

*These notes refer to the Postal Services Bill [HL]
as introduced in the House of Lords on 25th February 2009 [HL Bill 24]*

POSTAL SERVICES BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Postal Services Bill [HL] as introduced into the House of Lords on 25th February 2009. They have been prepared by the Department for Business, Enterprise and Regulatory Reform in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

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

BACKGROUND

3. At present, legislation governing the postal services sector is contained in the Postal Services Act 2000. This Act, amongst other things, gave the postal services regulator, the Postal Services Commission (Postcomm), its duties and powers, including the duty to ensure the provision of a universal postal service. The 2000 Act also introduced a new system of licensing and regulation for postal service operators.

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

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

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

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It was against this background that the government commissioned an independent review of the postal services sector. Led by Richard Hooper CBE, the review (the Hooper Review) was announced in December 2007.

The Hooper Review

7. In December 2008 the Hooper review published its final report, entitled *Modernise or Decline: policies to maintain the universal postal service in the United Kingdom* (Cm 7529).

8. The review process included consultation with consumers and their representatives, postal companies, trade unions, political parties, government departments, the devolved administrations and regulators.

9. The Hooper Review identified a number of key challenges facing the postal services sector and Royal Mail Group Ltd (Royal Mail). Particular emphasis was placed on Royal Mail as it is the only company currently capable of providing the universal service throughout the United Kingdom.

10. The Hooper Review identified five major factors that are hampering Royal Mail's ability to respond to the changing market:

- a) Inefficiency. Royal Mail is much less efficient and profitable than its main European peers.
- b) Pension deficit. Royal Mail's historic pension deficit is one of the largest in the United Kingdom and is a major drain on the company's cash.
- c) Pricing. Increasing postal prices is no longer guaranteed to generate sufficient revenues to offset falling volumes.
- d) Labour relations. The relationship between management and the Communications Workers Union is extremely difficult.
- e) Relationship with the regulator. The relationship between the company and its regulator, Postcomm, is difficult.

11. To address these difficulties, the Hooper Review proposed a package of measures:

- a) Strategic partnership: Royal Mail should enter into a strategic partnership with a private sector firm that has demonstrable expertise in transforming a major network business.
- b) Pensions: the government should tackle the historic pension deficit, to enable Royal Mail to benefit from modernisation.
- c) New regulatory regime: postal regulation should be placed within the broader context of the communications market, with the primary duty of the regulator in relation to postal services being to maintain the universal service.

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PURPOSE OF THE BILL

12. This Bill has three main purposes. First, it makes provision to ensure Royal Mail Group Ltd and Post Office Limited remain in public ownership, while allowing for a sale of a minority stake in Royal Mail. Secondly, it makes provision for the transfer of Royal Mail's historic pension deficit to the government. Thirdly, it makes provision for a new regulatory regime for the postal services sector, including transferring regulatory responsibility from Postcomm to the Office of Communications (OFCOM), with the primary duty of OFCOM in relation to postal services being to maintain the universal service.

STRUCTURE OF THE BILL

13. The Bill is divided into four Parts:

14. Part 1 of the Bill deals with the restructuring of the Royal Mail group. In particular, provision is made to ensure Royal Mail Group Limited and Post Office Limited remain in public ownership, while allowing for a sale of a minority stake in Royal Mail.

15. Part 2 of the Bill deals with the Royal Mail pensions scheme. This Part provides for the transfer of the historic pension deficit to government and sets out how this will be done.

16. Part 3 of the Bill deals with the regulation of the postal services sector. This Part includes provisions giving OFCOM the functions of the regulator for the postal services sector and abolishing Postcomm, making maintenance of the universal service the primary duty for the regulator in relation to postal services, replacing the current licensing regime for the provision of postal services with a general authorisation scheme, and providing for the regulator to impose conditions aimed at ensuring accounting separation and cost transparency.

17. Part 4 of the Bill contains general provisions relating to orders or regulations made by the Secretary of State, commencement and other general matters.

TERRITORIAL EXTENT

18. The Bill extends to the United Kingdom.

COMMENTARY ON CLAUSES

Part 1: Restructuring of Royal Mail group

Summary and Background

19. Part 1 of the Bill is concerned with the restructuring of the Royal Mail group of companies. This includes Post Office Limited which is currently a subsidiary of Royal Mail Group Limited. In particular, the provisions will ensure that any Royal Mail company providing the universal postal service is publicly owned (which will permit a minority sale of shares in such a company to a third party) and will also ensure that any Post Office company engaged in the provision of a post office network remains entirely owned by the Crown.

20. To facilitate the internal group restructuring that will be necessary before a minority stake is sold in Royal Mail Group Limited, this Part of the Bill contains tax provisions to ensure that the internal group restructuring is, so far as possible, tax neutral.

21. This part also contains transfer scheme provisions which will enable the transfer of property, rights or liabilities between companies in the Royal Mail group.

Ownership of the Post Office

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

22. Subsection (1) requires that each Post Office company must be owned in its entirety by the Crown (i.e. the Secretary of State and/or the Treasury). To ensure that this is the case, Subsection (2)(a) and (b) provide that any issue or transfer of shares in a company or of share rights (i.e. rights to subscribe for (or acquire shares) and any other rights in connection with shares) is ineffective if it would cause a Post Office company to cease to be owned in its entirety by the Crown. The meaning of Post Office company is set out in clause 2. Clauses 10 to 12 contain further details as to what is meant by “owned in its entirety by the Crown”.

Clause 2: Meaning of “Post Office Company”

23. Subsection (1) defines a Post Office company as one which meets the criteria set out. The criteria are that the company:

- 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 (i.e. Royal Mail Holdings plc), or
 - ii) in the same group as a company that is or was, designated under this clause; and
- c) is designated as a Post Office company by the Secretary of State.

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24. Subsection (2) provides that a company can only be designated if immediately before its designation, it is owned in its entirety by the Crown.

25. Subsection (3) provides that an order made under subsection (1) may not be amended or revoked.

26. Under subsection (4), before section 65 or 66 of the Postal Services Act 2000 can be repealed, the Secretary of State must have designated Post Office Limited (POL) as a Post Office company. Section 65 of the Postal Services Act 2000 precludes the issue of shares in certain companies in the Royal Mail group, including POL, outside the Crown, except where the issue has been approved under section 67 of that Act. Section 66 of the Postal Services Act 2000 precludes the transfer of shares in certain companies in the Royal Mail group, including POL, outside the Crown, except where the transfer has been approved under section 67 of the Postal Services Act 2000. By requiring the Secretary of State to have designated POL as a Post Office company before the share issue and transfer restrictions in the existing legislation are lifted, it ensures that POL will always be caught by either the existing restrictions or the new ones.

