

*These notes relate to the Lords Amendments to the Postal Services Bill, as brought from the House of Lords on 24 May 2011.*

## POSTAL SERVICES BILL

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### EXPLANATORY NOTES ON LORDS AMENDMENTS

#### INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Postal Services Bill, as brought from the House of Lords on 24th May 2011. They have been prepared by the Department for Business, Innovation and Skills in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 38, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister.

#### COMMENTARY ON LORDS AMENDMENTS

##### *Lords Amendment 1*

5. Lords Amendment 1 would introduce new requirements into the report that the Secretary of State must submit to Parliament when a decision has been made to undertake a relevant disposal of shares or share rights in a Royal Mail company owned by the Crown. The new requirements are that the report must include: the objective intended to be achieved by the disposal of shares; information about the expected commercial relationship between any Post Office company and the Royal Mail company in question after the disposal; and, when shares are proposed to be put into the employee share scheme for the first time, details of the scheme.

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### ***Lords Amendments 2 to 8***

6. Lords Amendments 2 to 8 would provide Parliament with increased control over the mutualisation of a Post Office company.
7. Subsection (1) of Clause 4 provides that a disposal of the Crown's interest in a Post Office company to a relevant mutual can be made only pursuant to a direction under subsection (2) or with approval given under subsection (3)(b). Lords Amendments 2 to 4 would require the direction or approval to be given by order subject to the affirmative resolution procedure. The affirmative resolution procedure requires the Secretary of State to lay a draft of the order before Parliament and for it to be approved by both Houses before it can be made (see clause 87(4)).
8. Lords Amendments 5 to 8 would require the Secretary of State to lay a report before Parliament before an order directing or approving the issue or transfer of shares or share rights in a Post Office company to a relevant mutual is made. The report must include details of the proposed issue or transfer (including the expected time-scale for the issue or transfer), name the body to whom shares or share rights are to be given and explain how that body meets the requirements for a relevant mutual set out in clause 7. This reporting requirement was contained in the Bill as introduced into the House of Commons, but it required the report to be laid after any direction or approval for the disposal of the Crown's interest in a Post Office company to a relevant mutual had been made.

### ***Lords Amendments 9 and 10***

9. Clause 11 requires a Post Office company to make an annual report to the Secretary of State on its network of post offices, and for the Secretary of State to lay this report before Parliament. Lords Amendment 9 would clarify that the report must include details of postal services provided under arrangements between a Post Office company and a universal service provider.
10. Lords Amendment 10 is a technical amendment that would clarify the Secretary of State's powers of enforcement in relation to the duty to provide an annual report on the network of post offices.

### ***Lords Amendment 11***

11. Lords Amendment 11 would introduce a new clause into the Bill. The new clause would require Royal Mail to report annually to the Secretary of State on its activities in relation to the British Postal Museum Collection and the Royal Mail Archive. Before preparing the report, Royal Mail would have to consult Post Office Ltd. The new clause would require the Secretary of State to lay

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the report before Parliament.

#### ***Lords Amendment 12***

12. Lords Amendment 12 concerns the transfer of assets from the Royal Mail Pension Plan (RMPP) to the Government. The department expects assets to be transferred under Clause 20 from the RMPP in two tranches: the bulk at the 'relevant time' when liabilities are transferred; followed by a second transfer when actuarial calculations have been finalised. The second transfer will include adjustments to account for investment and market movement in the time since the initial transfer. Lords Amendment 12 ensures that these adjustments are disregarded when assessing the asset/liability ratio within the RMPP immediately before and immediately after the transfer.

#### ***Lords Amendment 13***

13. Lords Amendment 13 would ensure that information relating to pensions or other benefits under the RMPP or the new public scheme could be shared between the Secretary of State, the administrators of the new public scheme, the Trustees of the RMPP (and any of the Trustees' administrators), and the employer. New subsection (4) would ensure that these information sharing arrangements would also apply to any section of the RMPP that is constituted as a separate pension scheme.

