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STATUTORY INSTRUMENTS

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**2011 No. 2749**

**POSTAL SERVICES**

**The Postal Services (Appeals to the Competition Commission)  
(Investigations and Extension of Time Limits) Order 2011**

<i>Made</i>	- - - -	<i>16th November 2011</i>
<i>Laid before Parliament</i>		<i>21st November 2011</i>
<i>Coming into force</i>	- -	<i>15th January 2012</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 60(6) of the Postal Services Act 2011<sup>(1)</sup>.

**Citation and commencement**

1. This Order may be cited as the Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 and shall come into force on 15th January 2012.

**Interpretation**

2. In this Order—
- “the Act” means the Postal Services Act 2011;
  - “the 2002 Act” means the Enterprise Act 2002<sup>(2)</sup>; and
  - “the Commission” means the Competition Commission.

**Application of sections 109 to 117 of the 2002 Act**

3. The following sections of Part 3 of the 2002 Act shall apply, as modified by Article 4, in relation to any appeal made to the Commission under section 59 of the Act—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);

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(1) 2011 c.5.  
(2) 2002 c.40.

- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties);
- (h) section 116 (statement of policy); and
- (i) section 117 (false or misleading documents).

**Modification of provisions of the 2002 Act**

- 4.—(1) The modifications referred to in Article 3 are—
- (2) In section 109 the words from “a reference made” to “this Part” in subsections (1), (2), (3), (5) and (6) are replaced by “an appeal made to it under section 59 of the Postal Services Act 2011”.
  - (3) Section 110(2) is omitted.
  - (4) In section 110(9) the words from “or section” to “section 65(3)” are omitted.
  - (5) Section 111(5)(b)(ii) is replaced by—
    - “(ii) if earlier, the day on which the Commission determines an appeal under section 59 of the Postal Services Act 2011.”.
  - (6) In section 117(1)(a) and (2)—
    - (a) the words “the OFT, OFCOM, the Commission or the Secretary of State” are replaced by “OFCOM or the Commission” ; and
    - (b) the words “this Part” are replaced by “section 59 of the Postal Services Act 2011”.

**Extension of time limits**

- 5.—(1) The Commission may extend the period within which an appeal under section 59 of the Act is to be determined if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 109 of the 2002 Act as applied to the Act.
- (2) In paragraph (1) “relevant person” means—
    - (a) the appellant in an appeal under section 59 of the Act;
    - (b) any person who (whether alone or as a member of a group) owns or has control of the appellant; or
    - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
  - (3) For the purposes of paragraph (2) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
  - (4) An extension under paragraph (1) shall come into force when published by the Commission.
  - (5) An extension under paragraph (1) shall continue in force until—
    - (a) the relevant person provides the information or documents to the satisfaction of the Commission or (as the case may be) appears as a witness in accordance with the requirements of the Commission; or
    - (b) the Commission publishes a decision to cancel the extension.

16th November 2011

*Edward Davey*  
Minister for Employment Relations, Consumer  
and Postal Affairs  
Department for Business, Innovation and Skills

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Article 3 of this Order applies sections 109 to 117 of the Enterprise Act 2002 (c.40) (“the 2002 Act”), as modified by Article 4, in relation to appeals to the Competition Commission (“the Commission”) made under section 59 (“section 59 appeals”) of the Postal Services Act 2011 (c.5).

Sections 109 to 117, as modified for the purposes of section 59 appeals, set out the Commission’s powers to require persons to give evidence and to provide specified documents and information needed for the purposes of those appeals.

Section 109 gives the Commission a power to serve notices requiring any person to attend to give evidence to the Commission or to provide it with specified documents or information by specified dates. Any notice has to set out the possible consequence of a failure to comply with the notice.

Section 110 sets out the Commission’s enforcement powers. It gives the Commission a power to impose monetary penalties where it considers that a person has, without reasonable excuse, failed to comply with a notice.

Subsection (9) provides that the Commission should have regard to a statement of policy (see section 116) in deciding how to make use of the available powers.

Sections 111 to 115 set out how the power under section 110 to impose a monetary penalty operates. The Commission has discretion about whether to impose a fixed penalty or a daily rate penalty, or both.

Section 116 requires the Commission to consult on and then to publish a statement of policy in relation to the enforcement of notices under section 109.

Section 117 provides that a person who supplies false or misleading information to the Commission, or the Secretary of State commits an offence. The penalty for this offence is imprisonment or a fine or both.

Article 4 makes modifications to sections 109 to 111 and 117 of the 2002 Act appropriate to their application to section 59 appeals.

Article 5 gives the Commission a discretion to extend the period within which it has to determine a section 59 appeal where a relevant person (as defined in paragraph (2)) has failed to comply with a formal notice under section 109. Any such extension continues until the notice is complied with, the Commission cancels the extension or the Commission determines the appeal.