Ownership of the Royal Mail

Clause 3: Royal Mail Companies to be publicly owned

27. Subsection (1) requires that each Royal Mail company must be publicly owned. To ensure that this is the case, subsection (2)(a) and (b) provide that any issue or transfer of shares or of share rights in a company is ineffective if it would cause a Royal Mail company to cease to be publicly owned. The meaning of Royal Mail company is set out in clause 4. Clauses 10 to 12 contain further details as to what is meant by “publicly owned”.

Clause 4: Meaning of “Royal Mail company”

28. Subsection (1) defines a Royal Mail company as one which meets the criteria set out. The criteria are that the company:

- a) provides a universal postal service;
- b) is or has at any time been –
 - i) a subsidiary of the original holding company, (i.e. Royal Mail Holdings plc), or
 - ii) in the same group as a company that is or was, designated under this clause; and
- c) is designated as a Royal Mail company by the Secretary of State.

29. Subsection (2) provides that any company can only be designated if immediately before its designation, it is publicly owned.

30. Subsection (3) provides that an order made under subsection (1) may not be amended or revoked.

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31. Under subsection (4), before section 65 or 66 of the Postal Services Act 2000 can be repealed, the Secretary of State must have designated Royal Mail Group Limited (RMG) as a Royal Mail company. Section 65 of the Postal Services Act 2000 precludes the issue of shares in certain companies in the Royal Mail group, including RMG, outside the Crown, except where the issue is approved under section 67 of that Act. Section 66 of the Postal Services Act 2000 precludes the transfer of shares in certain companies in the Royal Mail group, including RMG, outside the Crown, except where the transfer has been approved under section 67. By requiring the Secretary of State to have designated RMG as a Royal Mail company before the share issue and transfer restrictions in the existing legislation are lifted, it ensures that RMG will always be caught by either the existing restrictions or the new ones.

Securities

Clause 5: Power to direct issue of certain securities

32. This clause is similar in effect to section 63 of the Postal Services Act 2000. It enables the Secretary of State to direct a Post Office company, a Royal Mail company, or a company in the same group as such a company that is owned in its entirety by the Crown to issue securities to the Secretary of State, the Treasury, or to a nominee of either of them. The Secretary of State can also direct a Post Office company or a Royal Mail company to issue securities to its parent company if that parent company is owned in its entirety by the Crown

33. Any direction under this clause must specify the kind and amount of the securities to be issued, the terms of the issue and the date at or by which the securities should be issued.

34. Subsection (5) provides that any shares issued under this section are to be issued as fully paid up and treated for the purposes of the Companies Act as if they had been paid up by virtue of payment of their nominal value in cash.

35. Before a direction can be made the Treasury must give consent and the Secretary of State must consult with the company to whom the direction is being given, and any ultimate parent company of that company.

Clause 6: Government investment in certain securities

36. This clause enables the Treasury, or, with the consent of Treasury, the Secretary of State to acquire securities in a Post Office company, a Royal Mail company or a company in the same group as them.

Transfer of property etc

Clause 7: Transfer schemes

37. This clause enables the original holding company (Royal Mail Holdings plc) to make one or more transfer schemes to transfer property, rights and liabilities between the original holding company and a subsidiary of that company or between subsidiaries of that company, provided that the companies involved are owned in their entirety by the Crown (subsection

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(3)). The transfer schemes will ensure that in any restructuring the appropriate property, rights and liabilities are located in the appropriate company in the group. Transfer schemes have to be approved by the Secretary of State and can be modified by the Secretary of State, (subsection (4)), though the Secretary of State must consult the original holding company before modifying a scheme (subsection (5)). Subsection (6) gives the Secretary of State a power to direct the original holding company to make a transfer scheme, provided it is owned in its entirety by the Crown, as set out in the direction.

38. Further provisions about transfer schemes are contained in Schedule 1.

Clause 8: Transfer of employees other than under transfer scheme

42. This clause relates to any agreements between companies in the Royal Mail group of companies which are owned in their entirety by the Crown which provide:

- i) for employees' rights and liabilities under contracts of employment with one company to be transferred to another company in the group, or
- ii) for activities carried out by employees of one company for another (e.g. under a secondment agreement) to cease when the company for which those activities were being carried out decides to carry out those activities itself.

39. The Secretary of State may designate any contract of employment which is to be so transferred or any employee involved in the carrying out of such activities for another company in the group. On the coming into force of the agreement, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) will apply in relation to the transfer of the designated contracts of employment, or the cessation by the designated employees of the relevant activities, whether or not the provision made by the agreement constitutes a relevant transfer under the TUPE regulations.

Clause 9: Taxation provisions relating to re-structuring

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

Interpretation

Clause 10: Meaning of “owned in its entirety by the Crown” and “publicly owned”

41. This clause sets out the meaning of “owned in its entirety by the Crown” and “publicly owned” for the purposes of this Part of the Bill. The former is the case when the Crown owns all of a company (either directly or indirectly) and the latter if the Crown owns more than half of it (either directly or indirectly).

Clause 11: Indirect ownership of companies

42. This clause defines the meaning of indirect ownership of companies and is intended to ensure that the requirements for public ownership are not diluted by sales of shares along a chain of companies. To ensure RMG (and any other Royal Mail company) is publicly owned at all times, account must be taken of the Crown's shareholding in any holding companies and how this flows through the subsidiary companies below it. For example, if the Crown owned 51% of shares of a holding company and that holding company owned 51% of a Royal Mail company, then the Crown would only indirectly own 26% of the Royal Mail company. Clauses 1 and 3 together with this provision ensure that the Crown will at all times in substance own 100% of a Post Office company, and more than 50% of a Royal Mail company, taking into account ownership through any intervening holding companies.

Clause 12: Ownership of a company

43. This clause sets out what is meant by ownership of a company. Subsection (1) provides that the proportion of a company owned by the Crown, or any other person, is whichever of the following is the smallest:

- a) proportion of the company's issued share capital owned by the person;
- b) the proportion of the voting rights in the company owned by the person;
- c) the proportion of the company's distributable assets to which the person is entitled; and
- d) the proportion of the company's distributable profits to which the person is entitled.

44. Subsection (2) makes it clear that the property and rights of the Secretary of State, the Treasury or a nominee of the either of them shall be regarded as those of the Crown. Subsections (3) to (5) define "voting rights in the company", "distributable assets" and "distributable profits" for the purposes of this clause. Subsection (6) provides for the application of the clause in relation to a company that does not have a share capital.

