

Postal Services Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Enterprise and Regulatory Reform, are published separately as Bill 100 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Gareth Thomas has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Postal Services Bill [HL] are compatible with the Convention rights.

Postal Services Bill [HL]

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[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

A

B I L L

TO

Make provision for the restructuring of the Royal Mail group and about the Royal Mail Pension Plan; to make new provision about the regulation of postal services; and for connected purposes.

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

PART 1

RESTRUCTURING OF ROYAL MAIL GROUP

Ownership of the Post Office

1 Post Office companies to be owned in their entirety by the Crown

- (1) Each Post Office company must at all times be owned in its entirety by the Crown. 5
- (2) Accordingly—
- (a) any issue or transfer of shares in a company is of no effect if it would cause a Post Office company to cease to be owned in its entirety by the Crown, and 10
 - (b) any issue or transfer of share rights to a person is of no effect if the acquisition by the person of the shares to which the share rights relate would cause a Post Office company to cease to be owned in its entirety by the Crown.

2 Meaning of “Post Office company”

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- (1) In this Part “Post Office company” means a company that—
- (a) is engaged in the provision of post offices,
 - (b) is or has at any time been—
 - (i) a subsidiary of the original holding company, or

- (ii) in the same group as a company that is or (as the case may be) was at that time designated under this section, and
 - (c) is designated for the purposes of this subsection by order made by the Secretary of State.
- (2) A company may be designated only if, immediately before it is designated, it is owned in its entirety by the Crown. 5
 - (3) An order under subsection (1) may not be amended or revoked.
 - (4) An order under section 64 that appoints a day for the commencement of the repeal (by Schedule 10) of section 65 or 66 of the Postal Services Act 2000 (c. 26) (restrictions on issue or disposal of shares in the original holding company etc) may not be made unless Post Office Limited (registered number 02154540) has been designated under subsection (1). 10

Ownership of the Royal Mail

3 Royal Mail companies to be publicly owned

- (1) Each Royal Mail company must at all times be publicly owned. 15
- (2) Accordingly –
 - (a) any issue or transfer of shares in a company is of no effect if it would cause a Royal Mail company to cease to be publicly owned, and
 - (b) any issue or transfer of share rights to a person is of no effect if the acquisition by the person of the shares to which the share rights relate would cause a Royal Mail company to cease to be publicly owned. 20

4 Meaning of “Royal Mail company”

- (1) In this Part “Royal Mail company” means a company that –
 - (a) provides a universal postal service,
 - (b) is or has at any time been – 25
 - (i) a subsidiary of the original holding company, or
 - (ii) in the same group as a company that is or (as the case may be) was at that time designated under this section, and
 - (c) is designated for the purposes of this subsection by order made by the Secretary of State. 30
- (2) A company may be designated only if, immediately before it is designated, it is publicly owned.
- (3) An order under subsection (1) may not be amended or revoked.
- (4) An order under section 64 that appoints a day for the commencement of the repeal (by Schedule 10) of section 65 or 66 of the Postal Services Act 2000 (restrictions on issue or disposal of shares in the original holding company etc) may not be made unless Royal Mail Group Limited (registered number 04138203) has been designated under subsection (1). 35

Securities

5 Power to direct issue of certain securities

- (1) The Secretary of State may direct –
 - (a) a Post Office company,
 - (b) a Royal Mail company, 5
 - (c) a company in the same group as a company within paragraph (a) or (b),
to issue securities to the Secretary of State or the Treasury (or to a nominee of
either of them).
- (2) The Secretary of State may direct –
 - (a) a Post Office company, or 10
 - (b) a Royal Mail company,
to issue securities to a parent company that is owned in its entirety by the
Crown.
- (3) A direction under this section may be given only to a company that is owned
in its entirety by the Crown. 15
- (4) A direction must specify –
 - (a) the kind and amount of securities to be issued,
 - (b) the terms of issue, and
 - (c) the date at or by which the securities must be issued.
- (5) Any shares issued in pursuance of a direction under this section are to be – 20
 - (a) issued as fully paid, and
 - (b) treated for the purposes of the Companies Acts (as defined by section 2
of the Companies Act 2006 (c. 46)) as if they had been paid up by virtue
of payment of their nominal value in cash.
- (6) A direction under this section may be given only – 25
 - (a) with the consent of the Treasury, and
 - (b) after the Secretary of State has consulted –
 - (i) the company to whom the direction is to be given, and
 - (ii) if that company has one or more parent companies, the parent
company that does not itself have a parent company. 30

6 Government investment in certain securities

- (1) The Treasury may acquire securities of a relevant company.
- (2) The Secretary of State may, with the consent of the Treasury, acquire securities
of a relevant company.
- (3) Securities acquired under this section may be held by a nominee. 35
- (4) In this section “relevant company” means –
 - (a) a Post Office company;
 - (b) a Royal Mail company; or
 - (c) a company in the same group as a company within paragraph (a) or (b);

*Transfer of property etc***7 Transfer schemes**

- (1) The original holding company may (if it is owned in its entirety by the Crown) make one or more transfer schemes.
- (2) A “transfer scheme” is a scheme for the transfer of property, rights or liabilities (or the creation of interests, rights or liabilities) between companies within subsection (3). 5
- (3) A company is within this subsection if –
- (a) it is the original holding company or a subsidiary of that company, and
 - (b) it is owned in its entirety by the Crown. 10
- (4) A transfer scheme has effect –
- (a) only if approved by the Secretary of State, and
 - (b) subject to any modifications made by the Secretary of State.
- (5) Before making any modifications the Secretary of State must consult the original holding company. 15
- (6) The Secretary of State may direct the original holding company (if it is owned in its entirety by the Crown) to make a transfer scheme in accordance with the direction.
- (7) Schedule 1 contains further provision about transfer schemes.
- (8) Nothing in that Schedule is to be read as restricting the provision that may be contained in transfer schemes. 20

8 Transfer of employees otherwise than under transfer scheme

- (1) This section applies if an agreement in writing between companies within subsection (3) provides for the transfer from one to the other of rights and liabilities under contracts of employment. 25
- (2) This section also applies if –
- (a) a company within subsection (3) (“company A”) carries out activities on behalf of another company within that subsection (“company B”),
 - (b) an agreement in writing between the companies provides for company A to cease to carry out the activities on behalf of company B, and
 - (c) company B intends to carry out the activities on its own behalf. 30
- (3) A company is within this subsection if –
- (a) it is the original holding company or a subsidiary of that company, and
 - (b) it is owned in its entirety by the Crown.
- (4) At any time before the agreement comes into force, the Secretary of State may –
- (a) in a case within subsection (1), designate any contract of employment the rights and liabilities under which are to be transferred under the agreement;
 - (b) in a case within subsection (2), designate any employee of company A involved in the carrying out by that company of the activities mentioned in subsection (2)(a). 40

- (5) The designation may specify or describe the contracts of employment or employees.
- (6) On the coming into force of the agreement, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply in relation to— 5
- (a) the transfer of designated contracts of employment, and
 - (b) the cessation by designated employees of activities within subsection (2)(a),
- whether or not the agreement would otherwise be regarded for the purposes of those regulations as giving rise to a relevant transfer. 10
- (7) Where by virtue of the agreement a designated employee of a company within subsection (3) (“the transferor”) becomes an employee of another company within that subsection (“the transferee”)—
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and 15
 - (b) the transfer to the transferee is not to be treated as a break in service.

9 Taxation provisions relating to re-structuring

Schedule 2 contains taxation provisions.

Ownership

- 10 Meaning of “owned in its entirety by the Crown” and “publicly owned”** 20
- (1) For the purposes of this Part a company is “owned in its entirety by the Crown” if the Crown owns all of it (directly or indirectly).
- (2) For those purposes a company is “publicly owned” if the Crown owns more than half of it (directly or indirectly).
- (3) The following provisions supplement this section— 25
- section 11 (indirect ownership of companies);
 - section 12 (meaning of “ownership of a company”).

11 Indirect ownership of companies

- (1) Where— 30
- (a) the Crown or another person owns (directly or indirectly) part or all of a company (“company A”), and
 - (b) company A owns part or all of another company (“company B”),
- the appropriate proportion of company B is to be regarded as indirectly owned by the person.
- (2) “The appropriate proportion” is— 35

$$XxY$$

where—

X is the proportion of company A owned by the person, and
Y is the proportion of company B owned by company A.

12 Ownership of a company

- (1) The proportion of a company owned by the Crown or any other person is whichever of the following is smallest –
- (a) the proportion of the company’s issued share capital owned by the person; 5
 - (b) the proportion of voting rights in the company held by the person;
 - (c) the proportion of the company’s distributable assets to which the person is entitled;
 - (d) the proportion of the company’s distributable profits to which the person is entitled. 10
- (2) For the purposes of determining the proportion of any company owned by the Crown, property and rights of the Secretary of State or the Treasury (or a nominee of either of them) are to be regarded as property and rights of the Crown.
- (3) The reference in subsection (1)(b) to “voting rights in the company” is to the rights conferred on members to vote at general meetings of the company on all or substantially all matters. 15
- (4) In subsection (1)(c) “distributable assets” means the assets that are (in the event of a winding up of the company or in any other circumstances) distributable to members of the company. 20
- (5) In subsection (1)(d) “distributable profits” means the profits that are (in any circumstances) available for distribution to members of the company.
- (6) In the application of this section to a company that does not have a share capital, subsection (1)(a) is omitted.

13 Employee share schemes 25

The requirement that a Royal Mail company be publicly owned does not prevent the establishment of an employee share scheme provided the Crown continues to own (directly or indirectly) more than half of the company.

14 Report on agreement to dispose of shares in a Royal Mail company etc

- (1) This section applies to any agreement that would (or could) reduce the proportion owned (directly or indirectly) by the Crown of a Royal Mail company. 30
- (2) Where such an agreement is entered into, the Secretary of State must lay a report on the agreement before Parliament as soon as reasonably practicable after the agreement has been entered into. 35
- (3) The report must state –
- (a) the principal objectives intended to be achieved by the entering into and carrying out of an agreement to which this section applies, and
 - (b) the extent to which the Secretary of State considers that the carrying out of the agreement mentioned in subsection (2) will achieve those objectives. 40
- (4) The report must state –
- (a) the principal criteria applied in deciding whether an agreement to which this section applies should be entered into, and

- (b) the extent to which the Secretary of State considers that the agreement mentioned in subsection (2) meets those criteria.
- (5) The report must contain a summary of the terms considered by the Secretary of State to be the principal terms of the agreement.

Supplementary provisions

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15 Annual report on post office network

- (1) A Post Office company must send to the Secretary of State each year a report on its network of post offices.
- (2) The report must give details of –
 - (a) the number and location of the company’s post offices, 10
 - (b) the postal services, services provided under arrangements with a government department and other services that are provided at those post offices, and
 - (c) the accessibility of those post offices to users of those services.
- (3) The report must, in particular, provide information about the accessibility of the company’s post offices to – 15
 - (a) individuals living in rural areas,
 - (b) individuals living in urban areas,
 - (c) small businesses,
 - (d) disadvantaged individuals, individuals with low incomes and individuals with disabilities, and 20
 - (e) individuals who are elderly.
- (4) The report must contain such other information as the Secretary of State may from time to time require.
- (5) The Secretary of State must lay a copy of the report before Parliament. 25
- (6) References in this section to a company’s post offices (or network of post offices) are to those post offices (whether or not owned or operated by the company) that the company is engaged in providing.

16 Directions

- (1) This section applies to directions under this Part. 30
- (2) A direction must be in writing.
- (3) A direction may be varied or revoked by a further direction.
- (4) A person to whom a direction has been given has a duty to comply with it.
- (5) That duty is enforceable in civil proceedings by the person by whom the direction was given – 35
 - (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or
 - (c) for any other appropriate remedy or relief.

17 Interpretation of Part 1

- (1) In this Part—
- “company” means any body corporate;
 - “the original holding company” means the company that was nominated under section 62 of the Postal Services Act 2000 (c. 26) (transfer of property etc to nominated company); 5
 - “owned in its entirety by the Crown”, in relation to a company, has the meaning given by section 10;
 - “post office” means premises in the United Kingdom from which postal services, or services provided under arrangements with a government department, are provided directly to the public; 10
 - “Post Office company” has the meaning given by section 2;
 - “publicly owned”, in relation to a company, has the meaning given by section 10;
 - “Royal Mail company” has the meaning given by section 4; 15
 - “securities” has the meaning given by section 82(1) of the Postal Services Act 2000;
 - “shares” include stock;
 - “share rights”, in relation to any shares, means rights to subscribe for (or acquire) the shares and any other rights in connection with the shares; 20
 - “subsidiary” has the meaning given by section 1159 of the Companies Act 2006 (c. 46);
 - “universal postal service” has the same meaning as in Part 3 (see section 59(2)(a)).
- (2) In this Part— 25
- (a) references (except in Schedule 2) to companies being in the same “group” are to be read in accordance with section 1161(5) of the Companies Act 2006;
 - (b) references to a company that is a “parent” of another company are to be read in accordance with section 1162(2) of that Act. 30

PART 2

ROYAL MAIL PENSION PLAN

*Introduction***18 Introduction**

- (1) In this Part— 35
- “the RMPP” means the Royal Mail Pension Plan,
 - “qualifying member of the RMPP” means a person who falls within any description of member of the RMPP prescribed for the purposes of this Part,
 - “the qualifying time” means the time immediately before such date as may be prescribed (which may be before the passing of this Act), 40
 - “qualifying accrued rights” means—
- (a) any right which, at the qualifying time, has accrued to or in respect of a qualifying member of the RMPP to future benefits under the RMPP, 45

- (b) any entitlement under the RMPP to the present payment of a pension or other benefit which a qualifying member of the RMPP has at the qualifying time, or
 - (c) any entitlement to benefits, or rights to future benefits, under the RMPP which a person who has survived a qualifying member of the RMPP has at the qualifying time in respect of the member. 5
- (2) For the purposes of the definition of “qualifying accrued rights” –
 - (a) references to pensions or other benefits (including future benefits) do not include money purchase benefits within the meaning given by section 181 of the Pension Schemes Act 1993 (c. 48) but, subject to that, do include benefits attributable to additional voluntary contributions, and 10
 - (b) references to a right include a pension credit right within the meaning given by section 124(1) of the Pensions Act 1995 (c. 26). 15
- (3) In the event that qualifying members of the RMPP include any person (“P”) who is in pensionable service under the RMPP after the qualifying time –
 - (a) the qualifying accrued rights in respect of P, and
 - (b) the amounts payable in respect of those rights,are to be determined for the purposes of this Part on the assumption that P had opted, immediately before the qualifying time, to terminate that service. 20

Powers exercisable

19 Transfer of qualifying accrued rights to new public scheme

- (1) The Secretary of State may by order establish a scheme (a “new public scheme”) which, in respect of pensionable service under the RMPP before the qualifying time, provides for pensions or other benefits to be payable to or in respect of persons who are or have been qualifying members of the RMPP. 25
- (2) The Secretary of State may by order make provision for the transfer of qualifying accrued rights to a new public scheme (without the need for any approval or consent to the transfer). 30
- (3) A new public scheme may –
 - (a) include provision for increasing in particular circumstances the amounts payable in respect of qualifying accrued rights,
 - (b) include provision in relation to any persons who are active members of the RMPP which differs from the provision made in relation to persons who are deferred members of the RMPP, and 35
 - (c) include provision for the payment of transfer values.
- (4) An order under this section may include provision for treating a new public scheme as an occupational pension scheme for the purposes of any provision made by or under any enactment specified, or of a description specified, in the order. 40
- (5) An order under this section may include provision for –
 - (a) treating a new public scheme as a salary-related contracted out scheme for the purposes of Part 3 of the Pension Schemes Act 1993, and
 - (b) applying any provision of that Part with modifications. 45

- (6) Provision made by an order under this section may have retrospective effect.
- (7) The Secretary of State may –
 - (a) provide for a new public scheme to be administered by any person, and
 - (b) delegate to any person any functions exercisable by the Secretary of State under a new public scheme.

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20 Division of the RMPP into different sections

- (1) The Secretary of State may by order make provision for –
 - (a) the division of the RMPP into different sections,
 - (b) the participation of different companies in the different sections, and
 - (c) the allocation of assets, rights, liabilities or obligations between the different sections.
- (2) If no order has been made under section 19 establishing a new public scheme, an order under this section may create a section of the RMPP in respect of qualifying accrued rights (a “qualifying section of the RMPP”).
- (3) An order under this section may include provision in respect of a qualifying section of the RMPP for –
 - (a) requiring the Secretary of State to make periodic payments to the trustee of the RMPP to enable the discharge of the liabilities in respect of qualifying accrued rights as they fall due, and
 - (b) determining the times at which those payments are to be made.
- (4) An order under this section may include provision in respect of a qualifying section of the RMPP for –
 - (a) increasing in prescribed circumstances the amounts payable under subsection (3),
 - (b) securing that any relevant discretionary powers are exercisable only with the consent of the Secretary of State, and
 - (c) authorising the Secretary of State to make payments to the trustee of the RMPP in cases where those powers are exercised.
- (5) For this purpose a “relevant discretionary power” means –
 - (a) any power under the RMPP in so far as it is exercisable to make payments, or increase the amount of payments, to or in respect of qualifying members of the RMPP, or
 - (b) any power to amend the RMPP in so far as it is exercisable in relation to qualifying accrued rights.
- (6) An order under this section may include provision for –
 - (a) securing that, in any case where there is a qualifying section of the RMPP, the RMPP continues to be regarded as a salary-related contracted out scheme for the purposes of Part 3 of the Pension Schemes Act 1993 (c. 48), and
 - (b) the manner in which questions arising under the order in respect of a qualifying section of the RMPP are to be determined.
- (7) Provision made by an order under this section may have retrospective effect.

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21 Amendments of the RMPP

- (1) The Secretary of State may by order make such amendments of the RMPP as the Secretary of State considers appropriate in connection with any order made under section 19 or 20.
- (2) The provision that may be made by an order under this section includes provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the RMPP to be determined in particular circumstances by reference to pensionable service under the RMPP before and after the qualifying time. 5
- (3) Provision made by an order under this section may have retrospective effect. 10

22 Protection against adverse treatment

- (1) Subsection (2) applies to the exercise by the Secretary of State of—
 - (a) the power to make an order under section 19 in a case where the order contains provision establishing a new public scheme or transferring qualifying accrued rights to a new public scheme, and 15
 - (b) the power to make an order under section 20 or 21.
- (2) In exercising the power the Secretary of State must ensure that the relevant pensions provision in respect of each person who is or has been a member of the RMPP is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before the exercise of the power. 20
- (3) “The relevant pensions provision” means the provision for the payment of pensions or other benefits which is contained in the RMPP or in a new public scheme.
- (4) Subsections (1) to (3) do not require provision to be included in a new public scheme if the Secretary of State is of the opinion that the provision would be incompatible with any enactment or Community obligation (including any enactment as it applies as a result of any provision made under this Part). 25
- (5) Nothing in those subsections is to be read as—
 - (a) requiring particular provisions of the RMPP or a new public scheme to take the same or similar form, 30
 - (b) requiring a new public scheme to be established in a particular way,
 - (c) requiring any power conferred by the RMPP or a new public scheme to be exercised in a particular way, or
 - (d) affecting any power of any person to amend the RMPP or a new public scheme. 35
- (6) The power of the Secretary of State to amend a new public scheme may not be exercised in any manner which would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless—
 - (a) the consent requirements are satisfied in respect of the exercise of the power in that manner, or 40
 - (b) the scheme is amended in the prescribed manner.
- (7) The consent requirements are those prescribed for the purpose of obtaining the consent of members of the scheme to its amendment.

