to the Secretary of State about the number and location of public post offices and their accessibility to users. In the Act, a public post office means any post office from which any postal services are provided directly to the public (whether or not together with other services).

##### *Section 43: Duties in relation to social and environmental matters*

61. *Section 43* provides that the Commission, in exercising its functions, should have regard to any guidance issued by the Secretary of State issued under this section. Such guidance, which will need to be laid before each House of Parliament and subsequently published, will be concerned with social and environmental policies which may include policy on ensuring access to the post office network.

##### *Section 44: Review and information*

62. *Section 44* requires the Commission to keep under review and collect information about the provision of postal services in the United Kingdom, other member States of the European Community and elsewhere in order to facilitate the exercise of its functions, and to enable comparisons to be made between the efficiency and economy of different postal operators.
63. It also provides for the provision of information, advice and help to the Secretary of State regarding any matter in relation to which the Commission has a function; and for the collection of such information as is necessary for it to comply with a requirement of the Council under *section 58(1)*.

##### *Section 45: Annual and other reports: the Commission*

64. The Commission is required to make an annual report to be sent to the Secretary of State and published. *Section 45(2)* specifies what the report should include. The Commission also has the power to make other reports in respect of its functions.

##### *Section 46: Publication of information and advice: the Commission*

65. *Section 46* allows the Commission to publish information and advice to universal service providers, licence holders who are not universal service providers and users of postal services. The Commission is required, so far as practicable, to ensure that any such publication does not seriously and prejudicially affect a person's interests or, if it does, that the person consents to publication or publication is in the public interest.

***Section 47: Power of the Commission to require information***

66. *Section 47* provides powers for the Commission to require information and documents from any person for any relevant purpose; “relevant purpose” is defined in *subsection (6)*. But no person may be required to provide information or documents which he could not be compelled to produce or supply in evidence in civil proceedings before the court.

***Section 48: Information powers: enforcement***

67. *Section 48* makes it an offence for a person, without reasonable excuse, to fail to provide information and documents required by a notice under section 47. An offender is liable on summary conviction to a fine not exceeding level 5 on the standard scale. Under *subsection (4)* it is an offence for a person to alter, suppress or destroy documents which he has been required to produce, or knowingly or recklessly to make a false statement.

***Section 49: Powers of entry and seizure***

68. *Section 49* provides a power of entry and seizure where, on an application by a constable or the Commission, a justice of the peace or sheriff is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under section 6. A warrant may be issued for an appointed person to enter premises, search for articles or documents, and seize and remove items. In order to respect the principle of the inviolability of the mail, the power to seize documents does not extend to items of mail. The section also sets out procedures and powers in relation to the use of a warrant.

***Section 50: Codes of practice***

69. *Section 50* provides that the Commission shall prepare, and may revise, a code of practice governing the discharge of its functions. In preparing or revising the code the Commission shall consult the Secretary of State, the Council, universal service providers, licence holders who are not universal service providers, and such other persons as the Commission considers appropriate. The code and any revisions must also be published.

***Section 51: Relevant postal issues***

70. *Section 51* lays the foundations for setting out the functions of the Consumer Council for Postal Services by defining the postal issues and services that are to be covered. Relevant postal issues are defined by reference to relevant postal services. Relevant postal services are defined as those provided in connection with the provision of a universal postal service and any other postal services provided by licence holders in accordance with a licence under Part II.

***Section 52: Provision of advice and information to public authorities and licence holders***

71. *Section 52* gives the Council the duty of providing advice and information, representing the views of users in relation to relevant postal issues and making proposals on relevant postal issues to the Secretary of State, the Commission, the Competition Commission, other public authorities, universal service providers, licence holders who are not universal service providers and any person whose activities may affect the interests of users. *Subsection (3)* requires the Council to secure as far as practicable that no information is disclosed to a licence holder or person whose activities may affect the interests of users under this section which might seriously or prejudicially affect the interests of the person to whom it relates (unless by virtue of *subsection (4)* that person consents).

***Section 53: Publication of information to users***

72. *Section 53* requires the Council to make available and gives it power to publish information for users of postal services about relevant postal issues and services, and the Council itself and its functions. It includes a similar provision about disclosure of information to that in section 52.