Clause 13: Directions

45. This clause provides that directions given under this Part of the Bill must be in writing and may be varied or revoked by further directions. A person in receipt of a direction has a duty to comply with it, enforceable as specified in subsection (5). The clause applies to the powers of direction contained in clauses 5 and 7(6).

Clause 14: Interpretation of Part 1

46. This is an interpretation clause which sets out the definitions of terms used in this Part of the Bill.

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Part 2: Royal Mail Pension Plan

Summary and Background

47. Part 2 of the Bill gives power to the Secretary of State to remove historic pension liabilities from the Royal Mail and to take the liabilities into government. In particular, the Secretary of State is given power to:

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

48. When exercising the powers conferred by this Part, the Secretary of State must ensure that the pension provision in respect of anyone in the RMPP (or who has benefits transferred to the new statutory scheme) is in all material respects at least as good immediately after the power has been used as it was before that use of the power (clause 19). In addition, where the Secretary of State transfers assets to the government the ratio of assets to liabilities in the scheme after the transfer must be at least as good as the ratio before any assets transfer and attendant transfer of benefits (clause 21).

Introduction

Clause 15: Introduction

49. Subsection (1) defines the three main concepts in this Part of the Bill.

50. The first concept is “qualifying member of the RMPP”. This means a group of members of the RMPP specified by the Secretary of State by an order under this Part.

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

52. The third concept is “qualifying accrued rights”. These are the entitlements under the RMPP scheme that may be transferred to the new scheme under clause 16. Qualifying accrued rights will cover:

- rights of qualifying members or their beneficiaries to future benefits under the RMPP;

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- rights of qualifying members or their beneficiaries to the current payment of a pension, or other benefit.

53. Subsection (2) provides that “qualifying accrued rights” includes pension credit rights, which are pension rights provided to the ex-spouse of a member if that member’s pension benefit is divided between them pursuant to a pension sharing order on divorce, and any additional voluntary contributions which a member has made up to the qualifying time to enhance their benefits in the Royal Mail Pension Plan.

54. Subsection (3) provides that if “qualifying members” includes members who are in service after the qualifying time, their “qualifying accrued rights” will be calculated as if they had left the scheme at the qualifying time. So, in the case of current or active (rather than retired) members, the right that is transferred is to be calculated by reference to service up to the qualifying time and by reference to the member’s salary at or near the qualifying time, in accordance with the RMPP rules. If further rights accrue in respect of service before the qualifying time (e.g. where the pension is linked to the member’s final salary), amendments to the RMPP scheme will make it clear that these further rights will remain in the RMPP scheme. The Secretary of State has power to amend the RMPP scheme under clause 18 to achieve this.

Powers exercisable

Clause 16: Transfer of qualifying accrued rights to new public scheme

55. Subsection (1) confers power on the Secretary of State to establish a new scheme for pensionable service in the RMPP up to the qualifying time in respect of members designated as qualifying members. Subsection (2) allows the Secretary of State to transfer “qualifying accrued rights” of such members to this new scheme. The consequence of this transfer is that the corresponding liabilities of the RMPP scheme will be extinguished.

56. Subsection (3) provides that the benefits payable by a new scheme may be increased on such basis as the Secretary of State may determine and gives the Secretary of State power to pay a transfer value in respect of a member’s qualifying accrued rights. It also enables the Secretary of State to include provision in the scheme for further payments to active members of greater value than a deferred pension.

57. A new scheme established under this clause will not otherwise come within the definition of an occupational pension scheme or public service pension scheme in section 1(1) of the Pension Schemes Act 1993. Subsection (4) therefore provides that a new scheme may be deemed to be an occupational pension scheme for the purposes of applying any legislation to the scheme as may be prescribed by the Secretary of State.

58. Subsection (5) provides that an order by the Secretary of State may provide for a new scheme to be treated as a contracted-out scheme and as capable of providing contracted-out

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benefits for the purposes of Part 3 of the Pension Schemes Act 1993. This will allow benefits which are contracted out under the RMPP scheme to transfer to the new scheme.

59. Subsection (6) permits an order to have retrospective effect. This power may be used to enable the new scheme to be established with effect from a date before an order is made under this clause. This may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order. In addition this power would enable the Secretary of State to amend the new scheme rules to have retrospective effect, for example, to ensure that the rules complied with changes in legislation.

60. Under subsection (7) the Secretary of State may provide for a new scheme to be administered by any person and may delegate to any person any functions exercisable by the Secretary of State under a new scheme.

Clause 17: Division of the RMPP into different sections

61. Subsection (1) allows the Secretary of State by order to divide the RMPP into sections and to allocate assets, rights, liabilities and obligations between different sections, and to provide for different companies to participate in different sections. It is envisaged that this power may be used to create a section in the RMPP for Post Office Limited. The government's intention is to create a new scheme under clause 16 in respect of qualifying accrued rights. However, the powers conferred by this clause may also be used to establish a separate section within the RMPP in respect of "qualifying accrued rights" if it is found to be needed.

62. Under subsection (2) an order made by the Secretary of State may require the Secretary of State to provide financial support to a section of the RMPP by making payments to the RMPP trustee to enable the trustee to discharge the liabilities in respect of qualifying accrued rights.

63. Subsection (3) includes provision to require the RMPP trustees to obtain the Secretary of State's consent to the exercise of certain discretionary powers in the RMPP rules as the Secretary of State may prescribe. Subsection (4) limits this power to require consent to discretionary powers relating to making or increasing payments under the RMPP or amendments to the RMPP rules. This is because the intention is to require the consent of the Secretary of State for the exercise of any discretionary power by the RMPP trustee or Royal Mail under the scheme rules (e.g. to augment benefits) or any amendment which would have the effect of increasing the qualifying accrued rights and therefore the liabilities of the government under the new scheme to which the qualifying accrued rights will be transferred. Subsection (3) also provides that an order under clause 17 may authorise the Secretary of State to make payments to the RMPP trustee where discretionary powers under the RMPP have been exercised with the Secretary of State's consent or to authorise the Secretary of State to increase payments under subsection (2).

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64. Subsection (5) allows an order to include provision securing that the RMPP scheme continues to be treated as a contracted-out scheme for the purposes of Part 3 of the Pension Schemes Act 1993. This power may be used in relation to a separate section in the RMPP for ‘qualifying accrued rights’, where the section would not meet the criteria for being contracted out as it would not be an occupational pension scheme supported by an employer of any of the members.

65. Subsection (6) allows an order under this clause to have retrospective effect. As with a new scheme established under clause 16, this may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order.

Clause 18: Amendments of the RMPP

66. Subsection (1) provides that the Secretary of State may by order make amendments to the RMPP in such a way as the Secretary of State considers appropriate in connection with an order under clause 16 or 17.