23 Transfer of assets of the RMPP

- (1) The Secretary of State may by order make provision for the transfer of assets of the RMPP to—
- (a) the Secretary of State,
 - (b) a nominee of the Treasury, or 5
 - (c) a fund established by the Secretary of State for the purpose of holding the assets pending their disposal.
- (2) An order under this section—
- (a) may be made only if a pensions order is being, or has been, made, and
 - (b) must identify the pensions order in consequence of which it is made. 10
- (3) An order under this section may include provision for—
- (a) the delegation to any person of the administration and management of any fund within subsection (1)(c), and
 - (b) the making of payments into the Consolidated Fund.
- (4) In this section and section 24 a “pensions order” means— 15
- (a) an order under section 19, or
 - (b) an order under section 20 that contains provision by virtue of subsection (3) of that section.
- (5) This section needs to be read with section 24 (which contains restrictions on the exercise of the power to make a transfer under this section). 20

24 Restriction on power to transfer assets

- (1) The power of the Secretary of State to make an order under section 23 (a “transfer order”) must be exercised so as to secure that the ratio of assets to liabilities of the RMPP immediately after the relevant time is at least equal to the ratio of the assets to liabilities of the RMPP immediately before that time. 25
- (2) “The relevant time” is the time at which the pensions order in consequence of which the transfer order is made has effect.
- (3) For the purposes of this section it is to be assumed that, in a case where an order under section 20 is made, all the liabilities mentioned in subsection (3) of that section are extinguished at the relevant time. 30
- (4) For the purposes of this section any reference to the assets or liabilities of the RMPP is to their amount or value determined, calculated and verified by a prescribed person and in the prescribed manner.
- (5) In calculating the value of any liabilities for those purposes, a provision of the RMPP that limits the amount of its liabilities by reference to the amount of its assets is to be disregarded. 35

*Supplementary provisions***25 Taxation**

- (1) The Treasury may by regulations make provision for varying the way in which any relevant tax would, apart from the regulations, have effect in relation to— 40
- (a) a new public scheme,

- (b) members of a new public scheme, or
 - (c) a fund within section 23(1)(c).
- (2) Regulations under subsection (1) may include provision for treating a new public scheme as a registered pension scheme.
- (3) The Treasury may by regulations make provision for varying the way in which any relevant tax would, apart from the regulations, have effect in relation to, or in connection with, anything done in relation to –
 - (a) the RMPP, or
 - (b) any members of the RMPP,by or under, or in consequence of, an order made under this Part.
- (4) Regulations under subsection (1) or (3) may include provision for any of the following –
 - (a) a tax provision not to apply or to apply with modifications,
 - (b) anything done to have or not to have a specified consequence for the purposes of a tax provision, and
 - (c) the withdrawal of relief and the charging of a relevant tax.
- (5) Provision made by regulations under subsection (1) or (3), other than provision withdrawing a relief or charging a relevant tax, may have retrospective effect.
- (6) In this section –
 - “relevant tax” means –
 - (a) income tax,
 - (b) capital gains tax,
 - (c) corporation tax,
 - (d) inheritance tax,
 - (e) stamp duty and stamp duty reserve tax, and
 - (f) stamp duty land tax,
 - “registered pension scheme” has the same meaning as in Part 4 of the Finance Act 2004 (c. 12),
 - “tax provision” means any provision made by or under an enactment relating to a relevant tax.

26 Information

The Secretary of State may by order make provision for requiring any prescribed person to disclose any information (whether in the form of a document or otherwise) to the Secretary of State for any purpose of this Part.

27 Orders and regulations

- (1) The Secretary of State must consult the trustee of the RMPP before making –
 - (a) an order under section 19 which contains provision establishing a new public scheme or transferring qualifying accrued rights to a new public scheme, or
 - (b) any order under any other provision of this Part.
- (2) The Secretary of State may not make an order under any provision of this Part (apart from section 26) unless the Treasury have consented to its making.
- (3) Any order under this Part is subject to negative resolution procedure.

- (4) A statutory instrument containing regulations under section 25 is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Nothing in any provision of this Part that authorises the inclusion of any particular kind of provision in any order, regulations or scheme is to be read as restricting the generality of the provision that may be included in the order, regulations or scheme. 5

28 Interpretation of Part 2

- (1) In this Part—
- “active member” has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26), 10
 - “company” means any body corporate,
 - “deferred member” has the meaning given by section 124(1) of the Pensions Act 1995,
 - “enactment” includes an enactment whenever passed or made,
 - “member” has the meaning given by section 124(1) of the Pensions Act 1995, 15
 - “new public scheme” has the meaning given by section 19,
 - “occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 (c. 48),
 - “pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995, 20
 - “prescribed” means specified in, or determined in accordance with, an order made by the Secretary of State,
 - “qualifying accrued rights”, in relation to qualifying members of the RMPP, has the meaning given by section 18, 25
 - “qualifying member of the RMPP” has the meaning given by section 18,
 - “the qualifying time” has the meaning given by section 18,
 - “the RMPP” has the meaning given by section 18.
- (2) Any reference in this Part to amending the RMPP includes—
- (a) amending the trust deed or rules of the RMPP or any other instrument relating to the constitution, management or operation of the RMPP, and 30
 - (b) amending any instrument relating to the provision of financial support to or in relation to the RMPP.

PART 3

REGULATION OF POSTAL SERVICES 35

Postal services

29 Postal services, postal packets and postal operators

- (1) “Postal services” means—
- (a) the service of conveying postal packets from one place to another by post, 40
 - (b) the incidental services of receiving, collecting, sorting and delivering postal packets, and

- (c) any other service which relates to, and is provided in conjunction with, any service within paragraph (a) or (b).
- (2) “Postal packet” means a letter, parcel, packet or other article transmissible by post.
- (3) “Postal operator” means a person who provides – 5
 - (a) the service of conveying postal packets from one place to another by post, or
 - (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.
- (4) A person is not to be regarded as a postal operator by reason only of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another. 10
- (5) The Secretary of State may make regulations prescribing circumstances in which subsection (4) is not to apply.
- (6) Regulations under subsection (5) are subject to affirmative resolution procedure. 15

30 General authorisation to provide postal services

- (1) Persons may provide postal services without the need for any licence or authorisation, but the provision of those services by postal operators may be subject to regulatory conditions that OFCOM may impose on them under this Part. 20
- (2) In this Part a “regulatory condition” means any of the following conditions –
 - (a) a designated USP condition (see sections 35 and 36),
 - (b) a USP access condition (see section 37 and Schedule 3),
 - (c) a USP accounting condition (see section 38), 25
 - (d) a general universal service condition (see section 40),
 - (e) an essential condition (see section 46),
 - (f) a general access condition (see section 47 and Schedule 3), and
 - (g) a consumer protection condition (see sections 48 and 49).

The universal postal service 30

31 Duty to secure provision of universal postal service

- (1) OFCOM must carry out their functions in relation to postal services in a way that they consider will secure the provision of a universal postal service.
- (2) Accordingly, the power of OFCOM to impose access and other regulatory conditions on postal operators is subject to the duty imposed on them by subsection (1). 35
- (3) OFCOM’s duty under subsection (1) includes a duty to carry out their functions in relation to postal services in a way that they consider will secure the provision of sufficient access points to meet the reasonable needs of users of the universal postal service. 40

- (4) In this Part “access point” means any box, receptacle or other facility provided for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission by post.

32 The universal postal service

- (1) OFCOM must by order (“the universal postal service order”) set out – 5
- (a) a description of the services that they consider should be provided in the United Kingdom as a universal postal service, and
 - (b) the standards with which those services are to comply.
- (2) Before making or modifying the universal postal service order, OFCOM must carry out an assessment of the extent to which the market for the provision of postal services in the United Kingdom is meeting the reasonable needs of the users of those services. 10
- (3) A universal postal service must, as a minimum, include the following –
- (a) at least one delivery of letters every day other than a Sunday or public holiday – 15
 - (i) to the home or premises of every individual or other person in the United Kingdom, or
 - (ii) to such identifiable points for the delivery of postal packets as OFCOM may approve,
 - (b) at least one delivery of other postal packets every day other than a Saturday, Sunday or public holiday to the places mentioned in paragraph (a)(i) or (ii), 20
 - (c) at least one collection of letters every day other than a Sunday or public holiday from each access point in the United Kingdom used for the purpose of receiving postal packets, or any class of them, for onwards transmission in connection with the provision of a universal postal service, 25
 - (d) at least one collection of other postal packets every day other than a Saturday, Sunday or public holiday from each access point in the United Kingdom used for that purpose, 30
 - (e) a service of conveying postal packets from one place to another by post (including the incidental services of receiving, collecting, sorting and delivering them) at affordable prices determined in accordance with a uniform public tariff,
 - (f) a registered items service at affordable prices determined in accordance with a uniform public tariff, 35
 - (g) an insured items service at affordable prices determined in accordance with a uniform public tariff, and
 - (h) a service of conveying free of charge qualifying Parliamentary petitions and addresses. 40
- (4) In subsection (3) any reference to a letter or other postal packet does not include one –
- (a) whose weight exceeds 20 kilograms, or
 - (b) whose dimensions fall outside the minimum and maximum dimensions laid down in the Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union. 45
- (5) In subsection (3) –

- (a) the references in paragraphs (a) and (b) to the delivery of letters or other postal packets include the delivery of packets posted outside the United Kingdom,
 - (b) the references in paragraphs (c) and (d) to the onwards transmission of letters or postal packets include their onwards transmission to places outside the United Kingdom, and 5
 - (c) the reference in paragraph (e) to conveying postal packets from one place to another includes conveying them to places outside the United Kingdom.
- (6) The requirements of subsection (3)(a) to (d) do not need to be met in such geographical conditions or other circumstances as OFCOM consider to be exceptional. 10
- (7) Neither –
- (a) the interruption, suspension or restriction of any service in cases of emergency, nor 15
 - (b) the conclusion with customers of individual agreements as to prices, means that any requirement of subsection (3) is not met.
- (8) OFCOM must notify the European Commission of the universal postal service order and of any modifications of the order.
- (9) This section is supplemented by section 33, which defines the following expressions for the purposes of this section – 20
- “insured items service”,
 - “public holiday”,
 - “qualifying Parliamentary petitions and addresses”,
 - “registered items service”, and 25
 - “uniform public tariff”.

33 Definitions for purposes of section 32

- (1) “Insured items service” means a postal service which, in the event of the theft or loss of or damage to a postal packet, provides for the payment of an amount up to the value of the packet as declared by the sender. 30
- (2) “Public holiday” means –
- (a) Christmas Day or Good Friday, or
 - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.
- (3) “Qualifying Parliamentary petitions and addresses” means – 35
- (a) petitions and addresses to Her Majesty which –
- (i) are sent by post to a member of either House of Parliament or of a devolved legislature (that is to say, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly), and 40
 - (ii) meet the requirements of subsection (4),
- (b) petitions which –
- (i) are addressed to either House of Parliament or a devolved legislature,

- (ii) are sent by post to a member of either House of Parliament or of a devolved legislature or to the Clerk of the Scottish Parliament, and
 - (iii) meet the requirements of subsection (4), or
 - (c) petitions and addresses forwarded to Her Majesty or, in Northern Ireland, to the Secretary of State. 5
- (4) The requirements of this subsection are met if the petitions or addresses –
- (a) do not exceed 1 kilogram in weight, and
 - (b) are sent without covers or in covers open at the sides.
- (5) “Registered items service” means a postal service which provides – 10
- (a) for the registration of postal packets in connection with their transmission by post, and
 - (b) for the payment of an amount determined by the person providing the service in the event of theft or loss of or damage to the packets.
- (6) “Uniform public tariff” means a public tariff which is uniform throughout the United Kingdom. 15

Universal service provider

34 Designation of universal service provider

- (1) OFCOM may designate a single postal operator as the universal service provider. 20
- (2) OFCOM must publish the designation in such way as they consider appropriate for bringing it to the attention of members of the public.
- (3) The procedure to be followed for the making of a designation under this section must be provided for in regulations made by OFCOM.
- (4) OFCOM may – 25
- (a) review the designation for the time being in force, and
 - (b) consider what (if any) designated USP condition should continue to apply to the universal service provider.
- The procedure to be followed on a review must be provided for in regulations made by OFCOM. 30
- (5) Regulations made by OFCOM must provide for a postal operator’s designation to cease to have effect where, in any case described in the regulations, the designated USP condition applicable to the operator is revoked.
- (6) Both the procedure for designations and the procedure for the conduct of review of designations provided for by regulations under this section must be one appearing to OFCOM – 35
- (a) to be efficient, objective, proportionate and transparent, and
 - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons. 40
- (7) OFCOM must notify the European Commission of the designation and of any case where the designation ceases to have effect (and the notification must identify the postal operator designated or ceasing to be designated).

35 Designated USP condition

- (1) A designated USP condition is a condition that OFCOM impose on the universal service provider requiring it to do the following –
 - (a) to provide a universal postal service throughout the United Kingdom in accordance with the standards set out in the universal postal service order, 5
 - (b) to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service,
 - (c) to provide specified information (at such times and in such manner as OFCOM may direct) to other postal operators and users of postal services about the universal postal service, 10
 - (d) to provide specified postal services free of charge to specified descriptions of blind or partially sighted persons, and
 - (e) to do anything else that OFCOM consider appropriate for the purposes of, or in consequence of, the requirements imposed under any of paragraphs (a) to (d). 15
- (2) OFCOM may impose a designated USP condition only if it appears to them that it is necessary to do so in order to secure the provision of a universal postal service in accordance with the standards set out in the universal postal service order. 20
- (3) A designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which a universal postal service, or part of a universal postal service, is provided.
- (4) In exercising the power conferred by subsection (3) OFCOM must seek to ensure that –
 - (a) the prices are affordable,
 - (b) the prices take account of the costs of providing the service or part of a service, and
 - (c) the prices provide incentives to provide the service or part of a service efficiently. 30
- (5) A designated USP condition may impose performance targets.
- (6) In this section “specified” means specified in the designated USP condition.
- (7) Nothing in this section or section 36 is to be read as restricting the generality of the provision that may be included in a designated USP condition.

36 Publication of information about performance 35

- (1) A designated USP condition must include provision requiring the universal service provider –
 - (a) to publish information about the extent to which it is providing specified postal services in accordance with specified standards, and
 - (b) to publish annually an independently audited performance report. 40
- (2) The reference in subsection (1)(b) to an independently audited performance report is to a report that –
 - (a) contains information about the provider’s performance in complying with specified requirements under the designated USP condition, and
 - (b) is audited for accuracy by a person who is independent of both OFCOM and the provider. 45

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- (3) OFCOM must notify the European Commission of anything contained in a designated USP condition as a result of subsection (1).
- (4) A designated USP condition may require the universal service provider to meet the costs of the audit required by virtue of subsection (1)(b).
- (5) A designated USP condition may include other provision requiring the universal service provider to publish information about its performance in complying with specified requirements under the designated USP condition. 5
- (6) The provision made as a result of this section –
- (a) must include provision –
 - (i) requiring information previously published to be updated and published again, and 10
 - (ii) requiring the published information to satisfy requirements that OFCOM consider appropriate to secure its adequacy, and
 - (b) may include requirements as to the times at which, and the manner in which, the information is to be published. 15
- (7) In this section “specified” means specified in the designated USP condition.

37 USP access conditions

- (1) A USP access condition is a condition that OFCOM impose on the universal service provider requiring it to do either or both of the following –
- (a) to give access to its postal network to other postal operators or users of postal services, and 20
 - (b) to maintain a separation for accounting purposes between such different matters relating to access (including proposed or potential access) to its postal network as OFCOM may direct.
- (2) The provider’s “postal network” means the systems and all the resources used by the provider for the purpose of complying with a designated USP condition (and, accordingly, includes arrangements made with others for the provision of any service). 25
- (3) OFCOM may not impose a USP access condition unless it appears to them that the condition is appropriate for one or more of the following purposes – 30
- (a) promoting efficiency;
 - (b) promoting effective competition;
 - (c) conferring significant benefits on the users of postal services.
- (4) In addition, OFCOM may not impose a USP access condition that imposes price controls on the universal service provider unless it appears to them that the provider – 35
- (a) might fix and maintain some or all of its prices at an excessively high level with adverse consequences for users of postal services, or
 - (b) might impose a price squeeze with adverse consequences for users of postal services. 40
- (5) In imposing a USP access condition that imposes price controls in connection with the giving of access to the universal service provider’s postal network or to part of that network, OFCOM must have regard to such of the costs incurred in the provision of that network, or part of that network, as OFCOM consider appropriate. 45

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- (6) In imposing a USP access condition that imposes price controls OFCOM may –
- (a) have regard to the prices at which services are available in comparable competitive markets, and
 - (b) determine what they consider to represent efficiency by using cost accounting methods. 5
- (7) In deciding what USP access conditions to impose in a particular case, OFCOM must take into account, in particular, the following factors –
- (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary, 10
 - (b) the feasibility of giving the proposed access,
 - (c) the investment made by the universal service provider in relation to the matters in respect of which access is proposed,
 - (d) the need to secure effective competition in the long term, and
 - (e) any rights to intellectual property that are relevant to the proposal. 15
- (8) For the purposes of this section a reference to giving a person 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 the postal network.
- (9) In Schedule 3 – 20
- (a) Part 1 makes provision about the kind of matters that may be included in a USP access condition, and
 - (b) Part 2 makes provision about the resolution of access disputes by OFCOM.
- 38 USP accounting conditions** 25
- (1) A USP accounting condition is a condition that OFCOM impose on the universal service provider requiring it to do one or more of the following –
- (a) to maintain a separation for accounting purposes between such different matters as OFCOM may direct for such purposes as they may direct, 30
 - (b) to comply with rules made by OFCOM in relation to those matters about the identification of costs and cost orientation,
 - (c) to comply with rules made by OFCOM about the use of cost accounting systems in relation to those matters, and
 - (d) to secure that its compliance with those systems is audited annually by a qualified independent auditor. 35
- (2) A condition within subsection (1)(a) –
- (a) may require the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and 40
 - (b) may impose requirements about the accounting methods to be used in maintaining the separation.
- (3) A condition within subsection (1)(b) or (c) –
- (a) may include conditions requiring the application of presumptions in the fixing and determination of costs and charges for any purpose, and 45

- (b) may require the universal service provider to publish such accounts and other information relating to anything required to be done as a result of those provisions as OFCOM consider appropriate.
- (4) A condition within subsection (1)(d) may require the universal service provider to meet the costs of the audit. 5
- (5) If a USP accounting condition imposes rules on the universal service provider about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the provider to make arrangements for a description to be made available to the public of the cost accounting system used. 10
- (6) If OFCOM impose an obligation under subsection (5), the description of information to be made available must include details of—
- (a) the main categories under which costs are brought into account for the purposes of that system, and
- (b) the rules applied for the purposes of that system with respect to the allocation of costs. 15
- (7) In this section “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 (c. 46), and
- (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement). 20
- (8) Nothing in this section is to be read as restricting the generality of the power to impose a USP accounting condition.

Persons providing services within scope of universal postal service 25

39 Services within scope of the universal postal service

- (1) A postal service is within the scope of the universal postal service if—
- (a) the service falls within the description of a service set out in the universal postal service order, or
- (b) the service would fall within the description of a service set out in that order but for the fact that—
- (i) in the case of a service consisting of the delivery or collection of letters or other postal packets, the delivery or collection is not made on each of the days required by section 32(3)(a) to (d),
- (ii) the service is not provided throughout the United Kingdom, or 35
- (iii) the service is not provided at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom, or
- (c) in the opinion of OFCOM the service is of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service of a description set out in that order. 40
- (2) In this section any reference to a service includes a part of a service.