#### ***Lords Amendment 14***

14. Lords Amendment 14 would allow the Secretary of State to commence any Order (or any provision of any Order) made under Part 2 of the Bill on a specified day by means of a commencement order.

#### ***Lords Amendments 15, 20 and 25***

15. Lords Amendment 20 would introduce a new clause into the Bill. The new clause would enable Ofcom to impose a notification condition on any person providing or intending to provide a service within the scope of the universal postal service. A notification condition would require the person to give Ofcom advance notice of their intention to provide, or expand, a letters business on a specified scale. The new clause would also provide a power for the Secretary of State to direct Ofcom to impose a notification condition.
16. Lords Amendments 15 and 25 are consequential to amendment 20. Lords Amendment 15 would add notification conditions to the list of conditions which are regulatory conditions. Lords Amendment 25 would clarify that the term 'notification condition' has the meaning given by amendment 20.

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### ***Lords Amendments 16 to 18***

17. Clause 28 places a duty on Ofcom to have regard to the need for the provision of a universal postal service to be financially sustainable and efficient.
18. Lords Amendment 16 would clarify that the need for efficiency would apply after a reasonable period of time. Lords Amendment 18 would define “reasonable period” as a period beginning on the day that the provisions of Part 3 of the Bill come into force and which Ofcom consider, in all the circumstances, to be reasonable.
19. Lords Amendment 17 would introduce a further requirement that, when having regard to the need for the universal postal service to be financially sustainable, Ofcom includes the need for a reasonable commercial rate of return for a universal service provider on any expenditure incurred for the purpose of, or in connection with, providing the universal postal service.

### ***Lords Amendment 19***

20. Lords Amendment 19 would introduce a power for the Secretary of State to direct Ofcom to take, or refrain from taking, action to ensure that sufficient access points are provided throughout the United Kingdom to meet the interests of the public. Under Clause 28, Ofcom has a duty to ensure sufficient access points to meet the reasonable needs of users. The purpose of Lords Amendment 19 is to introduce the power for the Secretary of State to consider ‘interests of the public’ as distinct from ‘user needs’. The meaning of ‘access points’ is given in clause 28 as “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”.

### ***Lords Amendments 21 and 22***

21. Lords Amendments 21 and 22 relate to the review of the costs of the universal service obligation and the remedies available in the event that the universal service obligation is found to be an unfair burden on the provider.
22. Lords Amendment 21 would prevent Ofcom from undertaking a review of the costs of the universal service obligation for five years, rather than three years as was in the Bill as introduced into the House of Commons, unless the Secretary of State directed Ofcom to do so.
23. Lords Amendment 22 would prevent Ofcom from making a procurement determination within 10 years from the day that Part 3 of the Bill comes into force, unless the universal service provider agrees.

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***Lords Amendments 23 and 27***

24. Lord Amendments 23 and 27 give effect to recommendations of the Lords Delegated Powers and Regulatory Reform Committee. Lords Amendment 23 would ensure that when applying provisions of the Enterprise Act 2002 to appeals under the Postal Services Bill, the Secretary of State cannot impose civil or criminal penalties at greater levels than those specified in the Enterprise Act 2002. Amendment 27 would introduce the negative resolution procedure into the Secretary of State's power to amend the universal postal service order in a special administration scenario. The negative resolution procedure is defined in Clause 87(8).

***Lords Amendments 24 and 26***

25. Lords Amendment 26 would clarify that any directions made under Part 3 of the Bill must be in writing and may be varied or revoked by a further direction. Lords Amendment 24 would remove a specific reference in clause 60 to this procedure as it would be superseded by Lords Amendment 26.

***Lords Amendment 28***

26. Lords Amendment 28 would remove from the Bill an amendment of Schedule 5 to the Government of Wales Act 2006. The 2011 Welsh referendum on the powers of the Welsh Assembly has resulted in Schedule 5 to that Act being replaced by Schedule 7 to that Act from 5<sup>th</sup> May 2011. There is no need to amend Schedule 7, as that Schedule does not refer to 'licensed postal operators' or 'Postcomm' and it is those terms in Schedule 5 that this Bill originally sought to amend.

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