67. Subsection (2) provides that these amendments can cover benefits payable in respect of pensionable service before and after the qualifying time. This would enable amendments to the scheme rules in relation to benefits payable in addition to the qualifying accrued rights, so that it was clear whether these benefits were met from the RMPP scheme or, in the event of a clause 16 order, from the new scheme. It would also enable amendments to be made to any other documents governing or relating to the financial support provided to the RMPP, to address the effect of dividing the RMPP into sections.

68. Subsection (3) allows an order under this clause to have retrospective effect.

Clause 19: Protection against adverse treatment

69. This clause provides two forms of protection against RMPP members’ benefits being adversely affected.

70. Subsections (1) to (3) provide that the Secretary of State must secure that the pension provision for current and past members of the RMPP (including any such persons in a new scheme established under clause 16) accrued under the RMPP is, in all material respects, at least as good immediately after the exercise of any power provided under this Part to transfer liabilities from the RMPP to the new scheme, divide the RMPP into sections and/or amend the RMPP as such provision was immediately before the power was exercised. These provisions only apply to the Secretary of State when exercising those powers, and are not intended to constrain the ability of Royal Mail and the trustees of the RMPP to make amendments to the RMPP. Nor does it affect the ability of the Secretary of State to make any changes that may be required to the new scheme in the future, which is instead constrained by subsection (6).

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

72. Subsection (6) provides that the power of the Secretary of State to make any changes that may be required to the new scheme in the future may not be exercised in any manner which would, or might, adversely affect any provision of the scheme in respect of qualifying accrued rights, unless any member affected has given consent in accordance with requirements prescribed under subsection (7), or the modification has been made in a prescribed manner.

Clause 20: Transfer of assets of the RMPP

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

74. Subsection (2) provides that this power can only be exercised where there has been an order (defined as a "pensions order") under either clause 16 (transferring accrued rights to a new scheme) or clause 17 which includes a requirement for the Secretary of State to make payment to the RMPP trustees in respect of a section in the RMPP scheme for qualifying accrued rights.

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

76. Clause 21 provides for restrictions on the transfer of assets under this clause.

Clause 21: Restriction on power to transfer assets

77. This clause places a limit on the assets that the Secretary of State may transfer out of the RMPP using the powers under clause 20.

78. Subsection (1) requires that the ratio of assets to liabilities in the RMPP is no worse immediately after the transfer of assets under clause 20 than it was immediately before the transfer.

79. If the Secretary of State makes an order under clause 17(2) providing for a payment to be made to the RMPP trustee in respect of qualifying accrued rights following sectionalisation

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of the RMPP, subsection (3) provides that the ratio will be assessed on the basis that those liabilities are extinguished.

80. Under subsection (4) the valuation of assets and liabilities are to be made by a person, and in a manner, determined by the Secretary of State. Subsection (5) disapples any provision in the RMPP which limits the calculation of the scheme's liabilities by reference to the scheme assets. This has been included because pension scheme rules typically include provisions limiting the scheme's liabilities by reference to the assets available in the event that the scheme is wound up.

Supplementary provisions

Clause 22: Taxation

81. Subsections (1) and (4) of this clause allow the Treasury by regulations, to modify the way in which any relevant tax would otherwise have effect in relation to the new scheme, the members of the new scheme or a fund within clause 20(1)(c).

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

83. Subsections (3) and (4) allow the Treasury by regulations, to modify the taxation of the RMPP or members of the RMPP which would otherwise have resulted from anything done in relation to the RMPP or members of the RMPP by an order made under these clauses. This will enable tax provision to be made mitigating the tax charges that might otherwise have arisen in respect of transfers of assets and in respect of tax consequences for the Royal Mail group companies of the changes to the pension arrangements.

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

85. Subsection (6) lists the taxes for which provision can be made and defines the terms used in the clause.

Clause 23: Information

86. This clause enables the Secretary of State to make provision, by order, requiring prescribed persons to disclose information required by the Secretary of State for the purposes of the powers under Part 2 of the Bill.

Clause 24: Orders and regulations

87. Subsection (1) of this clause provides that before the Secretary of State exercises his powers under clause 16(1) or (2), or under any other clause in this Part, the RMPP trustees

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must be consulted. Subsection (2) provides that the Secretary of State may not make an order under this Part, other than under clause 23, without the consent of the Treasury.

Clause 25: Interpretation of Part 2

88. This is an interpretation clause which sets out the definitions of terms used in this Part of the Bill.

Part 3: Regulation of postal services

Summary and Background

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

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

Postal services

Clause 26: Postal services, postal packets and postal operators

91. This clause defines “postal services”, “postal packet” and “postal operator”. The definitions are the same as those used in the Postal Services Act 2000 (section 125), except for one change in relation to “postal operator”. Subsection (4) excludes from the definition of “postal operator” persons who only receive packets on behalf of another (either as agents or otherwise), and subsection (5) confers a power on the Secretary of State to prescribe circumstances in which that exclusion does not apply. The regulations are subject to affirmative resolution procedure.

Clause 27: General authorisation to provide postal services

92. This clause provides that persons may provide postal services without the need for a licence or authorisation but that OFCOM may impose conditions on people who do provide postal services. The conditions that can be imposed are designated USP conditions (clauses 32 and 33), USP access conditions (clause 34), USP accounting conditions (clause 35), general universal service conditions (clause 37), essential conditions (clause 43), general access conditions (clause 44) and consumer protection conditions (clauses 45 and 46).

*These notes refer to the Postal Services Bill [HL]
as introduced in the House of Lords on 25th February 2009 [HL Bill 24]*

The universal postal service

Clause 28: Duty to secure provision of universal postal service

93. Subsection (1) of this clause provides that the primary duty of OFCOM in relation to postal services is to secure the provision of a universal postal service. This clause should be read in conjunction with paragraph 54 of Schedule 9 to the Bill, which amends the Communications Act 2003 to provide that, in pursuing their duties in relation to postal services, OFCOM must give priority to the duty under this clause to secure the provision of a universal postal service.

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

95. This clause also requires OFCOM to carry out their functions in relation to postal services in a way that they consider will secure the provision of sufficient access points to meet the reasonable needs of users of the universal postal service, and defines access points.

Clause 29: The universal postal service

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

97. Subsection (2) provides that before making or modifying the universal postal service order, OFCOM must assess the extent to which the postal market in the United Kingdom is meeting the reasonable needs of users. This "market testing" is to enable OFCOM to determine what services (if any), other than those specified in this clause, should be provided as part of the universal service in the United Kingdom, in order to meet the reasonable needs of users.