40 General universal service conditions

- (1) A general universal service condition is—

- (a) a condition that OFCOM consider necessary to impose for the purpose of securing that a universal postal service is provided in accordance with the standards set out in the universal postal service order, or
 - (b) a condition imposed for the purposes of section 43 (sharing of burden of universal service obligations). 5
- (2) A general universal service condition may require a person providing services within the scope of the universal postal service –
 - (a) to make contributions in accordance with any scheme established under section 43, and
 - (b) to take such steps as may be required by any such scheme as regards contributions made by users of such services. 10
- (3) At any time when there is a postal operator designated as the universal service provider under section 34, nothing in subsection (1)(a) is to be read as authorising the imposition of a condition requiring a person –
 - (a) to deliver or collect letters or other postal packets as mentioned in section 32(3)(a) to (d), 15
 - (b) to provide a service throughout the United Kingdom, or
 - (c) to provide a service at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom.
- (4) A general universal service condition may be applied – 20
 - (a) to every postal operator providing a service within the scope of the universal postal service, or
 - (b) to every postal operator providing a service within the scope of the universal postal service of a description specified in the condition.
- (5) Nothing in this section is to be read as restricting the generality of the provision that may be included in general universal service conditions. 25

41 Recovery of administrative charges incurred by OFCOM

Schedule 4 makes provision authorising OFCOM to impose charges on postal operators providing services within the scope of the universal postal service to meet costs incurred by OFCOM in carrying out their functions in relation to postal services. 30

Financial support for universal service

42 Review of costs of universal service obligations

- (1) OFCOM must from time to time review the extent (if any) of the financial burden for the universal service provider of complying with its universal service obligations. 35
The provider’s “universal service obligations” means the obligations imposed on it by a designated USP condition.
- (2) In carrying out a review under this section OFCOM must consider the extent to which, in their opinion, the provider is complying with those obligations in a cost-efficient manner. 40
- (3) The first review under this section must be carried out no later than 5 years after this section comes into force; and every subsequent review must be carried out no later than 5 years after the previous one.

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- (4) Where—
- (a) regulations under section 34 (designation of universal service provider) require the financial burden of complying with universal service obligations (or proposed universal service obligations) to be taken into account in determining whom to designate, and 5
 - (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination, that must be the method of calculation applied on a review under this section.
- (5) Where subsection (4) does not apply, the financial burden of complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the universal service provider from— 10
- (a) the provider’s designation, and
 - (b) the application to the provider of universal service obligations.
- (6) After carrying out a review under this section OFCOM must either— 15
- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of the universal service provider, or
 - (b) themselves carry out an audit of those calculations.
- (7) OFCOM must ensure that a report on the audit— 20
- (a) is prepared, and
 - (b) if not prepared by OFCOM, is provided to them.
- (8) OFCOM must publish—
- (a) their conclusions on the review, and
 - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review. 25
- (9) The publication must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- 43 Sharing of burden of universal service obligations 30**
- (1) This section applies where OFCOM—
- (a) have concluded on a review under section 42 that complying with its universal service obligations imposes a financial burden on the universal service provider, and
 - (b) have published that conclusion in accordance with that section. 35
- (2) OFCOM must determine whether they consider it would be unfair for the provider to bear, or to continue to bear, the whole or any part of the burden.
- (3) The determination by OFCOM of— 40
- (a) whether it is or would be unfair for the universal service provider to bear, or to continue to bear, the burden of complying with its universal service obligations, or
 - (b) the extent (if any) to which that is or would be unfair, must be in accordance with regulations made by OFCOM.

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- (4) If OFCOM determine that it would be unfair for the provider to bear, or to continue to bear, the whole or a part of the burden, they may determine that contributions for meeting that burden are to be made –
- (a) by providers of postal services within the scope of the universal postal service, or 5
 - (b) by users of such services (by way of the charges paid by them), or
 - (c) by both providers and users of such services.
- OFCOM may determine that the contributions are to be made only by a description of providers or users.
- (5) The assessment, collection and distribution of contributions must be carried out in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM. 10
- (6) OFCOM must exercise their power to make regulations under this section in a manner they consider will secure that the scheme operates –
- (a) in an objective, proportionate and transparent manner; 15
 - (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against –
 - (i) particular postal operators (or a particular description of postal operators), or
 - (ii) particular users (or a particular description of users); and 20
 - (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition.
- (7) The regulations may provide for the scheme, and for any fund set up for the purposes of the scheme, to be administered either by OFCOM or by another person specified in the regulations. 25
- A person other than OFCOM may be specified only if OFCOM are satisfied as to the person's independence of both the universal service provider and providers of postal services within the scope of the universal postal service.
- (8) Regulations under subsection (5) may not be made unless –
- (a) the Secretary of State has consented to the making of the regulations, and 30
 - (b) a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.
- 44 Report on sharing mechanism 35**
- (1) This section applies where regulations under section 43 provide for a scheme for the assessment, collection and distribution of contributions.
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies –
- (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything required to be provided by the universal service provider in pursuance of its universal service obligations; 40
 - (b) the market benefits for the universal service provider that have accrued to the provider during that period from – 45
 - (i) the provider's designation, and

- (ii) the application to the provider of universal service obligations;
and
 - (c) the contribution made under section 43 by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of 12 months beginning with the coming into force of the first regulations made under section 43. 5
- (4) Subsequent reports must be prepared in relation to the period of 12 months beginning with the end of the period to which the previous report applied.
- (5) Every report under this section – 10
- (a) must be prepared as soon as practicable after the end of the period to which it is to apply, and
 - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section – 15
- (a) to publish any matter that is confidential, or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential for this purpose – 20
- (a) if it relates specifically to the affairs of a particular body and publication of the matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of the body;
 - (b) if it relates to the private affairs of an individual and publication of the matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of the individual. 25
- (8) A report under this section must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

Postal operators generally

- 45 Notification by postal operators** 30
- (1) The Secretary of State may make regulations requiring persons to notify OFCOM before they carry on business as postal operators.
- (2) The Secretary of State must consult OFCOM before making the regulations.
- (3) The regulations may make provision corresponding, with such modifications as appear to the Secretary of State to be appropriate, to any of the provisions of sections 33 to 37 of the Communications Act 2003 (c. 21) (requirements to notify before carrying on a regulated activity). 35
- (4) The maximum penalty which may be imposed by the regulations for failure to comply with any of its provisions must not exceed the maximum penalty for the time being specified in section 37(6) of that Act. 40
- (5) OFCOM must establish and maintain a register which records every notification given to them under the regulations.

Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.

- (6) OFCOM must publish a notice setting out –
 - (a) the times at which the register is for the time being available for public inspection, and 5
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.

The notice must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it. 10
- (7) OFCOM must make the register available for public inspection –
 - (a) during such hours, and
 - (b) on payment of such fees,as are set out in the notice for the time being in force under subsection (6).
- (8) Regulations under this section are subject to negative resolution procedure. 15

46 Essential conditions

- (1) An essential condition is a condition that OFCOM consider necessary to impose for any one or more of the following purposes –
 - (a) safeguarding confidentiality in connection with the sending, conveyance and delivery of letters, 20
 - (b) safeguarding security where dangerous goods are transported,
 - (c) safeguarding the confidentiality of information conveyed,
 - (d) guarding against the theft or loss of or damage to postal packets,
 - (e) securing the delivery of postal packets to the intended addressees.
- (2) An essential condition may be applied – 25
 - (a) to every postal operator, or
 - (b) to every postal operator of a description specified in the condition.

47 General access conditions

- (1) A general access condition is a condition that OFCOM impose on a postal operator requiring it to do either or both of the following – 30
 - (a) to give access to other postal operators, or users of postal services, to the operator’s postal infrastructure or any service within the scope of the universal postal service which it provides, and
 - (b) to maintain a separation for accounting purposes between such different matters relating to access of a kind within paragraph (a) 35 (including proposed or potential access of that kind) as OFCOM may direct.
- (2) An operator’s “postal infrastructure” includes both physical infrastructure (such as letter boxes) and infrastructure in non-physical form (such as information relating to postcodes or addresses or arrangements made with others for the provision of any service). 40
- (3) OFCOM may impose a general access condition only if it appears to them that the condition is necessary for either or both of the following purposes –
 - (a) protecting the interests of the users of postal services;

- (b) promoting effective competition.
- (4) In deciding what general access conditions to impose in a particular case, OFCOM must take into account, in particular, the following factors –
 - (a) the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed access unnecessary, 5
 - (b) the feasibility of giving the proposed access,
 - (c) the investment made by the postal operator in relation to the matters in respect of which access is proposed,
 - (d) the need to secure effective competition in the long term, and 10
 - (e) any rights to intellectual property that are relevant to the proposal.
- (5) For the purposes of this section a reference to giving a person access to an operator’s postal infrastructure includes giving a person an entitlement to use, be provided with or become a party to any services, facilities or arrangements comprised in the infrastructure. 15
- (6) In Schedule 3 –
 - (a) Part 1 makes provision about the kind of matters that may be included in general access conditions, and
 - (b) Part 2 makes provision about the resolution of access disputes by OFCOM. 20

48 Consumer protection conditions

- (1) A consumer protection condition is a condition that OFCOM impose requiring postal operators, or such descriptions of them as OFCOM consider appropriate, to do one or more of the following –
 - (a) to assume specified liability in respect of specified loss of or damage to specified postal packets, 25
 - (b) to establish and maintain procedures, standards and policies with respect to consumer protection matters,
 - (c) to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading. 30
- (2) The reference in subsection (1)(b) to consumer protection matters is to –
 - (a) the handling of complaints made to postal operators by users of their services,
 - (b) the resolution of disputes between postal operators and users of their services, 35
 - (c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes,
 - (d) the information that is to be made available by postal operators to users of their services about service standards and about the rights of those users, and 40
 - (e) anything else appearing to OFCOM to be necessary to secure effective protection for those users.
- (3) The reference in subsection (1)(c) to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading is to –
 - (a) such proportion of the expenses of the National Consumer Council as the Secretary of State considers reasonable having regard to the functions exercisable by it in relation to users of postal services, and 45

- (b) such proportion of the expenses of the Office of Fair Trading incurred in connection with its support of any public consumer advice scheme as the Secretary of State considers reasonable having regard to the functions under the scheme exercisable in relation to those users.
- (4) In imposing a consumer protection condition, OFCOM must (so far as they consider appropriate) secure that – 5
- (a) the procedures for the handling of complaints and the resolution of disputes are easy to use, transparent and effective and otherwise facilitate the settling of disputes fairly and promptly,
- (b) users have the right to use those procedures free of charge, and 10
- (c) if a postal operator contravenes a consumer protection condition, the operator follows such procedures as may be required by the condition.
- (5) The Secretary of State may direct OFCOM to include provision within subsection (1)(c) in consumer protection conditions.
- (6) In this section and section 49 any reference, in relation to postal operators, to users of their services is to users of any of the postal services provided by the operators. 15
- (7) In this section “specified” means specified in the consumer protection condition.
- 49 Provision that may be made by consumer protection conditions 20**
- (1) A consumer protection condition may require postal operators, or such descriptions of postal operators as OFCOM consider appropriate, to be members of an approved redress scheme.
- (2) A “redress scheme” is a scheme under which complaints about postal operators by users of their services may be made to, and investigated and determined by, a person who is independent of postal operators and OFCOM. 25
- (3) A redress scheme is “approved” if it is approved by OFCOM in accordance with Schedule 5.
- (4) For the purposes of the law relating to defamation, proceedings under an approved redress scheme are to be treated in the same way as proceedings before a court. 30
- (5) A consumer protection condition may require postal operators, or such descriptions of postal operators as OFCOM consider appropriate –
- (a) to provide information to OFCOM with respect to the levels of compliance with the standards for the handling of complaints, and 35
- (b) to publish information about the number of complaints made about them (whether under an approved redress scheme or otherwise) and the way in which the complaints were dealt with.
- (6) Requirements may be contained in the condition as to the times at which, and the manner in which, any information is to be published as a result of subsection (5)(b). 40
- (7) A consumer protection condition imposed on the universal service provider must include a requirement within subsection (5)(b).
- (8) Nothing in this section is to be read as restricting the generality of the provision that may be included in consumer protection conditions. 45

*General provisions***50 Imposition, modification or revocation of regulatory conditions**

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

51 Appeals against price control decisions

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(1) A person affected by a price control decision may appeal against it by sending a notice of appeal to OFCOM within the period of two months beginning with the day on which the decision is published.

(2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate the error (or errors) which the appellant contends OFCOM made.

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(3) OFCOM must refer any appeal made in accordance with this section (and with rules made under section 52) to the Competition Commission (“the Commission”) as soon as reasonably practicable after it is made.

(4) The making of an appeal against a decision does not suspend the effect of the decision.

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(5) The Commission must determine an appeal before the end of –

(a) the period of 4 months beginning with the day on which OFCOM refer the appeal to it, or

(b) if the Commission considers that the circumstances of the case are exceptional, the period of 6 months beginning with that day.

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

(6) On determining the appeal, the Commission must either –

(a) dismiss the appeal, or

(b) allow the appeal and make its own decision on the subject matter of the appeal.

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(7) An appeal may be allowed only if the Commission considers that OFCOM made a material error.

(8) The Commission may investigate any matter or do any other thing for the purpose of making a decision under subsection (6)(b).

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(9) OFCOM must give effect to any decision of the Commission under subsection (6)(b) as soon as is reasonably practicable after it is made.

(10) In this section “price control decision” means –

(a) a decision of OFCOM as to the tariffs that are to be used as mentioned in section 35(3) (designated USP condition: tariffs), or

(b) a decision of OFCOM (other than under Part 2 of Schedule 3) as to prices that may be charged for the giving of access under an access condition.

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52 Appeals under section 51: supplementary

- (1) The Commission may make rules about the making, conduct and disposal of appeals under section 51.
- (2) The rules may, in particular, impose time limits or other restrictions on—
 - (a) the taking of evidence at an oral hearing, or 5
 - (b) the making of representations or observations at an oral hearing.
- (3) The rules may make different provision for different cases.
- (4) The Commission must publish the rules in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them. 10
- (5) Before making the rules, the Commission must consult such persons as it considers appropriate.
- (6) The Secretary of State may by order—
 - (a) apply any of sections 109 to 117 of the Enterprise Act 2002 (c. 40) (investigation powers of the Commission), with or without modifications, in relation to appeals made under section 51, and 15
 - (b) make provision for and in connection with the extension of the period within which appeals must be determined in cases where requirements imposed under section 109 of that Act (as applied) have not been complied with. 20
- (7) An order under subsection (6) is subject to negative resolution procedure.

53 Enforcement of regulatory requirements

Schedule 7 makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services. 25

54 Information

- (1) Schedule 8 makes provision for requiring information to be provided to OFCOM for the purpose of carrying out their functions in relation to postal services or for related purposes.
- (2) In that Schedule—
 - (a) Part 1 makes provision authorising OFCOM to require information to be provided to them,
 - (b) Part 2 makes provision for the enforcement of those requirements, and
 - (c) Part 3 contains supplementary provision. 30
- (3) Nothing in Schedule 7 to the Postal Services Act 2000 (c. 26) (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. 35

55 General restriction on disclosure of information

- (1) Information that—
 - (a) is obtained by virtue of this Part, and 40

- (b) relates to the affairs of an individual or to a particular business, must not be disclosed during the lifetime of the individual or so long as the business is carried on, except as provided by this section.
- (2) Disclosure is permitted –
- (a) with the consent of the individual or the person for the time being carrying on the business; 5
 - (b) for the purpose of facilitating the carrying out –
 - (i) by OFCOM of any of their functions,
 - (ii) by the Secretary of State, the Treasury or the Competition Commission of their functions under this Act, or 10
 - (iii) by a prescribed person or body of functions under a prescribed enactment;
 - (c) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (d) for the purposes of any civil proceedings brought by virtue of this Part or any prescribed enactment; 15
 - (e) in pursuance of a Community obligation; or
 - (f) in any other prescribed circumstances or for any other prescribed purpose.
- (3) In subsection (2) “prescribed” means prescribed by order of the Secretary of State. 20
Any such order is subject to affirmative resolution procedure.
- (4) This section does not apply –
- (a) to information that has been made available to the public by being disclosed in circumstances in which, or for a purpose for which, disclosure is not precluded by this section; or 25
 - (b) to information that by virtue of –
 - (i) section 393(8) of the Communications Act 2003 (c. 21) (information obtained by OFCOM in exercise of competition functions), or 30
 - (ii) section 29(3) of the Consumers, Estate Agents and Redress Act 2007 (c. 17) (information obtained by the National Consumer Council),
 is subject to the disclosure regime in Part 9 of the Enterprise Act 2002 (c. 40). 35
- (5) It is an offence for a person to disclose information in contravention of this section.
- (6) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum; 40
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Supplementary and consequential provisions

- 56 Duties in relation to social and environmental matters**
- (1) The Secretary of State may from time to time give guidance about the making by OFCOM, in the carrying out of their functions in relation to postal services, of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance. 5
 - (2) OFCOM must, when carrying out their functions in relation to postal services, have regard to any guidance given under subsection (1).
 - (3) Before giving any such guidance, the Secretary of State must consult—
 - (a) OFCOM, 10
 - (b) the National Consumer Council, and
 - (c) such other persons as the Secretary of State considers appropriate.
 - (4) A draft of any guidance proposed to be given under subsection (1) must be laid before Parliament.
 - (5) Guidance may not be given under subsection (1) until after the end of the period of 40 days beginning with the day on which the draft is laid before Parliament. 15
 - (6) In calculating that period, no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued, or
 - (b) both Houses of Parliament are adjourned for more than four days. 20
 - (7) If, before the end of that period, either House of Parliament resolves that the guidance should not be given, the Secretary of State must not give it.
 - (8) The Secretary of State must publish any guidance given under subsection (1) in such way as the Secretary of State considers appropriate.
- 57 Orders, schemes and regulations made by OFCOM** 25
- Section 403 of the Communications Act 2003 (c. 21) (regulations and orders made by OFCOM) applies to any power of OFCOM under this Part to make an order, a scheme or regulations.
- 58 Abolition of Postal Services Commission etc**
- (1) The Postal Services Commission is abolished. 30
 - (2) In section 30 of, and Schedule 2 to, the Communications Act 2003 (transfers of property etc from pre-commencement regulators), each reference to a pre-commencement regulator includes the Postal Services Commission.
 - (3) The following provisions apply in relation to a transfer scheme made by virtue of subsection (2). 35
 - (4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to a transfer, by virtue of a transfer scheme, of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

- (5) Where an employee of the Postal Services Commission becomes an employee of OFCOM by virtue of a transfer scheme –
- (a) a period of employment with that Commission is to be treated as a period of employment with OFCOM, and
 - (b) the transfer to OFCOM is not to be treated as a break in service. 5
- (6) The transfer of functions, assets or liabilities from the Postal Services Commission to OFCOM under or by virtue of this Act is not to be treated as a merger for accounting purposes.