***Section 54: Exercise of functions: general***

73. *Section 54(1)* requires the Council to have regard to the interests of different users of relevant postal services including the interests of users in different areas.
74. *Subsection (2)* requires the Council to have regard to the interests of certain specified groups. The specified groups are qualified to make clear however, that this is not intended to be an exhaustive list and it should not be taken as implying that regard should not be had to the interests of other descriptions of persons.
75. *Subsection (3)* requires the Council, as far as practicable, to collect and review information about the provision of postal services and the interests and views of users and matters affecting them.
76. *Subsection (4)* requires or allows the Council to set up certain committees. It requires committees to be set up for each of Wales, Scotland, and Northern Ireland and for there to be at least one committee in relation to England. It allows for committees to be set up for England and for areas within England, Wales, Scotland, and Northern Ireland.
77. *Subsection (5)* sets out the purposes of a committee established under subsection (4), which are to provide advice and information to the Council about relevant postal issues affecting the area for which it is established and such other purposes as the Council may determine.
78. *Subsection (6)* requires the Council to maintain in each of England, Wales, Scotland, and Northern Ireland at least one office where users can apply for information.

***Section 55: Annual and other reports: the Council***

79. *Section 55* requires the Council to make an annual report to be sent to the Secretary of State and published. The Commission also has the power to make other reports in respect of its functions. So far as practicable, the Council should exclude from the report information about a person which might seriously and prejudicially affect that person's interest (unless that person consents).

***Section 56: Complaints referred to the Council***

80. *Section 56(1)* provides that the Council shall investigate complaints by or on behalf of users of relevant postal services as it thinks appropriate if:
- the matter has previously been the subject of a complaint to a person providing the services concerned and has not been satisfactorily resolved, and
  - it does not appear to the Council to be of a frivolous or vexatious nature.
81. *Subsection (2)* requires the Council to refer any complaint to the Commission if, as a result of an investigation under section 56(1) it considers that:
- a licence condition may have been contravened
  - the matter is a referable matter (as defined in *subsection (3) of section 56*)
  - it is appropriate to do so.
82. *Subsection (3)* requires the Council to agree with the Commission what are referable matters for the purposes of *subsection (2)(b)*.

***Section 57: Power of the Council to investigate other matters***

83. *Section 57(1)* allows the Council to investigate any matter, not being a matter it has a duty to investigate under section 56 which appears to it to relate to the interests of users of relevant postal services (defined in section 51) or which relates to the number and location of public post offices.
84. *Subsection (2)* allows the Council to send reports on any matter investigated under subsection (1) to specified public bodies.
85. *Subsection (3)* allows the Council, subject to the requirements of *subsection (5)*, to send reports on matters investigated to persons who the Council thinks might have an interest in these matters, or to publish a report in any manner the Council considers appropriate.
86. *Subsections (4) and (5)* require the Council, so far as practicable, to exclude from any report sent to any person or published under subsection (3), any matter which might seriously or prejudicially affect the interests of the person to whom it relates (unless that person consents).

***Section 58: Power of the Council to require information***

87. *Section 58* gives the Council the power to require information which it may reasonably require in the exercise of its functions from the Commission, universal service providers, or other licence holders. The Commission or other persons specified in this section, may refuse to supply information to the Council under certain circumstances.

***Section 59: Provision of information by the Council to the Commission***

88. *Section 59* gives the Council the duty to provide to the Commission information which the Commission may need in order to carry out its functions. But this duty is limited by the Secretary of State having the power to make an order specifying the conditions in which the Council may refuse to provide information to the Commission. If the Council refuses to supply information to the Commission, it must give notice to the Commission explaining why it has reached this decision. The Commission has the power to publish this notice.

***Section 60: Memorandum of understanding***

89. *Section 60* gives the Council and the Commission the duty to make arrangements on co-operation and exchange of information between them and on consistent treatment of matters which affect both of them, and also the duty to prepare a document setting out these arrangements (a Memorandum of Understanding; MoU). The Council and the Commission have the duty to send this MoU to the Secretary of State who has the duty to lay it before each House.

***Section 61: Forward work programmes***

90. *Section 61* provides that the Commission and the Council shall publish forward work programmes before the beginning of each financial year with a description of the projects each intends to undertake during that year. Such descriptions need not include routine activities in exercise of their functions. The description of the projects shall cover the objectives and the estimated costs to be incurred during the year in question.