98. Subsection (3) provides that as a minimum, the universal postal service must include at least one delivery and one collection of letters every day other than a Sunday or a public holiday and at least one delivery and one collection of other postal packets every day other than a Saturday, Sunday or public holiday; a service of conveying postal packets at affordable prices determined in accordance with a uniform public tariff; a registered delivery service and a insured items service; and a service of free petitions to Parliament and devolved legislatures. Subsection (5) makes it clear that international mail is included in the minimum requirements of the universal postal service.

99. The minimum requirements of the universal postal service are broadly similar to those set out currently in the Postal Services Act 2000 (section 4) and comply with the requirements of Article 3 of the Directive defining the universal postal service.

*These notes refer to the Postal Services Bill [HL]
as introduced in the House of Lords on 25th February 2009 [HL Bill 24]*

100. Subsection (4) defines a “postal packet” for the purposes of subsection (3). This definition is the same as the definition of “relevant postal packet” in the Postal Services Act 2000 and implements Article 3 of the Directive.

101. In Part 3 of the Bill, the universal postal service means the universal postal service as defined by OFCOM in its order.

Clause 30: Definitions for purposes of section 29

102. This clause gives the definitions of “insured items service”, “public holiday”, “qualifying Parliamentary petitions and addresses”, “registered items service” and “uniform public tariff” for the purposes of clause 29.

103. The clause broadly reproduces the definitions used in the Postal Services Act 2000 at section 125 (registered service and public holiday), section 100 (Parliamentary petitions), and section 4 (uniform public tariff). Parliamentary petitions and addresses are those petitions to Her Majesty sent to members of Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, or petitions addressed to any of these legislatures or their members (or the Clerk of the Scottish Parliament), or those forwarded to Her Majesty (or in Northern Ireland the Secretary of State). Petitions and addresses (other than those forwarded to Her Majesty or the Secretary of State) fall within the definition only if they do not exceed 1kg and are sent without covers or in covers open at the side.

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

Universal service providers

Clause 31: Designation of universal service provider

105. OFCOM may designate a single postal operator as the universal service provider. They must publish the designation. OFCOM may also review the designation and consider what (if any) designated USP conditions (see clause 32) should continue to apply to the designated universal service provider.

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

107. OFCOM must notify the European Commission of the designation and the identity of the person designated. They must also notify the European Commission when the designation ceases to have effect.

*These notes refer to the Postal Services Bill [HL]
as introduced in the House of Lords on 25th February 2009 [HL Bill 24]*

108. Article 4 of the Directive provides that each Member State must ensure the provision of the universal service and that Member States may designate one or more undertakings as universal service providers so that the whole of the country is covered.

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

Clause 32: Designated USP conditions

110. Subsection (1) describes the designated USP conditions that OFCOM may impose on the designated universal service provider under clause 31. OFCOM may impose the following types of requirement on the designated universal service provider. The first is a requirement to provide a universal service in accordance with the standards set out in the universal postal service order. The second is to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service. The third is to provide specified information about the services it is providing pursuant to any requirements imposed under the first two types of requirement. The fourth is to provide specified postal services free of charge to blind and partially sighted people. OFCOM may also impose a requirement to do anything else that they consider appropriate for the purposes of or in consequence of the preceding requirements.

111. Subsection (2) provides that a designated USP condition may only be imposed if it appears to OFCOM it is necessary to do so in order to secure the provision of the universal service in accordance with the standards as set out in the universal service order (made under clause 29).

112. Subsections (3) and (4) provide that a designated USP condition may also set tariffs (price controls) for the provision of a universal service or part of a universal service. OFCOM must ensure that the prices that are set are affordable, take account of the costs of providing the service or part of a service, and that they incentivise the service to be provided efficiently.

113. Subsection (5) provides that a designated USP condition may also impose performance targets.

Clause 33: Publication of information about performance

114. This clause provides that designated USP conditions must include provision requiring the designated universal service provider to publish information about its provision of a universal service in accordance with specified standards and may include other conditions requiring information to be published in relation to its performance in complying with specified requirements. "Specified" means specified in the condition. These conditions must also include a requirement for the provider to publish an annual performance report which must be independently audited. Information previously published must be updated and published again. When and where it is published may also be specified.

*These notes refer to the Postal Services Bill [HL]
as introduced in the House of Lords on 25th February 2009 [HL Bill 24]*

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

Clause 34: USP access conditions

116. Subsection (1) of this clause describes the access conditions that OFCOM may impose on the universal service provider requiring it to give access to other postal operators, or users of postal services, and/or to maintain accounting separation relating to access to its postal network. Access may be required to the postal network of the universal service provider and this is defined in subsection (2) as the systems and all the resources used for the purpose of complying with a designated USP condition, including arrangements made with others for the provision of any service. This is in line with Article 11a of the Directive which gives Member States the right to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

117. Subsection (3) provides that OFCOM may not impose a USP access condition unless it appears to OFCOM that it is appropriate to promote efficiency, effective competition and/or to confer significant benefits on the users of postal services.

118. Subsections (4) and (5) provide that OFCOM may not impose a USP access condition that imposes price controls unless it appears to OFCOM that the universal service provider might charge excessively high prices or impose a price squeeze. When considering this matter, OFCOM may have regard to the prices at which services are available in comparable competitive markets and determine what they consider to be efficiency by using cost accounting methods.

119. Subsection (6) provides that in deciding what USP access conditions to impose, OFCOM must take account of a number of factors, including technical and economic viability, feasibility, investment made by the universal service provider, the need to secure effective competition in the long term, and intellectual property rights.

120. Subsection (7) provides that for the purposes of this clause 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 that network.

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

Clause 35: USP accounting conditions

122. Subsection (1) of this clause describes the USP accounting conditions that OFCOM may impose on the universal service provider to maintain separate accounts between different

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matters as directed by OFCOM, to comply with rules about cost identification and orientation or the use of accounting systems in relation to those matters and to have compliance with those systems audited annually by a qualified independent auditor. This is in line with Article 14 of the Directive on the separation of accounts of universal service providers.

123. Subsection (2) provides that when OFCOM imposes a USP accounting condition requiring accounting separation, the condition may provide for accounting separation to be maintained for different services, facilities or products (including in different areas) and may impose requirements about the accounting methods to be used.

124. Subsection (3) provides that when OFCOM imposes a USP accounting condition requiring compliance with rules about cost identification or the use of accounting systems, the condition may include the application of presumptions on fixing or determining costs and charges and may require publication of the accounts and other information related to the condition. Additionally, when the USP accounting condition relates to the use of cost accounting systems, subsections (5) and (6) provide that OFCOM may require a description of the accounting system be made publicly available, including details of the cost categories and rules of cost allocation.