59 Interpretation of Part 3

- (1) In this Part – 10
- “access condition” means a USP access condition or a general access condition;
 - “access point” has the meaning given by section 31(4);
 - “consumer protection condition” has the meaning given by section 48;
 - “contravention” has the meaning given by subsection (3)(a) below; 15
 - “designated USP condition” has the meaning given by section 35;
 - “essential condition” has the meaning given by section 46;
 - “general access condition” has the meaning given by section 47;
 - “general universal service condition” has the meaning given by section 40;
 - “letter” means any communication in written form on any kind of physical medium to be conveyed to the person or address indicated on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical) and includes a postal packet containing any such communication; 20
 - “OFCOM” means the Office of Communications; 25
 - “postal operator” has the meaning given by section 29;
 - “postal packet” has the meaning given by section 29;
 - “postal services” has the meaning given by section 29;
 - “regulatory condition” has the meaning given by section 30;
 - “the universal postal service order” has the meaning given by section 32; 30
 - “universal service obligations”, in relation to the designated universal service provider, has the meaning given by section 42(1);
 - “the universal service provider” means the postal operator for the time being designated under section 34;
 - “user”, in relation to a postal service, includes – 35
 - (a) addressees, and
 - (b) potential users;
 - “USP access condition” has the meaning given by section 37;
 - “USP accounting condition” has the meaning given by section 38.
- (2) In this Part – 40
- (a) references to the provision of a universal postal service are to be read in accordance with section 32,
 - (b) references to the provision of a service within the scope of the universal postal service are to be read in accordance with section 39.
- (3) For the purposes of this Part – 45

- (a) “contravention” includes a failure to comply (and related expressions are to be read accordingly),
 - (b) where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, the contravention is to be taken to continue after the end of that period, or after that time, until that thing is done, 5
 - (c) references to remedying the consequences of a contravention include paying an amount to a person –
 - (i) by way of compensation for loss or damage suffered by the person, or 10
 - (ii) in respect of annoyance, inconvenience or anxiety to which the person has been put, and
 - (d) in determining whether a contravention is a repeated contravention for any purposes, a notification of a contravention under any provision is to be ignored if it has been withdrawn before the imposition of a penalty in respect of the matters notified. 15
- (4) Any power under this Part to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.
- (5) Any reference in this Part to OFCOM’s functions under an enactment includes their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment. 20

60 Transitional provisions for Part 3

Schedule 9 makes transitional provision in connection with the coming into force of this Part and provides for OFCOM to carry out certain functions before the provisions of this Part come into force generally. 25

PART 4

GENERAL

61 Orders and regulations made by the Secretary of State or the Treasury

- (1) This section applies to orders and regulations under this Act made by the Secretary of State or the Treasury. 30
- (2) Any order or regulations may –
 - (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision;
 - (b) make different provision for different cases or circumstances.
- (3) Any order or regulations must be made by statutory instrument. 35
- (4) Where orders or regulations are subject to “affirmative resolution procedure” the order or regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (5) Where orders or regulations are subject to “negative resolution procedure” the statutory instrument containing the order or regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 40

- (6) Any provision that may be made by order may be made by regulations; and any provision that may be made by regulations may be made by order.
- (7) Any provision that may be made by order or regulations subject to negative resolution procedure may be included in an instrument subject to affirmative resolution procedure. 5

62 Meaning of “enactment”

In this Act “enactment” includes –

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, 10
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales. 15

63 Minor and consequential amendments and repeals

- (1) Schedule 10 contains minor and consequential amendments and repeals.
- (2) In that Schedule –
- Part 1 contains amendments of the Postal Services Act 2000 (c. 26);
- Part 2 contains amendments of the Communications Act 2003 (c. 21); 20
- Part 3 contains amendments of other enactments;
- Part 4 contains general modifications; and
- Part 5 contains further repeals.
- (3) The Secretary of State or the Treasury may by order make such other provision amending, repealing or revoking any enactment as they consider necessary or expedient in consequence of any provision made by this Act. 25
- (4) An order under subsection (3) is subject to negative resolution procedure.

64 Short title, commencement and extent

- (1) The short title of this Act is the Postal Services Act 2009.
- (2) The following provisions of this Act come into force on the day after this Act is passed – 30
- (a) in Part 3 (regulation of postal services), section 60 and Schedule 9 (transitional provisions for that Part) and the provisions mentioned in that Schedule (to the extent provided);
- (b) in this Part – 35
- section 61 (orders and regulations made by the Secretary of State or the Treasury),
- section 62 (meaning of “enactment”);
- section 63(3) and (4) (power to make consequential amendments etc), and 40
- this section;
- (c) any other provisions of this Act so far as necessary for the purposes of the provisions mentioned above.

- (3) Subject to that, the provisions of this Act come into force on such day as the Secretary of State or the Treasury may by order appoint (and different days may be appointed for different purposes).
- (4) The Secretary of State or the Treasury may by order make such transitional provision and savings as they consider necessary or expedient in connection with the commencement of any provision made by this Act. 5
- (5) The provisions of this Act extend to the United Kingdom.
- (6) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 10

SCHEDULES

SCHEDULE 1

Section 7

TRANSFER SCHEMES

Introduction

- 1 (1) In this Schedule – 5
- “transfer scheme” means a transfer scheme under section 7;
- “transferee” –
- (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; 10
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created; 15
- “transferor” –
- (a) in relation to a transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme;
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created; and 20
- “third party”, in relation to a transfer scheme, means any person except the transferor or transferee. 25
- (2) Any reference in this Schedule to a right or to an entitlement to a right includes an entitlement to exercise a right, and any reference to a right’s arising accordingly includes its becoming exercisable. 30

Identification of property etc to be transferred

- 2 (1) A transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified. 35

Property, rights and liabilities that may be transferred

- 3 (1) A transfer scheme may transfer –

- (a) property situated in any part of the world;
 - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a transfer scheme include – 5
 - (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time specified under paragraph 6(1);
 - (b) rights and liabilities arising after that time in respect of matters occurring before that time;
 - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned. 10
- (3) The transfers to which effect may be given by a transfer scheme include transfers that are to take effect in accordance with the scheme as if there were –
 - (a) no such requirement to obtain a person's consent or concurrence, 15
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right, 20as there would be, in the case of a transaction apart from the scheme, by reason of any provision having effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) Sub-paragraph (3) has effect where shares in a subsidiary of the transferor are transferred as if the reference to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect. 25

Dividing and modifying transferor's property, rights and liabilities

- 4 (1) A transfer scheme may contain provision –
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property or rights transferred in accordance with the scheme; 30
 - (b) for giving effect to a transfer by the creation, in favour of the transferee, of an interest or right in or in relation to property or rights retained by a transferor; 35
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking into a contract between different transferees or between a transferee and a transferor. 40
- (3) A transfer scheme may contain provision –
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor; and 45
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be

enforceable in different or modified respects by or against each or any of them.

- (4) A transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme. 5
- (5) Paragraph 3(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Obligation to effect transfers etc

- 5 (1) A transfer scheme may impose on a transferee or transferor an obligation—
- (a) to enter into an agreement (specified or described in the scheme) with another person on whom a corresponding obligation is, could be or has been imposed by virtue of this paragraph (whether in the same or a different scheme), or 10
- (b) to execute an instrument (specified or described in the scheme) in favour of such a person. 15
- (2) A transfer scheme that imposes such an obligation may provide that paragraph 3(3) applies (to the extent specified in the scheme) in relation to—
- (a) a transfer made by or under an agreement or instrument made in pursuance of the obligation;
- (b) interests or rights created by or under such an agreement or instrument. 20
- (3) Subject to that, nothing in paragraph 3 enables—
- (a) an agreement or instrument made in pursuance of such an obligation, or
- (b) anything done under such an agreement or instrument, 25
- to give effect to a transfer, or to create an interest or right, that could not otherwise have been made or created by or under the agreement or instrument.
- (4) An obligation imposed by virtue of sub-paragraph (1) may be enforced by the person with (or in favour of) whom the agreement or instrument is to be entered into or executed, in proceedings for any of the following— 30
- (a) an injunction;
- (b) specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36);
- (c) any other appropriate remedy or relief. 35

Effect of transfer scheme: general

- 6 (1) At the time specified in the scheme, the relevant property, interests, rights and liabilities vest (by virtue of this sub-paragraph) in the transferee.
- (2) “The relevant property, interests, rights and liabilities” are—
- (a) the property, rights and liabilities that are, in accordance with the scheme, to be transferred, and 40
- (b) the interests, rights and liabilities that are, in accordance with the scheme, to be created.

- (3) Sub-paragraph (1) is subject to any provision of the scheme that provides that the transfer or creation of any property, interests, rights or liabilities is to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 5(1).

Effect of transfer scheme on right to terminate or modify interest etc 5

- 7 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a transfer scheme –
- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated. 10
- (2) The entitlement –
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
 - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement. 15
- (3) Where shares in a subsidiary of the transferor are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares. 20
- (4) A transfer scheme that (by virtue of paragraph 5(1)) contains an obligation to enter into or execute an agreement or instrument may provide for sub-paragraphs (1) to (3) to apply to interests or rights affected by –
- (a) the agreement or instrument, or
 - (b) a proposal for the agreement or for the execution of the instrument. 25
- (5) Where the scheme does so provide, sub-paragraphs (1) to (3) apply in relation to the interests or rights as if references there to the transfer scheme included the agreement or instrument.

Supplementary provisions of schemes

- 8 (1) A transfer scheme may contain incidental, supplemental, consequential and transitional provision; and different provision may be made for different purposes. 30
- (2) Nothing in paragraphs 9 to 13 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a transfer scheme includes the creation in accordance with such a scheme of an interest, right or liability. 35
- 9 A transfer scheme may provide, in relation to transfers in accordance with the scheme –
- (a) for the transferee to be treated as the same person in law as the transferor; 40
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;

- (c) for references in an agreement, instrument or other document (but not in an enactment) to the transferor or to an employee or office holder with the transferor to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme; and 5
- (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- 10 (1) A transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities;
- (b) the creation of foreign rights and interests. 10
- (2) For the purposes of this paragraph property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.
- 11 (1) A transfer scheme may contain provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or by virtue of) a transfer scheme. 15
- (2) The provision may provide for the appointment of an arbitrator (or, in Scotland, arbiter) to determine disputes about compensation.
- 12 A transfer scheme may make provision for disputes as to the effect of the scheme— 20
- (a) between different transferees, or
- (b) between a transferee and a transferor,
- to be referred to such arbitration as may be specified in or determined under the scheme. 25
- 13 (1) Where a person is entitled, in consequence of a transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—
- (a) the scheme may provide for that person to be 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; and 30
- (b) section 64 of the Law of Property Act 1925 (c. 20) (production and safe custody of documents) has effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention. 35
- (2) Where a person is entitled, in consequence of a transfer scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, section 16(1) of the Land Registration (Scotland) Act 1979 (c. 33) (omission of certain clauses in deeds) has effect in relation to the transfer as if— 40
- (a) the transfer had been effected by deed; and
- (b) in that provision, the words “unless specially qualified” were omitted. 45

Proof of title by certificate

- 14 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified. 5

Staff

- 15 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to a transfer (under a transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations). 10
- 16 Where an employee of the transferor becomes an employee of the transferee by virtue of a transfer scheme –
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and 15
 - (b) the transfer to the transferee is not to be treated as a break in service.

Modification of scheme

- 17 (1) If –
- (a) before the end of the period of three years beginning with the time specified under paragraph 6(1), the transferor and transferee agree in writing that the scheme is to be treated as having come into force at that time with such modifications as are specified in the agreement, and 20
 - (b) the Secretary of State, with the consent of the Treasury, approves the agreement, 25
- the scheme as modified is to be treated for all purposes as having come into force at that time.
- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme, contain incidental, supplemental, consequential and transitional provision (and different provision may be made for different purposes). 30

Disapplication of certain company law provisions

- 18 Nothing in –
- (a) Part 23 of the Companies Act 2006 (c. 46) (distributions),
 - (b) any rule of law relating to distributions by companies, or 35
 - (c) any rule of law relating to the maintenance of capital by companies,
- applies in relation to a transfer of property, rights or liabilities, or the creation of rights or interests, by or under a transfer scheme.

SCHEDULE 2

Section 9

TAXATION PROVISIONS RELATING TO RE-STRUCTURING ETC

Capital gains tax and stamp duty land tax: de-grouping charges

- 1 Paragraphs 2 to 4 apply in relation to—
- (a) section 179 of the Taxation of Chargeable Gains Act 1992 (c. 12) (company ceasing to be member of group); 5
 - (b) paragraph 3 of Schedule 7 to the Finance Act 2003 (c. 14) (withdrawal of SDLT group relief).
- 2 The provisions listed in paragraph 1 do not apply to a Post Office company or a Royal Mail company. 10
- 3 A provision listed in paragraph 1 does not apply to a company that, immediately before the event which would otherwise cause it to apply to the company, is a parent of a Post Office company or of a Royal Mail company.
- 4 (1) This paragraph applies if—
- (a) at any time, a company would otherwise be regarded (for the purposes of a provision listed in paragraph 1) as ceasing to be a member of a group, and 15
 - (b) immediately before and after that time, the company is a subsidiary of a Royal Mail company and is publicly owned.
- (2) For the purposes of the provision— 20
- (a) treat the company as continuing to be a member of the group, but
 - (b) if at any later time the company ceases to be publicly owned, treat the company as ceasing (at that time) to be a member of the group.
- (3) References in this paragraph to a group have the same meaning as in the provision. 25

Capital gains tax: transfer of securities of Post Office company

- 5 For the purposes of the Taxation of Chargeable Gains Act 1992, any disposal of securities of a Post Office company is to be treated as made for a consideration such that no gain or loss accrues to the person making the disposal. 30

Stamp duty: transfer of securities of Post Office company

- 6 No stamp duty is payable on a transfer of securities of a Post Office company.

Corporation tax: issue of shares and other securities

- 7 For the purposes of the Corporation Tax Acts, treat any shares issued by a company in pursuance of section 5 as if they had been issued wholly in consideration of a subscription paid to the company of an amount equal to the nominal value of the share. 35
- 8 For the purposes of the Corporation Tax Acts, treat any security (other than a share) issued by a company in pursuance of— 40
- (a) section 5 of this Act, or

(b) section 74 of the Postal Services Act 2000 (c. 26),
as if it had been issued wholly in consideration of a loan made to the
company of an amount equal to the principal sum payable under the
security.

Corporation tax: debt 5

9 For the purposes of the Corporation Tax Acts, treat any debt assumed by a
company under section 74(1) of the Postal Services Act 2000 as if it had been
assumed wholly in consideration of a loan made to the company of an
amount equal to the principal sum payable under the debt.

SCHEDULE 3

Sections 37 and 47

10

FURTHER PROVISION ABOUT ACCESS CONDITIONS

PART 1

PROVISION THAT MAY BE MADE BY ACCESS CONDITIONS

Introduction

- 1 (1) Access conditions imposed on a person may include provision of the kind 15
mentioned in the following provisions of this Part of this Schedule.
- (2) Nothing in those provisions is to be read as restricting the generality of the
power to impose access conditions.

Terms of access

- 2 An access condition imposed on a person may include provision— 20
- (a) requiring the terms and conditions on which the person is willing to
offer access to include such terms and conditions as may be specified
or described in the condition, or
- (b) requiring the person to make such modifications as OFCOM may
direct of any offer which sets out the terms and conditions on which 25
the person is willing to offer access.

Price controls etc.

- 3 (1) An access condition imposed on a person may include provision imposing 30
on the person—
- (a) such price controls as OFCOM may direct in relation to matters
connected with the giving of access (“access matters”),
- (b) rules made by OFCOM in relation to access matters about the
identification of costs and cost orientation,
- (c) rules made by OFCOM for those purposes about the use of cost
accounting systems, 35
- (d) obligations to have compliance with those systems audited annually
by a qualified independent auditor, and
- (e) obligations to adjust prices in accordance with directions given by
OFCOM.

-
- (2) A condition within sub-paragraph (1)(d) may require the person to meet the costs of the audit.
- (3) In sub-paragraph (1)(d) “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 (c. 46), and 5
 - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).
- 4 An access condition may include provision requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations referred to in paragraph 3. 10
- 5 (1) If an access condition imposes rules on any person about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the person to make arrangements for a description to be made available to the public of the cost accounting system used. 15
- (2) If OFCOM impose an obligation on a person under sub-paragraph (1), the description of information to be made available must include details of—
- (a) the main categories under which costs are brought into account for the purposes of that system, and 20
 - (b) the rules applied for the purposes of that system with respect to the allocation of costs.
- Arrangements for provision of services by others*
- 6 (1) This paragraph applies if— 25
- (a) services are provided to a postal operator pursuant to arrangements made between the operator and another person (“B”),
 - (b) an access condition requires the operator to secure that those services are also provided to a third person (“C”), and
 - (c) the provisions of the arrangements are such that the operator cannot secure that the services are provided to C without B’s agreement. 30
- (2) The access condition may include—
- (a) provision in relation to the giving of agreement by B (including provision for agreement to be deemed to be given in circumstances specified in the condition); 35
 - (b) provision for determining the terms and conditions on which B is to secure the provision of the services to C.
- (3) Provision may not be included in an access condition as a result of this paragraph if it would have the effect of requiring a person who provides services pursuant to the arrangements to do more than the person could be required to do pursuant to the arrangements as they have effect before the condition is imposed. 40
- Separation for accounting purposes*
- 7 An access condition imposed on a person requiring a separation for accounting purposes between different matters may include provision— 45

- (a) requiring the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas;
- (b) requiring particular accounting methods to be used in maintaining the separation.

5

Restriction on use of information obtained in connection with giving access

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

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Periods for compliance

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

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Dealing with requests for access

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

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Non-discrimination

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

Transparency

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

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PART 2

RESOLUTION OF ACCESS DISPUTES BY OFCOM

Reference of disputes to OFCOM

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- 13 (1) Any one or more parties to an access dispute may refer the dispute to OFCOM.
- (2) In this paragraph “access dispute” means a dispute between postal operators, or between a postal operator and a user of postal services, about

the terms and conditions (including those as to price) on which access, required by virtue of an access condition to be given –

- (a) is to be or may be provided,
 - (b) is being provided, or
 - (c) has been provided. 5
- (3) A reference under this paragraph must be made in such manner as OFCOM require.
- (4) A requirement under sub-paragraph (3) is to be imposed, withdrawn or modified by OFCOM publishing a notice in such manner as they consider appropriate for bringing the requirement, withdrawal or modification to the attention of persons who, in their opinion, are likely to be affected by it. 10
- (5) Different requirements may be imposed for different cases.

OFCOM to decide whether to handle dispute

- 14 (1) This paragraph applies where a dispute has been referred to OFCOM under paragraph 13. 15
- (2) OFCOM must decide whether it is appropriate for them to handle the dispute.
- (3) As soon as possible after they have reached a decision, OFCOM must inform each of the parties to the dispute of – 20
- (a) their decision,
 - (b) the date it was made, and
 - (c) their reasons for it.

Resolution of disputes by OFCOM

- 15 (1) This paragraph applies if OFCOM have decided under paragraph 14 that it is appropriate for them to handle a dispute. 25
- (2) OFCOM must –
- (a) consider the dispute, and
 - (b) make a determination for resolving it.
- (3) The determination must be made as soon as reasonably practicable.
- (4) A determination binds all of the parties to the dispute. 30
- (5) Where there has been an attempt to resolve the dispute by other means –
- (a) OFCOM may, in making their determination, take account of decisions made by others in the course of that attempt, and
 - (b) the determination may include provision ratifying any of those decisions. 35

Resolution of disputes: OFCOM's powers

- 16 (1) The powers that may be exercised by OFCOM, on the making of a determination under paragraph 15, are those listed in sub-paragraph (2).
- (2) The powers are –
- (a) to make a declaration setting out the rights and obligations of parties to the dispute; 40

- (b) to give a direction fixing the terms or conditions of transactions between parties to the dispute;
 - (c) to give a direction imposing an obligation, enforceable by the parties, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM; 5
 - (d) to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment (but see sub-paragraph (3));
 - (e) to require a party to the dispute to pay all or part of another party's costs and expenses incurred in connection with the dispute; 10
 - (f) to require a party to pay all or part of OFCOM's costs of dealing with the dispute (but see sub-paragraph (4)).
- (3) A direction under sub-paragraph (2)(d) may be given only for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one party to the dispute to another. 15
- (4) A direction under sub-paragraph (2)(f) may be given to a party only if –
- (a) the party referred the dispute to OFCOM, and
 - (b) OFCOM consider that the reference was frivolous or vexatious or that the party has otherwise abused the right (conferred by paragraph 13) to refer disputes. 20

Resolution of disputes: procedure

- 17 (1) The procedure for the consideration and determination of a dispute is the procedure that OFCOM consider appropriate.
- (2) That procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by other means. 25
- (3) OFCOM must send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute.
- (4) OFCOM must publish so much of their determination as (having regard in particular to the need to preserve commercial confidentiality) they consider it appropriate to publish. 30
- (5) Information published under sub-paragraph (4) must be published in such manner as OFCOM consider appropriate for bringing it to the attention (to the extent that they consider appropriate) of members of the public.