125. Subsection (4) provides that when OFCOM imposes a USP accounting condition requiring the auditing of the provider's compliance with accounting systems, OFCOM may require the universal service provider to meet the costs of the audit.

126. This clause does not restrict the power of OFCOM to impose other USP accounting conditions.

Persons providing services within scope of universal postal service

Clause 36: Services within scope of the universal postal service

127. This clause defines the meaning of "services within the scope of the universal postal service". This definition is relevant to those who may be subject to general universal service conditions under clause 37. This definition is also relevant to those who may be subject to the recovery of administrative charges incurred by OFCOM (clause 38) and to general access conditions (clause 44).

128. A service is within the scope of the universal service, firstly, if it falls within the description of a service set out in the universal postal service order made under clause 29. Secondly, a service is within the scope of the universal service if it would fall within the description of a service set out in the universal postal service order, but collection and delivery are not provided on each of the days required under clause 29, or the service is not provided throughout the UK, or the service is not provided at an affordable uniform price. Finally, a service is also within the scope of the universal postal service if OFCOM believe it is inter-changeable from users' point of view with one set out in the universal postal service order.

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Clause 37: General universal service conditions

129. Subsection (1) of this clause defines a general universal service condition. It is either a condition OFCOM considers necessary for the purpose of securing that a universal service is provided in accordance with the standards set out in the universal postal service order, or it is a condition imposed for the purposes of sharing the financial burden of universal service obligations.

130. Subsections (2) and (3) set out some of the things that general universal service conditions may require postal operators providing services within the scope of the universal service to do. Subsection (2) provides that they may require persons to guard against theft, loss or damage of postal packets and ensure delivery to the intended addresses. Subsection (3) provides that they may require persons to make contributions towards the costs of complying with designated USP conditions, in accordance with clause 40.

131. Subsection (4) provides that a general universal service condition may be applied to every postal operator providing a service within the scope of the universal service or to specified descriptions of such operators.

132. This is in line with Article 9.2 of the Directive, which provides that for services within the scope of the universal service, Member States may introduce authorisation procedures to the extent necessary to guarantee two things: the provision of the universal service itself and the compliance with the essential requirements. This clause provides for ensuring the provision of the universal service. Clause 43 (essential conditions) ensures compliance with the essential requirements.

Clause 38: Recovery of administrative charges incurred by OFCOM

133. OFCOM may impose charges on postal operators providing services within the scope of the universal postal service to meet OFCOM's costs in regulating postal services. Schedule 4 outlines in more detail the nature of these charges.

Financial support for universal service

Clause 39: Review of costs of universal service obligations

134. Clause 39 provides that OFCOM may review the extent of the financial burden for the universal service provider of complying with its universal service obligations. These are defined as the obligations imposed on it by a designated USP condition. OFCOM must apply the method of calculating the burden set out in designation regulations (clause 31), where those regulations require the financial burden to be taken into account in the designation decision and provide for a particular method of calculation. Where the regulations under clause 31 do not provide for a particular method of calculation of the financial burden, clause 39(3) provides that the financial burden shall be taken to be the net cost of compliance after allowing for market benefits of being the designated universal service provider. The conclusions of this review, and the audit, must be published.

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135. This clause together with clause 40 transposes new Article 7 of the Directive. This new article expands the provision of former Article 9(4) to clarify a range of alternatives available to Member States when there is a need for external financing of the universal service obligations. The financing alternatives include the establishment of a compensation fund with contributions from service providers (and user's fees), where the Member State has determined that universal services obligations entail a net cost which represents an unfair financial burden on the universal service provider(s).

Clause 40: Sharing of burden of universal service obligations

136. This clause requires OFCOM, where they have concluded from a clause 39 review that universal service obligations impose a financial burden on the universal service provider, to determine whether they consider it would be unfair for that provider to bear the whole or part of the burden.

137. OFCOM must make determinations of whether the burden would be unfair for the provider to bear or continue to bear, and the extent (if any) to which the burden would be unfair, in accordance with regulations they have made under subsection (3).

138. If they determine that the financial burden is unfair, OFCOM may then determine that contributions for meeting that financial burden are to be made by providers within the scope of the universal service, and/or through the charges paid by users for using a service, as provided by the Directive.

139. Subsection (5) provides that the assessment, collection and distribution of contributions can only be made if it is in accordance with a mechanism in a scheme contained in regulations made by OFCOM.

140. Subsection (6) provides that in making any regulations under this clause, OFCOM must seek to ensure that the assessment, collection and distribution of contributions is objective and transparent, does not involve (or tend to give rise to) any undue discrimination, and avoids or minimises distortion of competition.

141. Subsection (7) provides that a scheme can be administered by OFCOM or an independent person specified by OFCOM in their regulations.

Clause 41: Report on sharing mechanism

142. This clause requires that, where regulations provide for a scheme to share the burden of the universal service (clause 40), OFCOM must report annually on the sharing mechanism and for the reports to be published. OFCOM are not required to publish confidential information.

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Postal operators generally

Clause 42: Notification by postal operators

143. Postal operators are not required to notify OFCOM prior to providing postal services, however this clause provides that the Secretary of State may make regulations (subject to the negative resolution procedure) requiring them to do so. These provisions may make provisions corresponding with any of the provisions of sections 33 to 37 of the Communications Act 2003.

144. Subsections (5) and (6) provide that if, after consulting OFCOM, the Secretary of State decides to make such regulations, OFCOM must establish and maintain a register to record every notification. OFCOM must publish a notice outlining when the register can be seen by the public and what fees, if any, must be paid to do so.

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

Clause 43: Essential conditions

146. As stated in clause 27, the conditions that OFCOM may impose on those providing postal services include “essential conditions”. This clause describes what ‘essential conditions’ can be imposed and on whom. These correspond to the requirements in the Directive to ensure postal services comply with the “essential requirements” as defined in Article 1.

147. Subsection (1) provides that the essential conditions can be imposed for one of three reasons: to secure confidentiality of sending, conveying and delivery of letters, to safeguard security where dangerous goods are transported and to safeguard confidentiality of information conveyed.

148. Subsection (2) provides that these conditions may be applied to every postal operator or to those of a particular description specified in the condition.

Clause 44: General access conditions

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

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150. Subsection (3) provides that a general access condition may only be imposed if it appears to OFCOM that it is necessary to protect the interests of the users of postal services and/or to promote effective competition.

151. Subsection (4) provides that in deciding what general access conditions to impose, OFCOM must take account of a number of factors, including technical and economic viability, feasibility, investment made by the postal operator, the need to secure effective competition in the long term, and intellectual property rights.

152. Subsection (5) provides that for the purposes of clause 44, 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.

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

Clause 45: Consumer protection conditions

154. Subsection (1) of this clause describes the consumer protection conditions that OFCOM can impose on any postal operator. These include conditions requiring the postal operator to assume liability for loss or damage of postal packets and/or to establish and maintain procedures, standards and policies for consumer protection matters and/or make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading.

155. Subsection (2) provides that consumer protection matters include the handling of complaints, resolution of disputes, provision of remedies and redress, information about service standard and users rights.

156. Subsection (3) provides that the reference to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading is to such of their expenses as the Secretary of State considers reasonable having regard to the functions exercisable in relation to users of postal services. Subsection (5) provides that the Secretary of State may direct OFCOM to include provision within consumer protection conditions relating to the payment of these expenses.

157. Subsection (4) provides that in imposing a consumer protection condition, OFCOM must, as far as they consider appropriate, secure that the procedures are easy to use, transparent, effective and facilitate the settling of disputes fairly and promptly, that they are free of charge to users and that where postal operators contravene the condition the operator follows the procedure as may be required in the condition.

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158. Article 19 of the Directive provides that Member States must ensure that transparent, simple and inexpensive procedures are made available for dealing with postal users' complaints. This clause therefore implements this provision.

Clause 46: Provision that may be made by consumer protection conditions

159. This clause provides that postal operators may be required to be members of a redress scheme under which complaints may be made to and investigated by an independent person. Redress schemes are approved in accordance with Schedule 5.

160. Postal operators may be required to publish information about the number of complaints made about them, how they were dealt with, and to provide OFCOM with information about their compliance with standards for handling complaints. In the case of the designated universal service provider, a consumer protection condition must include a requirement to publish information about the number of complaints made about them. This is required by and implements Article 19.2 of the Directive.

General provisions

Clause 47: Imposition, modification or revocation of regulatory conditions

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

Clause 48: Appeals against price control decisions

162. This clause provides an appeal to the Competition Commission against a price control decision on the ground that OFCOM has made a material error (or errors) in coming to the decision.

163. An appeal must be made within two months of the original decision and Ofcom may impose requirements about the form of notices of appeals and the way in which some appeals are to be made. Any requirements must be published by OFCOM. The making of an appeal against a decision does not suspend the effect of the decision whilst the appeal is being considered.

164. Subsection (7) provides that on determining the appeal, the Commission must either dismiss the appeal or allow the appeal and make its own decision on the subject matter of the appeal. Subsection (8) provides that an appeal may only be allowed by the Commission if the Commission considers that OFCOM made a material error.

165. Subsection (9) provides that OFCOM must give effect to any decision of the Commission as soon as is reasonably practicable after it is made.

166. Subsection (10) defines a price control decision.

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Clause 49: Enforcement of regulatory requirements

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

Clause 50: Information

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

169. Subsection (3) provides that nothing in Schedule 7 of the Postal Services Act 2000 (c. 26) (disclosure of information) prevents Postcomm from disclosing information to OFCOM for the purposes of OFCOM's functions in relation to postal services.

Clause 51: General restriction on disclosure of information

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

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

172. Subsection (4) provides that this clause does not apply to information made public in circumstances in which, or for a purpose for which, disclosure is not precluded by clause 51. The clause does not apply either to information obtained by OFCOM for its competition functions or to information obtained by the National Consumer Council, as this information is subject to the disclosure regime in Part 9 of the Enterprise Act 2002 (c. 40).

173. Subsections (5) and (6) provide that it is an offence to disclose information in contravention of the prohibition in this clause, punishable by a fine or imprisonment of no more than two years.

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Supplementary and consequential provisions

Clause 52: Duties in relation to social and environmental matters

174. This clause enables the Secretary of State to give guidance to OFCOM about its contribution to social or environmental policies set out in the guidance, in which case OFCOM must have regard to that guidance.

Clause 53: Orders, schemes and regulations made by OFCOM

175. This clause provides for section 403 of the Communications Act 2003 (c.21) to apply to any power of OFCOM under Part 3 to make an order, a scheme or regulations. This secures that the orders, scheme and regulations are made by statutory instrument. OFCOM is required to follow a notification procedure before exercising the powers to which this section applies.

Clause 54: Abolition of Postal Services Commission etc

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

Clause 55: Interpretation of Part 3

177. Subsection (1) defines various terms used in Part 3 of the Bill. Subsection (2) deals with references in relation to a universal postal service. Subsection (3) defines contravention and other references relating to contraventions (for example, remedying the consequences of a contravention).

Clause 56: Transitional provisions for Part 3

178. This clause introduces Schedule 9, which contains transitional provisions in relation to the coming into force of Part 3 of the Bill.

Part 4: General

Clause 57: Orders and regulations made by the Secretary of State or the Treasury

179. This clause provides that any orders and regulations made under this Bill by the Secretary of State or the Treasury must be made by statutory instrument.

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

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181. Subsections (4) and (5) define “affirmative resolution procedure” and “negative resolution procedure”.

182. Subsection (7) provides the flexibility to include provisions requiring negative resolution in a statutory instrument which is subject to affirmative resolution.

Clause 58: Meaning of “enactment”

183. This clause defines “enactment” as includes any enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978, and any enactment contained in, or an instrument made under: an Act of the Scottish Parliament; Northern Ireland legislation; and a Measure or Act of the National Assembly for Wales.

Clause 59: Consequential amendments and repeals

184. This clause introduces Schedule 10 which contains minor and consequential amendments and repeals.

185. Subsection (3) also gives the Secretary of State or the Treasury the power by order to make further consequential amendments.

Clause 60: Short title, commencement and extent

186. Subsection (2) of this clause provides that clause 56 and the provisions in Schedule 9, and clauses 57, 58 and 59(3) and (4), and any other provisions of the Bill so far as necessary for the operation of any of those provisions, come into force on the day after the Bill is passed. Subsection (3) provides that the other provisions of this Bill 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).

187. Subsection (4) provides that the Secretary of State or the Treasury may by order make transitional provisions and savings in connection with the commencement of any provision made by this Bill.

Schedule 1: Transfer schemes

188. This Schedule contains further provision about transfer schemes under clause 7.

189. Paragraph 1 defines various terms used in Schedule 1. Paragraph 2 provides that a transfer scheme may identify property rights and liabilities to be transferred by specifying or describing them, and may specify the way in which property, rights or liabilities of any description may be identified Paragraph 3 contains further provisions as to the property, rights and liabilities that may be transferred under a scheme and the basis on which they are to be transferred.

190. Paragraph 4 provides that the transfer scheme may contain provision for the creation or transfer of an interest or a right in, or in relation to, property transferred and property

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retained. It may also contain provision for the creation of new rights and liabilities between different transferees and as between a transferee and a transferor. It also allows for the transfer scheme to contain provision to cover the interest, rights or liabilities of third parties.