Reference not to affect legal proceedings or OFCOM's powers 35

- 18 (1) A reference under paragraph 13 of a dispute does not prevent any person from bringing or continuing any civil or criminal proceedings in or before a court with respect to any of the matters under dispute.
- (2) Sub-paragraph (1) is subject to –
- (a) paragraph 15(4) (determination binding on all parties); 40
 - (b) any agreement to the contrary.
- (3) Any reference of a dispute to OFCOM, or consideration or determination by OFCOM of a dispute, does not prevent OFCOM from exercising any of their

powers (or from doing anything in connection with the exercise of any of their powers) in relation to the subject-matter of the dispute.

Information

- | | | |
|----|---|--------------|
| 19 | <ul style="list-style-type: none"> (1) This paragraph applies where a dispute has been referred under paragraph 13 to OFCOM. | 5 |
| | <ul style="list-style-type: none"> (2) OFCOM may require a person to provide them with specified information, in the specified manner and within the specified period.
“Specified” here means specified by OFCOM. | |
| | <ul style="list-style-type: none"> (3) The information that may be specified is information required by OFCOM for the purpose of – <ul style="list-style-type: none"> (a) deciding whether it is appropriate for them to handle the dispute, or (b) considering the dispute and making a determination under paragraph 15. | 10 |
| | <ul style="list-style-type: none"> (4) The specified period must be reasonable. | |
| | <ul style="list-style-type: none"> (5) In fixing that period, OFCOM must have regard (in particular) to – <ul style="list-style-type: none"> (a) the information that is required, (b) the nature of the dispute, and (c) the obligation imposed by paragraph 15(3) (obligation to make a determination as soon as reasonably practicable). | 15 |
| | <ul style="list-style-type: none"> (6) Part 2 of Schedule 8 (information: enforcement) applies in relation to a requirement imposed under this paragraph as if – <ul style="list-style-type: none"> (a) the requirement were imposed under paragraph 1 of that Schedule, and (b) sub-paragraphs (4) and (5) of paragraph 5 of that Schedule were omitted. | 20

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SCHEDULE 4

Section 41

RECOVERY OF ADMINISTRATIVE CHARGES INCURRED BY OFCOM

Fixing of charges

- | | | |
|---|--|----|
| 1 | <ul style="list-style-type: none"> (1) If, at any time in a charging year, a postal operator provides a service within the scope of the universal postal service, the operator must, in respect of the service, pay to OFCOM the administrative charge (if any) that is fixed by OFCOM as applicable to the operator. | 30 |
| | <ul style="list-style-type: none"> (2) OFCOM may fix the administrative charge for a charging year only if – <ul style="list-style-type: none"> (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that they are proposing to apply in fixing charges under this paragraph for that year, and (b) the charge is fixed in accordance with those principles. | 35 |
| | <ul style="list-style-type: none"> (3) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make, that – | 40 |

- (a) on a year-by-year basis the total amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their postal services functions,
- (b) the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed, and 5
- (c) the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent.
- (4) OFCOM’s power to fix charges for a particular case includes – 10
- (a) power to provide that the charges are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them,
- (b) power to provide for different charges to be imposed on different descriptions of persons,
- (c) power to provide for particular descriptions of persons to be excluded from the liability to pay charges. 15
- (5) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement (a “financial statement”) setting out for that year – 20
- (a) the total amount of the charges for that year that they have received,
- (b) the total amount of the charges for that year that remain outstanding but are likely to be paid or recovered, and
- (c) the cost to OFCOM of carrying out their postal services functions.
- (6) Any deficit or surplus shown (after applying this sub-paragraph for previous years) by a financial statement is to be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of sub-paragraph (3)(a) in relation to the following year. 25
- (7) For the purposes of this paragraph “charging year” means – 30
- (a) the period beginning with the commencement of this Schedule and ending with the next 31 March, or
- (b) any subsequent period of 12 months beginning with 1 April.

Meaning of OFCOM’s postal services functions

- 2 (1) For the purposes of paragraph 1 OFCOM’s postal services functions are – 35
- (a) functions that OFCOM carry out under, or in consequence of, any enactment relating to postal services (including one contained in this Schedule),
- (b) securing international co-operation in relation to the regulation of postal services,
- (c) market analysis and any monitoring of the controls operating in the market for the provision of postal services, 40
- (d) the carrying out for a relevant purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(6A)(b) to (e) of the Communications Act 2003 (c. 21) (as inserted by Schedule 10 to this Act),
- (e) the publication under section 26 of that Act of any information or advice that appears to OFCOM to be appropriate to make available to users of postal services, and 45

- (f) any incidental functions carried out in relation to any of the above functions.
- (2) In sub-paragraph (1)(d) “a relevant purpose” means the purpose of ascertaining the effectiveness of one or more of the following –
- (a) the regulation of the provision of postal services, 5
 - (b) the mechanisms in place for the handling by postal operators of complaints made about them by the users of postal services, and
 - (c) the mechanisms in place for resolving disputes between postal operators and the users of postal services.
- (3) In sub-paragraph (1)(f) the reference to incidental functions carried out in relation to any of the functions within sub-paragraph (1)(a) to (e) includes the taking of any steps that OFCOM consider necessary –
- (a) in preparation for the carrying out of any of those functions, or 10
 - (b) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out. 15

Procedure for fixing of charges

- 3 (1) The way in which a charge is to be fixed under paragraph 1 is by the publication or giving of such notification as OFCOM consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it. 20
- (2) OFCOM may set out in that notification the time at which the charge is to become due to them.
- (3) A charge fixed under paragraph 1 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which the service in respect of which it is fixed is not provided by the person otherwise liable to the charge. 25
- (4) A charge fixed under paragraph 1 for a charging year may also be fixed so that (subject to sub-paragraph (5)) it is referable, in whole or in part, to the provision of a service during a part of the year falling before the fixing of the charge. 30
- (5) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both –
- (a) the imposition of the charge, and
 - (b) the amount of the charge,
- are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year. 35
- (6) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM’s opinion, are likely to be affected by those principles as they think fit.
- (7) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it. 40

Notification of non-payment of charges

- 4 (1) OFCOM may bring proceedings for the recovery from a person of an administrative charge fixed for a year under paragraph 1 only if they have given that person a notification under this paragraph with respect to the amount they are seeking to recover. 5
- (2) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is in contravention of a requirement to pay the charge (whether the whole or part of it).
- (3) A notification under this paragraph must set out the determination made by OFCOM. 10
- (4) A notification under this paragraph must also specify the period during which the person notified has an opportunity –
- (a) to make representations about the notified determination, and
 - (b) to pay the unpaid charge or (if applicable) the amount outstanding. 15
- (5) The specified period must be at least one month beginning with the day after the day the notification is given unless –
- (a) OFCOM and the person notified agree a shorter period, or
 - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate. 20
- (6) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if –
- (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge, and 25
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 6(2) that the contravention to which the previous notification related did occur. 30
- (7) OFCOM may (on one or more occasions) extend the specified period.
- 5 (1) A notification under paragraph 4 –
- (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued. 35
- (2) If a notification under paragraph 4 has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount only if – 40
- (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates, or
 - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified. 45

Penalties for non-payment of charges

- 6 (1) This paragraph applies if –
- (a) a person has been given a notification under paragraph 4,
 - (b) OFCOM have allowed the person an opportunity of making representations about the notified determination, and 5
 - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on the person if the person –
- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under paragraph 1, and 10
 - (b) has not, during the period allowed under paragraph 4, paid the whole of the notified amount outstanding.
- (3) If a notification under paragraph 4 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification. 15
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be –
- (a) appropriate, and 20
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than twice the amount of the charge fixed for the year in relation to which the contravention occurred.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to – 25
- (a) any representations made to them by the person, and
 - (b) any steps taken by the person towards paying the amounts that the person was notified under paragraph 4 were outstanding.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must – 30
- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph – 35
- (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) This paragraph does not affect OFCOM’s power to bring proceedings (whether before or after the imposition of a penalty under this paragraph) for the recovery of the whole or part of an amount due to them under paragraph 1. 40

Suspending service provision for non-payment

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

-
- (2) A direction under this paragraph is a direction that the entitlement of the contravening operator to provide postal services –
- (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to D are met. 5
- (4) Condition A is that the contravening operator is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under paragraph 1 (whether in respect of the whole or a part of the charges).
- (5) Condition B is that the bringing of proceedings for the recovery of the amounts outstanding – 10
- (a) has failed to secure complete compliance by the contravening operator with the requirements to pay the charges, or
 - (b) has no reasonable prospect of securing such compliance.
- (6) Condition C is that an attempt, by the imposition of penalties under paragraph 6, to secure such compliance has failed. 15
- (7) Condition D is that the giving of the direction is –
- (a) appropriate, and
 - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions. 20
- 8 (1) Unless it provides otherwise, a direction under paragraph 7 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 7 –
- (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and 25
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening operator as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator’s services. 30
- (3) Those conditions may include a condition requiring the making of payments –
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or 35
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM are not to give a direction under paragraph 7 unless they have –
- (a) notified the contravening operator of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction, 40
 - (b) provided the contravening operator with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and 45

- (c) considered every representation and proposal made to them during the period allowed by them for the contravening operator to take advantage of that opportunity.
- (5) That period must be at least one month beginning with the day after the day the notification is given. 5
- (6) OFCOM may revoke a direction under paragraph 7 or modify its conditions –
- (a) with effect from such time as they may direct,
- (b) subject to compliance with such requirements as they may specify, and 10
- (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (7) For the purposes of paragraph 7 there are repeated contraventions by a person of requirements to pay administrative charges to the extent that –
- (a) in the case of a previous notification given to that person under paragraph 4, OFCOM have determined for the purposes of paragraph 6(2) that a contravention did occur, and 15
- (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges. 20

Enforcement of directions under paragraph 7

- 9 (1) A person commits an offence if the person provides any service –
- (a) while the person’s entitlement to do so is suspended by a direction under paragraph 7, or 25
- (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum; 30
- (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under paragraph 7 is to be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Sub-paragraphs (5) and (6) apply where a duty is owed by virtue of sub-paragraph (3) to a person. 35
- (5) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (6) An act which –
- (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and 40
- (b) is done wholly or partly for achieving that result, is actionable at the suit or instance of that person.
- (7) In proceedings brought against a person as a result of sub-paragraph (5) it is a defence for that person to show that the person took – 45

- (a) all reasonable steps, and
 - (b) exercised all due diligence,
- to avoid contravening the condition in question.

SCHEDULE 5

Section 49

APPROVAL OF REDRESS SCHEMES

5

Approval of redress schemes

- 1 (1) In deciding whether to approve a redress scheme, OFCOM must have regard to—
 - (a) the provisions of the scheme,
 - (b) the manner in which the scheme will be operated (so far as that can be judged from the facts known to OFCOM), 10
 - (c) the interests of users of postal services (including, in particular, the number of other redress schemes which are, or are likely to be, approved), and
 - (d) applicable best practice. 15
- (2) “Applicable best practice” means the principles—
 - (a) which, in OFCOM’s opinion, constitute generally accepted principles of best practice in relation to schemes for providing redress to consumers, and
 - (b) which it is reasonable to regard as applicable to the scheme. 20
- (3) OFCOM must not approve a redress scheme unless—
 - (a) the membership of the scheme is open to all postal operators,
 - (b) the independent adjudicator may require members of the scheme to provide complainants with the minimum types of redress (whether or not other types of redress are available), and 25
 - (c) OFCOM consider that the scheme makes satisfactory provision about the matters listed in sub-paragraph (6).
- (4) Sub-paragraph (3)(a) is not to be read as preventing OFCOM from approving a redress scheme that contains provision as to the expulsion of its members. 30
- (5) The minimum types of redress are—
 - (a) providing an apology or explanation,
 - (b) paying compensation, and
 - (c) taking such other action in the interests of the complainant as the independent adjudicator may specify. 35
- (6) The matters are—
 - (a) the matters about which complaints may be made (which may include contravention of a code of practice or other document),
 - (b) the independent adjudicator’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint), 40
 - (c) the enforcement of any requirement to provide redress imposed on a member of the scheme,

- (d) the acceptance and handling of complaints transferred from redress schemes which have their approval withdrawn under paragraph 2, and
 - (e) the provision of information by the independent adjudicator to the persons within sub-paragraph (7) (and, in the case of persons within sub-paragraph (7)(e) and (f), for the purposes mentioned there). 5
- (7) The persons are—
- (a) OFCOM,
 - (b) persons carrying out functions under other redress schemes that apply to postal operators, 10
 - (c) the National Consumer Council,
 - (d) the Secretary of State,
 - (e) the Office of Fair Trading, for the purposes of any public consumer advice scheme supported by it, and
 - (f) persons who operate a public consumer advice scheme supported by the Office of Fair Trading, for the purposes of that scheme. 15
- (8) In this paragraph “the independent adjudicator” means the person mentioned in section 49(2) who investigates and determines the complaints.

Approval of redress schemes: supplementary

- 2 (1) An application for approval of a redress scheme must be made in such manner, and be accompanied by such information, as OFCOM may determine. 20
- (2) The person who administers an approved redress scheme must notify OFCOM of any change to the scheme.
- (3) That notification must be given before the end of the period of 14 days beginning with the day on which the change is made. 25
- (4) OFCOM may withdraw their approval of a redress scheme, and may do so generally or in relation to complaints of a description specified by OFCOM.
- (5) OFCOM may, in particular, specify complaints by reference to the date on which they were made. 30

Procedure for refusing or withdrawing approval

- 3 (1) Before refusing or withdrawing their approval of a redress scheme, OFCOM must give the person who administers the scheme (“the scheme administrator”) a notice— 35
- (a) stating that they propose to refuse or withdraw approval,
 - (b) giving the reasons for the proposed refusal or withdrawal, and
 - (c) specifying a period within which representations about the proposed refusal or withdrawal may be made.
- (2) That period must be at least one month beginning with the day after the day the notice is given. 40
- (3) OFCOM must give notice (a “decision notice”) to the scheme administrator of—
- (a) OFCOM’s decision on a proposal to refuse or withdraw approval, and

- (b) the reasons for their decision.
- (4) If the decision is to withdraw approval, OFCOM must also give notice of their decision and the reasons for it to the Secretary of State.
- (5) The scheme administrator must give a copy of a decision notice to each member of the scheme. 5
- (6) If OFCOM decide to withdraw approval, the withdrawal has effect in accordance with, and from the date specified in, the decision notice.

SCHEDULE 6

Section 50

IMPOSITION, MODIFICATION OR REVOCATION OF REGULATORY CONDITIONS

General test for imposing or modifying regulatory conditions 10

- 1 OFCOM may impose or modify a regulatory condition only if satisfied that the condition or modification –
- (a) is objectively justifiable,
 - (b) does not discriminate unduly against particular persons or a particular description of persons, 15
 - (c) is proportionate to what it is intended to achieve, and
 - (d) is transparent in relation to what it is intended to achieve.

Provision which may be contained in regulatory conditions

- 2 (1) The power of OFCOM to impose a regulatory condition includes each of the following powers. 20

Directions

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

Consents, approvals and recommendations 25

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

Discretion

The power to confer a discretion exercisable by OFCOM or by another person specified in, or determined in accordance with, the condition. 30

Different provision for different cases

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

Revocation and modification 35

The power to revoke or modify the condition.

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

Procedure for imposing, modifying or revoking conditions

- 3 (1) The way in which a regulatory condition is to be imposed or modified is by the publication of a notification setting out the condition or modification. 5
- (2) The way in which a regulatory condition is to be revoked is by the publication of a notification stating that the condition is revoked.
- (3) Before imposing, modifying or revoking a regulatory condition, OFCOM must publish a notification – 10
- (a) stating that they are proposing to impose, modify or revoke the condition specified in the notification,
- (b) setting out the effect of the condition, modification or revocation,
- (c) giving their reasons for making the proposal, and
- (d) specifying the period within which representations may be made to OFCOM about their proposal. 15
- (4) The specified period must be at least one month beginning with the day after the day the notification is published.
- (5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they – 20
- (a) have considered every representation about the proposal that is made to them within the specified period, and
- (b) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State. 25
- (6) The publication of a notification under this paragraph must be in such manner as appears to OFCOM to be appropriate for bringing its contents – 30
- (a) in the case of a designated USP condition, a USP access condition or a USP accounting condition, to the attention of the persons who, in OFCOM's opinion, are likely to be affected by its contents, and
- (b) in any other case, to the attention of such persons as OFCOM consider appropriate.
- (7) The requirements of this paragraph apply even if OFCOM is under a duty under any other provision of Part 3 of this Act to impose or modify a condition. 35

Directions and approvals for purposes of conditions

- 4 (1) This paragraph applies if –
- (a) a regulatory condition has effect by reference to directions, approvals or consents given by a person (whether OFCOM or another), and 40
- (b) the person proposes to give a direction, approval or consent affecting the operation of the condition or to modify or withdraw a direction, approval or consent so as to affect its operation.
- (2) A person may give, modify or withdraw the direction, approval or consent only if satisfied that to do so – 45

- (a) is objectively justifiable,
 - (b) does not discriminate unduly against particular persons or a particular description of persons,
 - (c) is proportionate to what it is intended to achieve, and
 - (d) is transparent in relation to what it is intended to achieve. 5
- (3) Before the direction, approval or consent is given, modified or withdrawn, a notification must be published –
- (a) stating that there is a proposal to give, modify or withdraw it,
 - (b) identifying the person whose proposal it is,
 - (c) setting out the direction, approval or consent to which the proposal relates, 10
 - (d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal,
 - (e) giving reasons for the making of the proposal, and
 - (f) specifying the period within which representations may be made about the proposal to the person whose proposal it is. 15
- (4) That period must be at least one month beginning with the day after the day the notification is published.
- (5) But if the person giving the notification is satisfied that there are exceptional circumstances justifying a shorter period, the period for making representations may be whatever shorter period that person considers reasonable in the circumstances. 20
- (6) If –
- (a) a person other than OFCOM proposes to give, modify or withdraw a direction, approval or consent, and 25
 - (b) the condition for the purposes of which it has (or will have) effect provides for notifications of proposals for the purposes of the condition to be given by that person,
- the obligation of publishing the notification of that proposal for the purposes of this paragraph falls on that person. 30
- (7) Otherwise, the obligation of publishing a notification for the purposes of this paragraph falls on OFCOM.
- (8) The person who is authorised to give the direction, approval or consent may give effect, with or without modifications, to a proposal with respect to which a notification has been given only if the person – 35
- (a) has considered every representation about the proposal that is made to the person within the period specified in the notification, and
 - (b) has had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State. 40
- (9) The publication of a notification under this paragraph must be in such manner as appears to the person publishing it to be appropriate for bringing its contents to the attention of such persons as that person considers appropriate.

Delivery of copies of notifications etc.

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- 5 (1) The relevant person must send to the Secretary of State –

- (a) a copy of every notification published under paragraph 3 or 4,
 - (b) a copy of every direction, approval or consent given for the purpose of giving effect to a proposal required to be published under paragraph 4, and
 - (c) a copy of every instrument modifying or withdrawing a direction, approval or consent for the purpose of giving effect to a proposal required to be published under that paragraph. 5
- (2) The relevant person must send to the European Commission –
- (a) a copy of every notification published under paragraph 3(1) with respect to a designated USP condition or a general universal service condition, 10
 - (b) a copy of every direction, approval or consent given for the purposes of a designated USP condition or a general universal service condition, and
 - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent. 15
- (3) In this paragraph “the relevant person”, in relation to a notification, direction, approval or consent –
- (a) except in a case falling within paragraph (b), means the person by whom it is published or by whom it has been or is to be given, modified or withdrawn, and 20
 - (b) in the case of a direction, approval or consent given, modified or withdrawn by a person other than OFCOM for the purpose of giving effect to a proposal published by OFCOM under paragraph 4, means OFCOM. 25

SCHEDULE 7

Section 53

ENFORCEMENT OF REGULATORY REQUIREMENTS

Introduction

- 1 (1) This Schedule makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services. 30
- (2) “Regulatory requirement” means –
- (a) a regulatory condition, or
 - (b) a direction under –
 - (i) section 89A or 116(2A) of the Postal Services Act 2000 (c. 26) (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or 35
 - (ii) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (c. 17) (enforcement of requirements to give information to the National Consumer Council). 40
- (3) The reference to the enforcement of a regulatory condition includes the enforcement of an access condition containing provision as a result of paragraph 6 of Schedule 3 against the person (B) who has made the arrangements with a postal operator mentioned in that paragraph.

Notification of contravention of regulatory requirements

- 2 (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a regulatory requirement.
- (2) A notification under this paragraph must – 5
 - (a) set out the determination made by OFCOM, and
 - (b) specify the requirement and contravention in respect of which that determination has been made.
- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity – 10
 - (a) to make representations about the notified determination,
 - (b) to comply with notified requirements of which the person remains in contravention, and
 - (c) to remedy the consequences of notified contraventions.
- (4) The specified period must be at least one month beginning with the day after the day the notification is given unless – 15
 - (a) OFCOM and the person notified agree a shorter period,
 - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate, or 20
 - (c) OFCOM specify a shorter period under paragraph 8(3) (power to deal with urgent cases).
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if – 25
 - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same regulatory requirement, and
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 5(2) or 6(2) that the contravention to which the previous notification related did occur. 30
- (6) OFCOM may (on one or more occasions) extend the specified period.
- 3 (1) A notification under paragraph 2 – 35
 - (a) may be given in respect of more than one contravention, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 2 has been given to a person in respect of a contravention of a regulatory requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if – 40
 - (a) the contravention occurs after the earlier notification is given,
 - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or 45
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

- 4 OFCOM may not give a notification under paragraph 2 in relation to a contravention if –
- (a) they decide that a more appropriate way of proceeding in relation to the contravention would be under the Competition Act 1998 (c. 41), and 5
 - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.

Enforcement notification for contravention of regulatory requirements

- 5 (1) This paragraph applies if – 10
- (a) a person has been given a notification under paragraph 2,
 - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
 - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may give the person an enforcement notification if they are satisfied that the person – 15
- (a) has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2, and
 - (b) has not, during the period allowed under that paragraph, taken all such steps as they consider appropriate – 20
 - (i) for complying with that requirement, and
 - (ii) for remedying the consequences of the notified contravention of that requirement.
- (3) An enforcement notification is a notification which imposes one or both of the following requirements on the person – 25
- (a) a requirement to take such steps for complying with the notified regulatory requirement as may be specified in the notification,
 - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.
- (4) A decision of OFCOM to give an enforcement notification to a person – 30
- (a) must be notified by them to that person, together with their reasons for the decision, no later than one week after the day on which it is taken, and
 - (b) must fix a reasonable period for the taking of the steps required by the notification. 35
- (5) A person to whom an enforcement notification has been given has a duty to comply with it.
- (6) That duty is enforceable in civil proceedings by OFCOM –
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or 40
 - (c) for any other appropriate remedy or relief.

Penalties for contravention of regulatory requirements

- 6 (1) This paragraph applies (in addition to paragraph 5) if –
- (a) a person has been given a notification under paragraph 2, 45

- (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
 - (c) the period allowed for the making of the representations has ended.
 - (2) OFCOM may impose a penalty on a person if the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2. 5
 - (3) If a notification under paragraph 2 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
 - (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification. 10
 - (5) OFCOM may also impose a penalty on a person if the person is contravening, or has contravened, a requirement of an enforcement notification given under paragraph 5.
 - (6) If OFCOM impose a penalty on a person under this paragraph, they must – 15
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
 - (7) A penalty imposed under this paragraph – 20
 - (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- 7 (1) The amount of a penalty imposed under paragraph 6 on a person is to be such amount as OFCOM determine to be – 25
 - (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (2) The amount must not be more than 10% of the turnover of the person’s postal services business for the relevant period, calculated in accordance with such rules as may be set out by order made by the Secretary of State. 30
- (3) For the purposes of this paragraph –
 - “the person’s postal services business” means so much of any business carried on by the person as consists in the provision of postal services, and
 - “the relevant period” means – 35
 - (a) except in a case within paragraph (b) or (c), the period of one year ending with the 31 March next before the time when notification of the contravention was given under paragraph 2,
 - (b) in the case of a person who at that time has been carrying on postal services business for under a year, the period, ending with that time, during which the person has been carrying it on, and 40
 - (c) in the case of a person who at that time has ceased to carry on postal services business, the period of one year ending with the time when the person ceased to carry it on. 45

- (4) In making the determination of the amount of the penalty OFCOM must have regard to—
- (a) any representations made to them by the person,
 - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 2, and 5
 - (c) any steps taken by the person for remedying the consequences of those contraventions.
- (5) An order under this paragraph is subject to affirmative resolution procedure. 10

Power to deal with urgent cases

- 8 (1) This paragraph applies if OFCOM determine—
- (a) that they are entitled to give a notification under paragraph 2 with respect to a contravention by a person (“the contravening person”) of a regulatory requirement, 15
 - (b) that there are reasonable grounds for suspecting that the case is urgent, and
 - (c) that the urgency of the case makes it appropriate for them to act under this paragraph.
- (2) A case is urgent for the purposes of this paragraph if the contravention has resulted in or creates an immediate risk of— 20
- (a) a serious threat to the safety of the public, to public health or to national security,
 - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or 25
 - (c) serious economic or operational problems for users of postal services.
- (3) OFCOM may, in a notification under paragraph 2 with respect to the contravention, specify a period of less than one month for doing the things mentioned in sub-paragraph (3) of that paragraph. 30
- (4) OFCOM may also give to the contravening person a direction that the entitlement of the contravening person to provide postal services—
- (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
- 9 (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given. 35
- (2) A direction under paragraph 8—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and 40
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person’s services. 45

- (3) Those conditions may include a condition requiring the making of payments –
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction. 5
- (4) OFCOM may revoke a direction under this paragraph or modify its conditions –
- (a) with effect from such time as they may direct,
 - (b) subject to compliance with such requirements as they may specify, and 10
 - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- 10 (1) As soon as reasonably practicable after giving a direction under paragraph 8 to a person, OFCOM must give the person – 15
- (a) an opportunity of making representations to them about the grounds on which it was given, and
 - (b) an opportunity of proposing steps to remedy the situation.
- (2) As soon as reasonably practicable after the period allowed by OFCOM for making those representations has ended, OFCOM must determine – 20
- (a) whether the contravention did occur, and
 - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) If they decide that the contravention did occur and that the direction was justified, they may confirm the direction. 25
- (4) If not, they must revoke the direction or modify its conditions.
- (5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify their decision to the person to whom the direction was given.
- (6) Conditions included in a direction as a result of paragraph 9(3) have effect only if the direction is confirmed. 30

Suspending service provision for contravention of regulatory requirements

- 11 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services – 35
- (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met. 40
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of regulatory requirements.

-
- (5) Condition B is that an attempt, by the giving of enforcement notifications under paragraph 5 or the imposition of penalties under paragraph 6 (or both), to secure compliance with the contravened requirements has failed.
- (6) Condition C is that the giving of the direction is –
- (a) appropriate, and 5
 - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 12 (1) Unless it provides otherwise, a direction under paragraph 11 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given. 10
- (2) A direction under paragraph 11 –
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person’s services. 15
- (3) Those conditions may include a condition requiring the making of payments – 20
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction. 25
- (4) OFCOM may revoke a direction under this paragraph or modify its conditions –
- (a) with effect from such time as they may direct,
 - (b) subject to compliance with such requirements as they may specify, and 30
 - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (5) For the purposes of paragraph 11 there are repeated contraventions by a person of regulatory requirements to the extent that –
- (a) in the case of a previous notification given to that person under paragraph 2, OFCOM have determined for the purposes of paragraph 5(2) or 6(2) that a contravention did occur, 35
 - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a regulatory requirement, and 40
 - (c) the previous notification and the subsequent ones all relate to contraventions of the same regulatory requirement (whether the same contravention or different ones).
- 13 (1) OFCOM are not to give a direction under paragraph 11 unless they have – 45
- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,

- (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity. 5
 - (2) That period must be at least one month beginning with the day after the day the notification is given.
 - (3) This paragraph does not apply in an urgent case (as to which, see paragraph 14). 10
- 14 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 11, give the contravening person –
 - (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
 - (b) an opportunity of proposing steps to remedy the situation. 15
- (2) A case is urgent for the purposes of this paragraph if OFCOM –
 - (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and 20
 - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 13.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of –
 - (a) a serious threat to the safety of the public, to public health or to national security, 25
 - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
 - (c) serious economic or operational problems for users of postal services. 30

Enforcement of directions under paragraph 8 or 11

- 15 (1) A person commits an offence if the person provides any service –
 - (a) while the person’s entitlement to do so is suspended by a direction under paragraph 8 or 11, or
 - (b) in contravention of a restriction contained in a direction under either of those paragraphs. 35
- (2) A person guilty of an offence under sub-paragraph (1) is liable –
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine. 40

Civil liability for breach of regulatory requirements etc.

- 16 (1) The duty of a person to comply with –
 - (a) regulatory requirements,
 - (b) requirements imposed by an enforcement notification under paragraph 5, or 45

- (c) a condition of a direction under paragraph 8 or 11, is a duty owed to every person who may be affected by a contravention of the requirement or condition.
- (2) Sub-paragraphs (3) and (4) apply where a duty is owed by virtue of sub-paragraph (1) to a person. 5
- (3) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (4) An act which –
- (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and 10
- (b) is done wholly or partly for achieving that result, is actionable at the suit or instance of that person.
- (5) In proceedings brought against a person as a result of sub-paragraph (3) it is a defence for that person to show that the person took – 15
- (a) all reasonable steps, and
- (b) exercised all due diligence, to avoid contravening the requirement or condition in question.
- (6) The consent of OFCOM is required for the bringing of proceedings as a result of sub-paragraph (1)(a).
- (7) If OFCOM give their consent subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on except in compliance with those conditions. 20

SCHEDULE 8

Section 54

INFORMATION PROVISIONS

PART 1 25

REQUIREMENTS TO PROVIDE INFORMATION TO OFCOM

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

- 1 (1) OFCOM may require a person falling within sub-paragraph (2) to provide them with all such information as they consider necessary for the purpose of carrying out any of their functions in relation to postal services. 30
- (2) The persons within this sub-paragraph are –
- (a) a person who is, or has been, a postal operator,
- (b) a person who provides, or has provided, access points or other facilities for use in connection with a postal service,
- (c) a person not falling within paragraph (a) or (b) who appears to OFCOM to have information required by them for the purpose of carrying out any of their functions in relation to postal services. 35
- (3) The required information may, in particular, include information required for any one or more of the following purposes –

- (a) ascertaining whether a contravention of a regulatory requirement (within the meaning of Schedule 7) has occurred or is occurring,
 - (b) ascertaining whether a provision of a regulatory condition which is for the time being in force continues to be effective for the purpose for which it was made, 5
 - (c) making a designation in accordance with regulations made under section 34,
 - (d) carrying out a review under section 34 or 42,
 - (e) ascertaining or verifying amounts payable by virtue of section 43,
 - (f) ascertaining or verifying charges payable under Schedule 4, 10
 - (g) identifying markets and carrying out market analyses or assessments in accordance with, or for the purposes of, any enactment relating to postal services,
 - (h) statistical purposes connected with the carrying out of any of OFCOM’s functions in relation to postal services. 15
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM’s functions.

Restrictions on imposing requirements in case of conditions of general application

- 2 (1) This paragraph limits the circumstances in which OFCOM may require the provision of information under paragraph 1 for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application. 20
- (2) OFCOM may require the provision of information for that purpose only if –
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint, 25
 - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the condition in question has been complied with,
 - (c) the condition in question is one which OFCOM have reason to suspect is one that has been, or is being, contravened, or 30
 - (d) the condition in question falls within section 40(1)(b).
- (3) A “condition of general application” means a regulatory condition other than a designated USP condition, a USP access condition or a USP accounting condition. 35

Information required for related purposes

- 3 (1) OFCOM may require –
- (a) a postal operator, or
 - (b) a person who provides access points or other facilities for use in connection with a postal service, 40
- to provide OFCOM with all such information as they consider necessary to carry out comparative overviews of the quality and prices of postal services.
- (2) The overviews in question must be carried out –
- (a) with a view to publication, and
 - (b) in the interest of users of postal services. 45

- (3) OFCOM may also require—
- (a) a postal operator, or
 - (b) a person who provides access points or other facilities for use in connection with a postal service,
- to provide OFCOM, for use for such statistical purposes as they think fit, with information relating to the provision of postal services. 5
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.
- Manner in which information may be required* 10
- 4 (1) A person required to provide information under paragraph 1 or 3 must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (2) OFCOM must require the provision of information under paragraph 1 or 3 by a demand which— 15
- (a) describes the required information, and
 - (b) sets out OFCOM's reasons for requiring it.
- (3) The reasons for requiring information for statistical purposes under paragraph 1 or 3 must set out the statistical purposes for which the information is required. 20
- (4) A demand for information under paragraph 1 or 3 must be contained in a notice served on the person from whom the information is required.
- (5) This is subject to an exception in the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under Schedule 4.
- (6) In that case, the demand— 25
- (a) may be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons described in the demand as the persons from whom the information is required, and
 - (b) may take the form of a general demand for a person so described to provide information when specified conditions relevant to the person's liability to the charges are satisfied. 30

PART 2

ENFORCEMENT

- Notification of contravention of information requirements* 35
- 5 (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a requirement imposed under paragraph 1 or 3.
- (2) A notification under this paragraph must— 40
- (a) set out the determination made by OFCOM, and
 - (b) specify the requirement and contravention in respect of which that determination has been made.

- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity –
- (a) to make representations about the matters notified, and
 - (b) to comply with notified requirements of which the person remains in contravention. 5
- (4) The specified period must be at least one month beginning with the day after the notification is given unless –
- (a) OFCOM and the person notified agree a shorter period, or
 - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate. 10
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if –
- (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same requirement, and 15
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 7(2) that the contravention to which the previous notification related did occur. 20
- (6) OFCOM may (on one or more occasions) extend the specified period.
- 6 (1) A notification under paragraph 5 –
- (a) may be given in respect of more than one contravention, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued. 25
- (2) If a notification under paragraph 5 has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if –
- (a) the contravention occurs after the earlier notification is given, 30
 - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention. 35

Penalties for contravention of information requirements

- 7 (1) This paragraph applies if –
- (a) a person has been given a notification under paragraph 5,
 - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and 40
 - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on a person if –
- (a) they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 5, 45

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- (b) the person has not, during the period allowed under that paragraph, complied with the notified requirement, and
 - (c) no proceedings for an offence under paragraph 13 have been brought against the notified person in respect of the contravention.
 - (3) If a notification under paragraph 5 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention. 5
 - (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
 - (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be – 10
 - (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
 - (6) The amount must not be more than £50,000.
 - (7) In making the determination of the amount of the penalty OFCOM must have regard to – 15
 - (a) any representations made to them by the person, and
 - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 5. 20
 - (8) If OFCOM impose a penalty on a person under this paragraph, they must –
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid. 25
 - (9) A penalty imposed under this paragraph –
 - (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
 - (10) The Secretary of State may by order substitute a different maximum penalty for the maximum penalty for the time being specified in sub-paragraph (6). 30
 - (11) An order under sub-paragraph (10) is subject to affirmative resolution procedure.

Suspending service provision for contravention of information requirements

- 8 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”). 35
- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services –
 - (a) is suspended (either generally or in relation to particular services), or
 - (b) is restricted in the respects set out in the direction. 40
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.

-
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of requirements imposed under paragraph 1 or 3.
- (5) Condition B is that an attempt, by the imposition of penalties under paragraph 7 or the bringing of proceedings under paragraph 13, to secure compliance with the contravened requirements has failed. 5
- (6) Condition C is that the giving of the direction is—
- (a) appropriate, and
 - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 9 (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given. 10
- (2) A direction under paragraph 8—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and 15
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator’s services. 20
- (3) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or 25
 - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under paragraph 8 or modify its conditions—
- (a) with effect from such time as they may direct, 30
 - (b) subject to compliance with such requirements as they may specify, and
 - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (5) For the purposes of paragraph 8 there are repeated contraventions by a person of requirements imposed under paragraph 1 or 3 to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 5, OFCOM have determined for the purposes of paragraph 7(2) that a contravention did occur, and 35
 - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a requirement imposed under paragraph 1 or 3. 40
- (6) For the purposes of sub-paragraph (5) it does not matter whether the notifications relate to the same contravention or to different contraventions of the same or different requirements or of requirements under different paragraphs. 45

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- 10 (1) OFCOM are not to give a direction under paragraph 8 unless they have –
- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
 - (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and 5
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity. 10
- (2) That period must be at least one month beginning with the day after the day the notification is given.
- (3) This paragraph does not apply in an urgent case (as to which, see paragraph 11).
- 11 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 8, give the contravening person – 15
- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
 - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM – 20
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
 - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 10. 25
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of – 30
- (a) a serious threat to the safety of the public, to public health or to national security,
 - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
 - (c) serious economic or operational problems for users of postal services.
- Enforcement of directions under paragraph 8* 35
- 12 (1) A person commits an offence if the person provides any service –
- (a) while the person’s entitlement to do so is suspended by a direction under paragraph 8, or
 - (b) in contravention of a restriction contained in a direction under that paragraph. 40
- (2) A person guilty of an offence under sub-paragraph (1) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Offences in connection with information requirements

- 13 (1) A person who fails to provide information in accordance with a requirement imposed under paragraph 1 or 3 commits an offence.
- (2) A person guilty of an offence under sub-paragraph (1) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum; 5
 - (b) on conviction on indictment, to a fine.
- (3) A person does not commit an offence under sub-paragraph (1) if –
- (a) it was not reasonably practicable to comply with the requirement within the period specified by OFCOM, and 10
 - (b) the person has taken all reasonable steps to provide the information after the end of that period.
- (4) A person commits an offence if –
- (a) in pursuance of a requirement under paragraph 1 or 3, the person provides any information that is false in any material particular, and 15
 - (b) at the time the information is provided, the person knows it to be false or is reckless as to whether or not it is false.
- (5) A person guilty of an offence under sub-paragraph (4) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum; 20
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (6) Proceedings for an offence under sub-paragraph (1) may be brought in respect of a contravention by a person of a requirement imposed under paragraph 1 or 3 only if – 25
- (a) OFCOM have given the person a notification under paragraph 5 in respect of the contravention,
 - (b) the period allowed under that paragraph for doing the things mentioned in sub-paragraph (3) of that paragraph has ended without the required information having been provided, and 30
 - (c) OFCOM have not imposed a financial penalty under paragraph 7 in respect of the contravention.

PART 3

SUPPLEMENTARY PROVISIONS

Statement of policy on information gathering 35

- 14 (1) OFCOM must prepare and publish a statement of their general policy with respect to –
- (a) the exercise of their powers under paragraph 1 or 3, and
 - (b) the uses to which they are proposing to put information obtained under those paragraphs. 40
- (2) OFCOM may from time to time revise the statement.
- (3) Where OFCOM make or revise a statement under this paragraph, they must publish the statement in such manner as they consider appropriate for

bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

- (4) In exercising the powers conferred by this Schedule, OFCOM must have regard to the statement for the time being in force under this paragraph.

Provision of information by OFCOM 5

- 15 (1) OFCOM must comply with a request made by a person –
- (a) to notify the person whether or not a notification is required to be submitted by the person under regulations made under section 45,
 - (b) to notify the person whether a notification submitted for the purposes of those regulations satisfies the requirements of those regulations, or 10
 - (c) to provide the person with such information about the person’s rights as may be necessary for the purpose of facilitating the negotiation by the person of any right to be provided with access pursuant to an access condition. 15
- (2) A request for the purposes of this paragraph must be made in such manner as OFCOM may require.
- (3) OFCOM do not have to comply with a request under this paragraph if (without having been asked to do so) they have already given the person the notification or information for which the person is asking. 20
- (4) Any notification or information which under sub-paragraph (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request was made to them.

SCHEDULE 9 Section 60 25

TRANSITIONAL PROVISIONS FOR PART 3

Introduction

- 1 In this Schedule –
- “the appointed day” means the day appointed under section 64(3) as the day on which the provisions of Part 3 of this Act come generally into force; and
 - “the transitional period” means the period beginning with the day after this Act is passed and ending immediately before the appointed day.
- 30

The universal postal service

- 2 Until the first universal postal service order under section 32 comes into force –
- (a) references in Part 3 of this Act to a universal postal service are to be read as references to a universal postal service as defined by section 4(1) and (2) of the Postal Services Act 2000 (c. 26), and
 - (b) references in Part 3 of this Act to services within the scope of the universal postal service are to be read as references to services that 40

immediately before the appointed day were, according to section 7A of that Act, not outside the scope of the universal postal service in the United Kingdom.

Provisional designation of the universal service provider

- 3 (1) OFCOM may before the appointed day designate provisionally, with effect from that date, the universal service provider. 5
- (2) Any such provisional designation must be –
- (a) notified to the person designated,
 - (b) published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it, and 10
 - (c) notified to the European Commission.
- (3) Whilst in force a provisional designation has the same effect as designation under section 34.
- (4) A provisional designation ceases to have effect on the making of the first designation under that section. 15

Regulatory conditions applicable as from appointed day

- 4 (1) OFCOM must determine before the end of the transitional period what regulatory conditions (“initial conditions”) are to apply to postal operators on and after the appointed day. 20
- (2) The initial conditions applicable to –
- (a) the universal service provider, and
 - (b) other postal operators,
- must be to substantially the same effect as the licence conditions applying immediately before the appointed day to the universal service provider or, as the case may be, in relation to the corresponding description of operator, except so far as it appears to OFCOM unnecessary to maintain the existing conditions. 25
- (3) The provisions of Part 3 of this Act as to what regulatory conditions may be imposed –
- (a) have effect subject to sub-paragraph (2) in their application to the imposition of initial conditions, and
 - (b) do not apply in relation to the modification of initial conditions. 30
- (4) If OFCOM modify the initial conditions, they may not impose any conditions that could not have been imposed under Part 2 of the Postal Services Act 2000. 35
- (5) The provisions of Part 3 of this Act about –
- (a) the procedure for imposing, modifying or revoking regulatory conditions, and
 - (b) appeals against price control decisions, 40
- apply to initial conditions as to other regulatory conditions.

Power to extend operation of time-limited licence condition

- 5 (1) If it appears to the Secretary of State –

- (a) that a licence condition applicable before the appointed day to the universal service provider depends for its continuing operation on forecast figures indicating the volume of business in future periods (“index years”) set out in the condition, and
- (b) that the index years and forecast figures set out in the condition do not extend beyond the index year ending 31st March 2010, the Secretary of State may by order amend that condition so as to specify a forecast figure for the index year ending 31st March 2011. 5
- (2) The power of the Secretary of State is limited to inserting a forecast figure produced by applying the same methods as were used by the Postal Services Commission to determine the forecast figure for the index years presently set out in the condition. 10
- (3) If it appears to the Secretary of State that the Postal Services Commission has produced, using those methods, a forecast figure for the index year ending 31st March 2011, the Secretary of State may adopt the Commission’s figure and need not repeat, or examine the basis of, the work done by the Commission in producing that figure. 15
- (4) Before making an order under this paragraph the Secretary of State must –
- (a) consult the universal service provider and such other persons as the Secretary of State considers appropriate, and 20
- (b) consider any representations made before the end of the consultation period.
- The consultation period, in relation to a person, is the period of 21 days beginning with the day on which that person is consulted.
- (5) The requirements of sub-paragraph (4) may be met by consultation and consideration before the passing of this Act. 25
- (6) If an order under this paragraph is made before the appointed day, the reference in paragraph 4(2) to the licence conditions applicable immediately before that day is to be read accordingly as a reference to the conditions as amended by the order. 30

Anticipatory exercise of powers

- 6 (1) During the transitional period the provisions of Part 3 of this Act relating to –
- (a) the making of the universal postal service order,
- (b) the designation of the universal service provider, and 35
- (c) the imposition of conditions on postal operators,
- have effect so far as necessary to enable OFCOM to undertake work with a view to making an order or designation, or imposing conditions, under that Part as soon as practicable on or after the appointed day.
- (2) The work referred to in sub-paragraph (1) includes, in particular – 40
- (a) the assessment required by section 32(2) of the extent to which the market for the provision of postal services in the United Kingdom is meeting the reasonable needs of the users of the those services, and
- (b) consultation with existing licensed operators and others in connection with that assessment. 45

- 7 The provisions of Part 3 of this Act also come into force at the beginning of the transitional period so far as necessary to enable the making of any regulations, order or scheme by OFCOM or the Secretary of State.
- 8 (1) The provisions of section 54 and Schedule 8 (information) have effect during the transitional period so far as necessary for the purposes of the carrying out by OFCOM of their functions during or after that period. 5
- (2) The provisions of section 55 (general restriction on disclosure of information) have effect accordingly.

Consultation on exercise of existing regulatory functions

- 9 During the transitional period the Postal Services Commission must consult OFCOM before taking any step with a view to modifying or revoking the conditions of a licence under Part 2 of the Postal Services Act 2000 (c. 26). 10

References to universal service provider

- 10 References in this Schedule to the universal service provider, in relation to periods before the appointed day, are to the operator whose identity is for the time being notified to the European Commission as being the provider of a universal postal service in the United Kingdom. 15

Saving

- 11 Nothing in this Schedule is to be read as impliedly restricting the generality of the power to make transitional provision by order under section 64(4). 20

SCHEDULE 10

Section 63

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

AMENDMENTS OF THE POSTAL SERVICES ACT 2000 (c. 26)

- 1 The Postal Services Act 2000 is amended as follows. 25
- 2 Omit sections 1 and 3 to 5 (introductory).
- 3 Omit sections 6 to 41 (licences for postal services).
- 4 Omit sections 42 to 50 (the Postal Services Commission).
- 5 Omit sections 60 to 61A (the Postal Services Commission and the Council).
- 6 In section 62 (transfer of property etc to nominated company), omit subsections (1) to (5), (7) and (8). 30
- 7 Omit sections 63 to 67 (reorganisation of the Post Office).
- 8 (1) Section 68 (loans by the Secretary of State to the Post Office company etc) is amended as follows.

-
- (2) In the title, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
- (3) In subsection (1), for “the Post Office company or any of its subsidiaries” substitute “a relevant company”.
- (4) After that subsection insert – 5
- “(1A) In this Part “relevant company” means –
- (a) a Post Office company,
- (b) a Royal Mail company, or
- (c) a company in the same group as a company within paragraph (a) or (b).” 10
- 9 (1) Section 69 (guarantees by the Secretary of State for the Post Office company etc) is amended as follows.
- (2) In the title, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
- (3) In subsection (1), for “the Post Office company or any of its subsidiaries” substitute “a relevant company”. 15
- (4) In subsection (3), for “the Post Office company or the subsidiary concerned” substitute “the relevant company”.
- 10 (1) Section 70 (extinguishment of certain liabilities) is amended as follows.
- (2) In subsections (1) and (2), for “the Post Office company or of any of its subsidiaries” substitute “a relevant company”. 20
- (3) For subsections (3) and (4) substitute –
- “(3) Before exercising a power under subsection (1) or (2), the Secretary of State must consult –
- (a) the relevant company, and 25
- (b) if the relevant company has one or more parent companies, the parent company that does not itself have a parent company.”
- 11 In section 71(1) and (2) (limit on loans and other arrangements with government), for “the Post Office company and any of its subsidiaries” substitute “relevant companies”. 30
- 12 (1) Section 72 (reserves of the Post Office company and its subsidiaries) is amended as follows.
- (2) In the title, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”. 35
- (3) In subsection (1) –
- (a) for “the Post Office company”, in the first place it occurs, substitute “a relevant company that does not have a parent company (“the relevant company”)”;
- (b) in paragraphs (a), (b) and (c), for “the Post Office company” substitute “the relevant company”. 40

- (4) For subsection (6) substitute –
- “(5A) No direction under this section may be given to, or in respect of, a company that is not owned in its entirety by the Crown.
- (6) Before giving a direction under this section to a company, the Secretary of State must consult the company.” 5
- 13 In section 73 (statutory accounts of the Post Office company), for “the Post Office company” (in each place) substitute “the original holding company”.
- 14 (1) Section 74 (further provisions relating to the capital structure of the Post Office company) is amended as follows.
- (2) In the title, for “**the Post Office company**” substitute “**certain relevant companies**”. 10
- (3) In subsection (1), for “the Post Office company” substitute “a relevant company within subsection (1A)”.
- (4) After that subsection insert –
- “(1A) A relevant company is within this subsection if – 15
- (a) it is owned in its entirety by the Crown, and
- (b) it does not have a parent company.”
- (5) In subsection (3) –
- (a) for “The Post Office company” substitute “A relevant company within subsection (1A)”;
- (b) at the end insert “(or their nominees)”. 20
- (6) In subsection (5), for “section 63” substitute “section 5 of the Postal Services Act 2009”.
- (7) In subsection (7)(b), for “the Post Office company” substitute “the relevant company”. 25
- 15 Omit section 75 (dissolution of the Post Office).
- 16 (1) Section 77 (publicity requirements for certain accounts and reports of the Post Office company) is amended as follows.
- (2) In the title, omit “**of the Post Office company**”.
- (3) In subsections (1) and (2), for “The Post Office company” substitute “A company to which this section applies”. 30
- (4) After subsection (3) insert –
- “(3A) This section applies to the following companies –
- (a) the original holding company;
- (b) a Post Office company; 35
- (c) a Royal Mail company.”
- 17 (1) Section 78 (information requirements on the Post Office company) is amended as follows.
- (2) In the title, for “**the Post Office company**” substitute “**certain relevant companies**”. 40

- (3) In subsection (1), for “, on or after the appointed day, serve notice on the Post Office company” substitute “serve notice on a relevant company that does not have a parent company”.
- 18 Omit section 79 (exercise of functions through nominees).
- 19 In section 80(1) (shadow directors), for “the Post Office company” substitute “a relevant company”. 5
- 20 In section 82(1) (interpretation of Part 4) –
- (a) after the definition of “the appointed day” insert –
 ““company” includes any body corporate;”
- (b) for the definitions of “the Post Office company” and “relevant subsidiary” substitute – 10
- “any reference to a company being in the same “group” as another company is to be read in accordance with section 1161(5) of the Companies Act 2006,
- “the original holding company” has the meaning given by section 17 of the Postal Services Act 2009, 15
- “owned in its entirety by the Crown”, in relation to a company, has the meaning given by section 10 of that Act,
- any reference to a company being a “parent” of another company is to be read in accordance with section 1162 of the Companies Act 2006, 20
- “Post Office company” has the meaning given by section 2 of the Postal Services Act 2009,
- “relevant company” has the meaning given by section 68(1A) of this Act, 25
- “Royal Mail company” has the meaning given by section 4 of the Postal Services Act 2009;”
- (c) omit the definition of “share rights”;
- (d) omit the definition of “wholly owned by the Crown”. 30
- 21 For the title of Part 6 substitute “POSTAL SERVICES: SUPPLEMENTARY”.
- 22 (1) Section 89 (schemes as to terms and conditions for provision of a universal postal service) is amended as follows.
- (2) In the title, for “**a universal postal service**” substitute “**postal services**”.
- (3) For subsection (1) substitute – 35
- “(1) A postal operator may make a scheme under this section in relation to any or all of the postal services provided by the operator.”
- (4) In subsection (2) –
- (a) at the end of paragraph (a), insert “and”;
- (b) omit paragraph (c) (together with the “and” immediately before it). 40
- (5) In subsections (3)(a), (4)(a) and (7), for “the universal service provider concerned” substitute “the postal operator”.

23 After section 89 insert –

“89A Powers of OFCOM in relation to schemes

- (1) A postal operator may not make a scheme under section 89 unless –
 - (a) the operator has notified OFCOM of the scheme that the operator is proposing to make, and 5
 - (b) the operator has carried out a consultation exercise in relation to the proposed scheme in accordance with requirements contained in a notification published by OFCOM.
- (2) OFCOM may give a direction to a postal operator who has notified a scheme to them under subsection (1)(a) requiring the operator to make such modifications of the scheme as are specified in the direction. 10
- (3) Before giving a direction under subsection (2), OFCOM must publish a notification –
 - (a) setting out the terms of the scheme that the operator proposes to make, 15
 - (b) stating that OFCOM are proposing to give a direction under subsection (2) modifying the scheme,
 - (c) setting out the effect of the proposed modification,
 - (d) giving reasons for making the proposed modification, and 20
 - (e) specifying the period within which representations may be made to them about the proposed modification.
- (4) The specified period must be at least one month beginning with the day after the day the notification under subsection (3) is published.
- (5) OFCOM may not give a direction under subsection (2) unless they have considered every representation and proposal made to them during the period specified in that notification. 25
- (6) If the scheme is not in force at the time at which that notification is published, the operator may not bring the scheme into force until such time as OFCOM may direct. 30
- (7) OFCOM must publish a notification of any direction that they make under subsection (2).
- (8) The publication of a notification under this section must be in such manner as OFCOM consider appropriate for bringing its contents to the attention of such persons as they consider appropriate. 35
- (9) An obligation imposed on a postal operator by a direction under subsection (2) is enforceable by OFCOM under Schedule 7 to the Postal Services Act 2009 (enforcement of regulatory requirements).”

24 (1) Section 90 (exclusion of liability) is amended as follows.

(2) Before subsection (1) insert – 40

“(A1) This section applies in relation to –

- (a) the provision by the universal service provider of a universal postal service, and

- (b) the provision by a postal operator of a service in relation to which a scheme under section 89 (made by the operator) applies.
- (A2) In this section –
- (a) “the operator” means the universal service provider or the postal operator, and 5
- (b) “the service” means the service mentioned in subsection (A1)(a) or (b) (as the case may be).”
- (3) In subsection (1) –
- (a) for “a universal service provider” substitute “the operator”; 10
- (b) for “a universal postal service” substitute “the service”.
- (4) In subsection (2) –
- (a) for “a universal service provider” substitute “the operator”;
- (b) for “the provider” (in both places) substitute “the operator”;
- (c) in paragraph (b), for “an inland packet” substitute “a postal packet”. 15
- (5) In subsection (3) –
- (a) for “the universal service provider concerned” substitute “the operator”;
- (b) for “the provider” substitute “the operator”;
- (c) in paragraph (b), for “an inland packet” substitute “a postal packet”. 20
- 25 (1) Section 91 (limited liability for registered inland packets) is amended as follows.
- (2) In the title, for “**registered inland packets**” substitute “**postal packets**”.
- (3) In subsection (1) –
- (a) for “a universal service provider” substitute “a postal operator”; 25
- (b) for “an inland packet” substitute “a postal packet”;
- (c) for “the universal service provider” substitute “the operator”.
- (4) In subsection (2), for “the universal service provider” substitute “the postal operator”.
- (5) In subsection (4), for “universal service provider” substitute “postal operator”. 30
- (6) Omit subsection (6).
- 26 In section 93(2) (power to modify sections 89 to 92 of that Act), for “the Commission” substitute “OFCOM”.
- 27 In section 95 (power to acquire land etc), for “universal service providers” substitute “postal operators”. 35
- 28 After section 98 insert –
- “98A Power to modify sections 97 and 98**
- (1) The Secretary of State may by order modify sections 97 and 98.
- (2) Before making an order under subsection (1), the Secretary of State 40
must consult OFCOM and the Council.”
- 29 In section 99 (common carriers) –

- (a) for “universal service provider” substitute “postal operator”;
(b) for “a universal postal service” substitute “postal services”.
- 30 (1) Section 100 (certain exemptions from postage etc.) is amended as follows.
(2) Omit subsections (1) to (3).
(3) In subsection (4) – 5
(a) for “universal service provider” substitute “postal operator”;
(b) for “a universal postal service” substitute “postal services”.
(4) In subsection (5), for “universal service provider” substitute “postal operator”.
- 31 (1) Section 101 (directions in interests of national security etc) is amended as follows. 10
(2) In subsection (1), for the words from “such directions” to “functions” substitute “a direction to OFCOM in connection with the exercise of their functions relating to postal services”.
(3) In subsection (2), for “the Commission” substitute “OFCOM”. 15
(4) In subsection (3), for the words from “such directions” to the end substitute “a direction (relating to the provision of postal services) to –
(a) a postal operator,
(b) a description of postal operators, or
(c) all postal operators.” 20
(5) In subsection (4), for “licence holder” substitute “postal operator”.
(6) In subsection (5), for “the Commission” substitute “OFCOM”.
(7) For subsection (6) substitute –
“(6) Before giving a direction under subsection (3) to a particular postal operator (as opposed to all postal operators or a description of them), the Secretary of State must consult the operator.” 25
(8) In subsection (7)(a), for “the Commission” substitute “OFCOM”.
- 32 In section 102(3)(a) (power to ensure compliance with the Postal Services Directive), for “the Commission” substitute “OFCOM”.
- 33 In section 104(3) (inviolability of mails), omit paragraphs (a) and (b). 30
- 34 In section 105 (application of customs and excise enactments to certain postal packets), after subsection (4) insert –
“(4A) A postal operator may detain a postal packet to which this section applies until any duties and charges in respect of the packet that are recoverable by virtue of subsection (3) have been paid.” 35
- 35 After that section insert –
“105A Section 105: limit on handling charges
(1) OFCOM may give a direction to a postal operator limiting the amount of any handling charge.

-
- (2) Where a direction is given to an operator, section 105(3) to (4A) have effect in relation to it (in any case where the handling charge would otherwise exceed the amount specified in the direction) as if the handling charge were equal to the amount specified in the direction.
- (3) Before giving a direction to a postal operator, OFCOM must – 5
- (a) inform the operator that they propose to give it a direction, and
- (b) allow the operator an opportunity to make representations about the proposal.
- (4) In this section “handling charge” means a charge payable to a postal operator, in respect of a postal packet, for the performance by the operator of all or any of the duties mentioned in section 105(2)(c).” 10
- 36 (1) Section 111 (exclusion of liability in relation to postal and money orders) is amended as follows.
- (2) In subsection (1) – 15
- (a) for “the Post Office company” (in the first place) substitute “a relevant company”;
- (b) in paragraphs (a) and (b), for “the Post Office company” substitute “the company”.
- (3) In subsections (2) and (3), for “the Post Office company” substitute “a relevant company”. 20
- (4) In subsection (4) –
- (a) for “the Post Office company” (in the first place) substitute “a relevant company”;
- (b) for “the Post Office company” (in the second place) substitute “the company”. 25
- (5) In subsection (5) –
- (a) for “the Post Office company” (in the first place) substitute “a relevant company”;
- (b) for “the Post Office company” (in the second place) substitute “the company”. 30
- (6) In subsection (6) –
- (a) for “the Post Office company” (in the first place) substitute “a relevant company”;
- (b) for “the Post Office company” (in the second and third places) substitute “the company”. 35
- (7) In subsection (7), for “the Post Office company” substitute “a relevant company”.
- (8) After subsection (8) insert – 40
- “(8A) In this section “relevant company” means –
- (a) a Post Office company (as defined by section 2 of the Postal Services Act 2009), or
- (b) the original holding company (as defined by section 17 of that Act).”

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- 37 (1) Section 112 (schemes in relation to postal and money orders) is amended as follows.
- (2) In subsections (1) and (2), for “The Post Office company” substitute “A relevant company”.
- (3) In subsections (4), (5) and (8) for “the Post Office company” (in each place) substitute “a relevant company”. 5
- (4) After subsection (9) insert –
- “(9A) “Relevant company” has the same meaning as in section 111.”
- 38 (1) Section 113 (recoupment of losses on wrongly paid money orders) is amended as follows. 10
- (2) In subsection (1) –
- (a) in paragraph (a), for “the Post Office company” substitute “a relevant company”;
- (b) in paragraph (b), for “the Post Office company” substitute “a relevant company (“the company”)”. 15
- (3) In subsection (2), for “the Post Office company” substitute “the company”.
- (4) After that subsection insert –
- “(3) “Relevant company” has the same meaning as in section 111.”
- 39 (1) Section 114 (special arrangements with other countries or territories) is amended as follows. 20
- (2) In subsection (1), for “the Post Office company” substitute “a relevant company”.
- (3) In subsection (2) –
- (a) for “the Post Office company” (in the first place) substitute “a relevant company”; 25
- (b) for “the Post Office company” (in the second place) substitute “the company”.
- 40 (1) Section 116 (the Postcode Address File) is amended as follows.
- (2) In subsection (2), for “the Commission” substitute “OFCOM”.
- (3) After that subsection insert – 30
- “(2A) OFCOM may give a direction to the owner for the time being of the Postcode Address File requiring the owner –
- (a) to issue, and comply with, a code of practice dealing with the making of revisions to the File, or
- (b) to make such modifications of the code as are specified in the direction. 35
- (2B) A direction under subsection (2A) is enforceable under Schedule 7 to the Postal Services Act 2009; but, where it is given to a person who is not providing a postal service, that Schedule has effect with the omission of paragraphs 7(2) and (3), 8(4) and 11.” 40

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- (4) After subsection (4) insert –
- “(5) OFCOM may give a direction to the owner of the Postcode Address File as to the terms that may be imposed under subsection (1)(b).
- (6) If it does so, no term that contravenes the direction may be imposed under that provision.” 5
- 41 (1) Section 117 (Records of the former Postmaster General’s department) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (2), for “the Post Office company” (in both places) substitute “the original holding company”. 10
- 42 Omit section 118 (supplementary provisions about the Council).
- 43 Omit section 119 (general restriction on disclosure of information).
- 44 (1) Section 122 (orders and regulations) is amended as follows.
- (2) In subsection (3), omit “9, 10,”.
- (3) In subsection (5), omit “8,”. 15
- (4) After subsection (9) insert –
- “(9A) A statutory instrument containing regulations under paragraph 1A of Schedule 6 is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) In subsection (10), omit “10, 38(8), 58(7), 59(2),” and “, paragraph 4 of Schedule 7”. 20
- (6) In subsection (12) –
- (a) omit “8, 9, 30(2),”;
- (b) after “93,” insert “98A,”.
- 45 In section 123 (directions), at the end insert – 25
- “(4) OFCOM may give a direction under this Act only if they are satisfied that the direction –
- (a) is objectively justifiable,
- (b) does not discriminate unduly against particular persons or a particular description of persons, 30
- (c) is proportionate to what it is intended to achieve, and
- (d) is transparent in relation to what it is intended to achieve.”
- 46 In section 124(1) (general financial provision), omit paragraph (a).
- 47 (1) Section 125(1) (interpretation) is amended as follows.
- (2) After the definition of “notice” insert – 35
- ““OFCOM” means the Office of Communications,”.
- (3) For the definition of “postal operator” substitute –
- ““postal operator” has the same meaning as in Part 3 of the Postal Services Act 2009 (see section 29(3) to (5) of that Act),”.

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- (4) In the definition of “the Postal Services Directive”, for the words from “implementation” to the end substitute “improvement of quality of service, as amended from time to time,”.
- (5) After the definition of “public holiday” insert—
““public post office” means any post office from which any postal services are provided directly to the public (whether or not together with other services),”.
- (6) After the definition of “subordinate legislation” insert—
“references to the provision of a “universal postal service” are to be read in accordance with section 32 of the Postal Services Act 2009,
“universal postal service letter box” has the meaning given by section 86 of this Act,
“universal postal service post office” has the meaning given by that section,
“the universal service provider” has the meaning given by section 59(1) of the Postal Services Act 2009,”.
- 48 Omit section 126 (index).
- 49 Omit Schedule 1 (the Postal Services Commission).
- 50 In Schedule 4 (transfer to the Post Office company: tax), omit paragraphs 2 to 5 and 9.
- 51 (1) Schedule 5 (acquisition of land) is amended as follows.
- (2) In paragraphs 1 to 3, for “a universal postal service” (in each place) substitute “postal services”.
- (3) In the following provisions, for “universal service provider” (in each place) substitute “postal operator” —
- (a) paragraphs 1 to 4;
 - (b) paragraph 14;
 - (c) paragraph 20;
 - (d) in paragraph 23, in the text substituted by that paragraph;
 - (e) paragraph 24;
 - (f) paragraph 26;
 - (g) paragraph 29 (including in the text substituted by paragraph 29(d) and (e));
 - (h) paragraph 30.
- (4) In the following provisions, for “universal service provider’s” (in each place) substitute “postal operator’s” —
- (a) paragraphs 5 and 6;
 - (b) paragraph 13;
 - (c) paragraphs 15 and 16;
 - (d) paragraph 22;
 - (e) paragraph 27.
- 52 (1) Schedule 6 (further provisions relating to land) is amended as follows.
- (2) In the following provisions, for “a universal postal service” (in each place) substitute “postal services” —

-
- (a) paragraph 1(1);
 (b) paragraph 2;
 (c) paragraphs 6 to 9.
- (3) In the following provisions, for “universal service provider” (in each place) substitute “postal operator” – 5
 (a) paragraph 1(1), (5) and (7);
 (b) paragraph 2;
 (c) paragraphs 6 to 10.
- (4) In paragraph 1 – 10
 (a) in sub-paragraph (2)(a), for “a universal postal service letter box or a universal postal service pouch-box” substitute “a post office letter box or postal service pouch-box”;
 (b) in sub-paragraph (4), for “universal postal service letter boxes and universal postal service pouch-boxes” substitute “post office letter boxes and postal service pouch-boxes”; 15
 (c) in sub-paragraph (10), after the definition of “maintainable highway” insert –
 ““postal service pouch-box” means any box or receptacle provided by a postal operator for the temporary storage of postal packets in the course of transmission by post pending their collection for immediate delivery by a person who is in the course of delivering postal packets in connection with the provision of postal services;” 20
 (d) in sub-paragraph (10), omit the definition of “universal postal service pouch-box” (and the “and” immediately before it). 25
- (5) After paragraph 1 insert –
 “1A (1) The Secretary of State may by regulations make provision in connection with the exercise by postal operators of powers conferred by virtue of paragraph 1. 30
 (2) The regulations may in particular –
 (a) require a postal operator to notify OFCOM before exercising any power;
 (b) impose restrictions on the exercise of powers or provide for OFCOM to impose such restrictions; 35
 (c) make provision for and in connection with the removal of access points placed in streets (including provision requiring postal operators to secure that sufficient funds are available for the purposes of removing such access points). 40
 (3) Restrictions may be framed by reference to –
 (a) the making of a determination by any person;
 (b) the giving of an approval or consent by any person;
 (c) the opinion of any person.
 (4) The regulations may apply Schedule 7 to the Postal Services Act 2009 (enforcement of regulatory requirements), with or without modifications, in relation to requirements imposed under the regulations. 45

- (5) The Secretary of State must consult OFCOM before making regulations under this paragraph.
- (6) In this paragraph “access point” means apparatus of a kind mentioned in paragraph 1(2)(a).”
- 53 Omit Schedule 7 (disclosure of information). 5

PART 2

AMENDMENTS OF THE COMMUNICATIONS ACT 2003 (C. 21)

- 54 The Communications Act 2003 is amended as follows.
- 55 In section 3 (general duties of OFCOM), after subsection (6) insert –
- “(6A) Where it appears to OFCOM, in relation to the carrying out of any of their functions in relation to postal services, that any of their general duties conflict with their duty under section 31 of the Postal Services Act 2009 (duty to secure provision of universal postal service), priority must be given to their duty under that section.” 10
- 56 In section 14 (consumer research), after subsection (6) insert – 15
- “(6A) OFCOM must make arrangements for ascertaining –
- (a) the state of public opinion from time to time about the way in which postal services are provided;
 - (b) the experiences of consumers in the markets for postal services, in relation to the way in which those services are provided; 20
 - (c) the experiences of such consumers in relation to the handling, by persons providing postal services, of complaints made to them by such consumers;
 - (d) the experiences of such consumers in relation to the resolution of disputes with persons providing postal services; 25
 - (e) the interests and experiences of such consumers in relation to matters that are incidental to or otherwise connected with their experiences of the provision of postal services.” 30
- 57 (1) Section 16 (consumer consultation) is amended as follows.
- (2) In subsection (1)(b), at the end insert “(other than postal services)”.
- (3) In subsection (3) –
- (a) in paragraph (c), for “any such services or facilities” substitute “a service or facility mentioned in subsection (4)(a) to (e)”;
 - (b) in paragraph (e), for “such services or facilities” substitute “services or facilities mentioned in subsection (4)”. 35
- (4) In subsection (4) –
- (a) omit “and” at the end of paragraph (d);
 - (b) after paragraph (e) insert – 40
- “(f) postal services.”

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- (5) In subsection (13), in paragraph (a) of the definition of “domestic and small business consumer”, for “any such services or facilities” substitute “a service or facility mentioned in subsection (4)(a) to (e)”.
- 58 (1) Section 22(5) (representation on international and other bodies) is amended as follows. 5
- (2) In the definition of “communication functions”, omit the “and” at the end of paragraph and after that paragraph insert –
“ba) functions relating to postal services; and”.
- (3) In the definition of “international meetings about communication”, after paragraph (b) insert – 10
“(ba) the regulation of postal services;”.
- 59 (1) Section 26 (publication of information and advice for consumers etc) is amended as follows.
- (2) In subsection (2) – 15
- (a) omit the “and” at the end of paragraph (c);
- (b) after paragraph (d) insert –
“(e) the customers of persons who provide postal services.”
- (3) After that subsection insert –
- “(2A) In subsection (2)(e) the reference to customers of persons who provide postal services includes – 20
- (a) persons who wish to be provided with such services,
- (b) persons who are likely to seek to be provided with such services, and
- (c) addressees.” 25
- 60 In section 369(1) (matters in relation to which OFCOM have competition functions), after paragraph (e) insert –
“(f) the provision of postal services.”
- 61 (1) Section 370 (OFCOM’s functions under Part 4 of the Enterprise Act 2002) is amended as follows. 30
- (2) In subsection (11), for “section 3 does not” substitute “section 3 of this Act (general duties) and section 31 of the Postal Services Act 2009 (duty to secure provision of universal postal service) do not”.
- (3) In subsection (12), for “section 3(1) to (4)” substitute “section 3(1) to (4) of this Act or section 31 of the Postal Services Act 2009”. 35
- 62 (1) Section 371 (OFCOM’s functions under Competition Act 1998) is amended as follows.
- (2) In subsection (11), for “section 3 does not” substitute “section 3 of this Act (general duties) and section 31 of the Postal Services Act 2009 (duty to secure provision of universal postal service) do not”. 40
- (3) In subsection (12), for “section 3(1) to (4)” substitute “section 3(1) to (4) of this Act or section 31 of the Postal Services Act 2009”.
- 63 In section 394(2) (service of notifications and other documents) –

- (a) omit the “and” at the end of paragraph (e);
 (b) at the end insert –
 “(g) Part 3 of the Postal Services Act 2009.”
- 64 In section 400(1) (destination of licence fees and penalties), at the end
 insert – 5
 “(i) an amount paid to OFCOM in respect of a penalty imposed
 by them under Part 3 of the Postal Services Act 2009.”
- 65 In section 404(4) (criminal liability of company directors etc.) –
 (a) omit the “or” at the end of paragraph (d);
 (b) at the end insert “; or” 10
 (f) Part 3 of the Postal Services Act 2009.”
- 66 (1) Section 405 (general interpretation) is amended as follows.
 (2) In subsection (1), after the definition of “other member State” insert –
 ““postal services” has the meaning given by section 29 of the
 Postal Services Act 2009;”. 15
 (3) After subsection (5) insert –
 “(5A) References in this Act to consumers in a market for a service include,
 where the service is a postal service, addressees.”

PART 3

AMENDMENTS OF OTHER ENACTMENTS 20

House of Commons Disqualification Act 1975 (c. 24)

- 67 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975
 (other disqualifying offices), for the entry relating to a director of the Post
 Office company substitute –
 “Director of any of the following, being a director appointed or
 nominated by a Minister of the Crown or by a person acting on
 behalf of the Crown – 25
 (a) a Post Office company;
 (b) a Royal Mail company;
 (c) the original holding company. 30
 Expressions used in paragraphs (a) to (c) have the same meanings
 as in Part 1 of the Postal Services Act 2009.”

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 68 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification
 Act 1975 (other disqualifying offices), after the entry relating to a director of
 the National Building Agency insert – 35
 “Director of any of the following, being a director appointed or
 nominated by a Minister of the Crown or by a person acting on
 behalf of the Crown –
 (a) a Post Office company; 40
 (b) a Royal Mail company;

(c) the original holding company.

Expressions used in paragraphs (a) to (c) have the same meanings as in Part 1 of the Postal Services Act 2009.”

Taxation of Chargeable Gains Act 1992 (c. 12)

- 69 In section 288(3A) of the Taxation of Chargeable Gains Act 1992 (meaning of “the no gain/no loss provisions”), after paragraph (j) insert – 5
“(k) paragraph 5 of Schedule 2 to the Postal Services Act 2009.”

Office of Communications Act 2002 (c. 11)

- 70 In paragraph 12(2) of the Schedule to the Office of Communications Act 2002 (OFCOM’s annual report), omit the “and” at the end of paragraph (a) and after that paragraph insert – 10
“(aa) a report about OFCOM’s performance, during that year, of their duty under section 31 of the Postal Services Act 2009 (duty to secure provision of universal postal service); and”.

Consumer, Estate Agents and Redress Act 2007 (c. 17) 15

71 The Consumers, Estate Agents and Redress Act 2007 is amended as follows.

- 72 In the following provisions (which relate to postal services in Northern Ireland) for “relevant postal services” substitute “postal services” – 20
section 2(1)(c)(ii);
section 3(2)(b) and (4)(a);
section 4(1)(b) and (5)(b);
section 5(4)(b);
section 38(2)(c).

- 73 (1) Section 15 (reference of matters to the Postal Services Commission) is amended as follows. 25

(2) For the heading substitute “Reference of postal matters to OFCOM”.

(3) In subsection (1) –

(a) in the opening words for “the Postal Services Commission (“the Commission”)” substitute “the Office of Communications (“OFCOM”)”; 30

(b) in paragraph (a) for “a condition of a licence under Part 2 of the Postal Services Act 2000” substitute “a condition imposed under Part 3 of the Postal Services Act 2009”.

(4) In subsection (2) for “the Commission” (twice) substitute “OFCOM”.

- 74 In section 16 (investigations relating to public post offices), in subsection (2) (meaning of “public post office”) for “section 42(3)” substitute “section 125(1)”. 35

75 In section 24(9) (provision of information: definitions), in the definition of “designated regulator”) for paragraph (b) substitute –

“(b) the Office of Communications;”. 40

- 76 (1) Section 25 (enforcement by regulator of section 24 notice) is amended as follows.

- (2) In subsection (3), in the table, for the entry relating to a person holding a licence under Part 2 of the Postal Services Act 2000 (c. 26) substitute –

“A postal operator.	The Office of Communications.”
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- (3) After subsection (6) insert –
- “(6A) An obligation imposed by virtue of subsection (5) on a postal operator is enforceable by OFCOM under Schedule 7 to the Postal Services Act 2009 (enforcement of regulatory requirements).” 5
- 77 In section 29(3)(b) (disclosure of information: application of Part 9 of the Enterprise Act 2002) for “the Postal Services Act 2000” substitute “the Postal Services Act 2009”. 10
- 78 (1) Section 41 (interpretation of Part 1) is amended as follows.
- (2) At the appropriate place insert –
- “postal operator” has the same meaning as in Part 3 of the Postal Services Act 2009 (see section 59 of that Act);”.
- (3) In the definition of “postal services” for “Postal Services Act 2000 (see section 125(1) of that Act)” substitute “Part 3 of the Postal Services Act 2009 (see section 59 of that Act)”. 15
- (4) Omit the definition of “relevant postal services”.
- 79 In section 42 (interpretation of Part 2), omit the entry relating to a person holding a licence under Part 2 of the Postal Services Act 2000. 20
- 80 (1) Section 45 (information with respect to compliance with complaints handling standards) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) This section also applies in relation to standards for the handling of complaints made about postal operators by users of their services which are contained in consumer protection conditions imposed under Part 3 of the Postal Services Act 2009.” 25
- (3) In subsection (2), after “providers” insert “or postal operators”.
- 81 In section 60(10) (orders and regulations: meaning of “regulator”), omit paragraph (b) and the “or” preceding it. 30
- 82 In section 65 (extent), omit subsections (4) and (5).

PART 4

GENERAL MODIFICATIONS

- 83 The following modifications have effect subject to any express amendment made by or under this Act. 35
- 84 (1) For any reference in an enactment to the Post Office company or a relevant subsidiary within the meaning of the Postal Services Act 2000 substitute a reference to the original holding company or a Post Office company or Royal Mail company within the meaning of Part 1 of this Act.

- (2) For any reference in an enactment to the Post Office company within the meaning of that Act or any of its subsidiaries substitute a reference to—
- (a) a Post Office company,
 - (b) a Royal Mail company, or
 - (c) any company in the same group of companies as a company within paragraph (a) or (b),
- 5
- within the meaning of that Part.
- (3) For any other reference in an enactment to the Post Office company within the meaning of that Act substitute a reference to the original holding company within the meaning of that Part. 10
- 85 (1) For any reference in an enactment to a universal service provider within the meaning of the Postal Services Act 2000 substitute a reference to a postal operator within the meaning of Part 3 of this Act.
- (2) For any reference in an enactment to a universal postal service within the meaning of that Act substitute a reference to postal services within the meaning of that Part. 15
- 86 The above modifications do not apply to any enactment contained in—
- (a) the Postal Services Act 2000 (c. 26) (see Part 1 of this Schedule),
 - (b) the Communications Act 2003 (c. 21) (see Part 2 of this Schedule), or
 - (c) the Consumers, Estate Agents and Redress Act 2007 (c. 17) (see paragraphs 71 to 82 in Part 3 of this Schedule). 20

PART 5

OTHER REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Postal Services Act 2000 (c. 26)	Section 115.	25
Enterprise Act 2002 (c. 40)	In Schedule 9, paragraph 14. In Schedule 25, paragraph 42.	
Railways and Transport Safety Act 2003 (c. 20)	In Schedule 2, paragraph 19(r).	
Communications Act 2003 (c. 21)	In Schedule 17, paragraph 162(3).	30
Water Act 2003 (c. 37)	In Schedule 9, paragraph 33.	
Railways Act 2005 (c. 14)	In Schedule 12, paragraph 15.	
Consumers, Estate Agents and Redress Act 2007 (c. 17)	Section 52(4). In Schedule 1, paragraphs 30 and 31. In Schedule 2, paragraph 3. In Schedule 5, paragraph 3. In Schedule 7, paragraphs 12 to 17.	35

Postal Services Bill [HL]

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B I L L

To make provision for the restructuring of the Royal Mail group and about the Royal Mail Pension Plan; to make new provision about the regulation of postal services; and for connected purposes.

Brought from the Lords 21 May 2009.

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