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

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

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

194. Paragraph 8 provides that a transfer scheme may contain incidental, supplementary, consequential and transitional provision, and that different provision may be made for different purposes. Under Paragraph 9, a transfer scheme may provide, in relation to transfers in accordance with the scheme that the transferee is treated as the same person in law as the transferor, for things done by the transferor to be treated as done by the transferee and for proceedings commenced by or against the transferor to be continued by or against the transferee.

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

196. Paragraph 12 provides that a transfer scheme may make provision for disputes. Paragraph 13 makes provision for persons, entitled in consequence of a transfer scheme, to possession of a document relating in part to the title to land or other property or the management of such property or land to have been treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it. Paragraph 14 provides for proof of title by certificate issued by the Secretary of State.

197. Paragraph 15 provides that the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the transfer under a transfer scheme of rights or liabilities under a

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contract of employment. Paragraph 16 provides that where an employee of the transferor becomes an employee of the transferee, the period of employment with the transferor is to be treated as a period of employment of the transferee, and the transfer is not to be treated as a break in service.

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

199. Paragraph 18 disapplies certain provisions of the Companies Act 2006, together with rules of law relating to those provisions or the maintenance of capital by companies.

Schedule 2: Taxation provisions relating to re-structuring etc

200. Paragraphs 1 to 4 determine certain aspects of the tax implications of an event which causes a Royal Mail company, a Post Office company, or the parent of such a company, or a subsidiary of a Royal Mail company, to leave the existing tax group headed by Royal Mail Holdings plc, which can occur when a company's shares are sold or shares are moved around the group. The clause prevents tax charges arising as a result of the degrouping for the purposes of both corporation tax on chargeable gains and stamp duty land tax. These tax charges could arise from internal group restructuring prior to the degrouping event. The aim of this clause is to prevent tax liabilities arising in companies due to historic transactions where such liabilities arise only as a result of the affected company leaving the existing tax group headed by Royal Mail Holdings plc.

Paragraphs 5 and 6 ensure that no tax liabilities should arise from a reorganisation of the structure of the Crown's shareholding in a Post Office Company.

Paragraphs 7 and 8 make provision as regards corporation tax in relation to the issue of shares and other securities in pursuance of section 5 of the Postal Services Act 2009 and section 74 of the Postal Services Act 2000.

Paragraph 9 makes provision as regards corporation tax in relation to any debt assumed by a company under section 74(1) of the Postal Services Act 2000.

Schedule 3: Further provision about access conditions

Part 1 Provision that may be made by access conditions

201. Paragraph 1 introduces Part 1 of the Schedule and states that access conditions of the kind set out in Part 1 may be imposed but that the power to impose them is not restricted by these provisions.

*These notes refer to the Postal Services Bill [HL]
as introduced in the House of Lords on 25th February 2009 [HL Bill 24]*

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

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

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

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

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

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

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

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

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

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

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

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Part 2 Resolution of access disputes by OFCOM

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

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

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

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

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

Schedule 4: Recovery of administrative charges incurred by OFCOM

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

219. Paragraph 1 further provides that at the end of each charging year OFCOM must publish a financial statement setting out total charges received that year, total charges

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outstanding that year, and cost to OFCOM of carrying out their postal service functions. Any surplus or deficit should be taken into account in determining charges for the following year.

220. Paragraph 2 defines OFCOM's functions in relation to postal services for the purposes of paragraph 1.

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

222. Paragraph 4 allows OFCOM to bring proceedings against a person who they believe is in contravention of a requirement to pay a charge imposed under paragraph 1. OFCOM may only do this if they give the person notification of the amount they are seeking to recover.

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

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

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

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

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

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

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

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

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

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

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

Schedule 5: Approval of redress schemes

234. This Schedule sets out the considerations OFCOM must have regard to in deciding whether to approve a redress scheme for the purposes of clause 46. These include the scheme's provisions, how it will operate, the interests of users of postal services, and best practice in relation to schemes for providing redress to consumers. It further outlines certain requirements for a redress scheme, namely that it must be open to all postal operators, that the independent adjudicator may require members to provide complainants with the minimum types of redress (which include apologies and compensation), and that it makes satisfactory provision about a series of matters. Redress schemes may make provision for the expulsion of their members.

235. OFCOM may determine the manner for approval of a redress scheme and OFCOM must be notified of any changes to the scheme.

236. There are also provisions regarding the processes that OFCOM must follow in refusing or withdrawing approval of a redress scheme.

Schedule 6: Imposition, modification or revocation of regulatory conditions

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

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

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

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

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

Schedule 7: Enforcement of regulatory requirements

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

243. Paragraphs 2 to 4 provide for contravention notifications. OFCOM may give a notification that they have reasonable grounds to believe a person is contravening or has contravened a regulatory requirement. A notification must specify a period giving the person notified the opportunity to make representations, comply and remedy the consequences. That period must be one month, or less than a month by agreement, because of repeated contravention, or because the case is urgent, and OFCOM may also specify a longer period.

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OFCOM may give a further notification for the same contravention only if certain conditions are met. OFCOM may not give a notification if it decides that the more appropriate way of proceeding would be under the Competition Act 1998.

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

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

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

247. Paragraphs 8 to 10 relate to the power to deal with urgent cases. A case is urgent if the contravention results in or creates a serious threat to the safety of the public, to public health or to national security, or serious economic or operational problems for other postal operators or users. OFCOM can give a direction suspending or restricting the entitlement of the contravening person to provide postal services. In doing so, OFCOM may also impose conditions appropriate to protect users of the contravening person, including making payments for compensation. If there is a direction in an urgent case, an opportunity for making representations and for proposing remedial steps must be given as soon as reasonably practicable after making the direction. At the end of that period, OFCOM must determine whether there was a contravention and whether treating the case as urgent was justified. If so, then OFCOM may then confirm the direction. If not OFCOM must modify or revoke the direction.

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

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remedying the situation, and must consider every representation. OFCOM must give one month's minimum notice, except in urgent cases.

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

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

Schedule 8: Information provisions

Part 1 Requirements to provide information to OFCOM

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

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

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

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

Part 2 Enforcement

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

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

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

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

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

Part 3 Supplementary provisions

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

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

Schedule 9: Transitional provisions for Part 3

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

262. Until the first universal postal service order is made by OFCOM, the universal service is defined by reference to section 4 of the Postal Services Act 2000 (defining the universal service), and services within the scope of the universal service are decided by reference to section 7A of the Postal Services Act, which describes the services not outside the scope of the universal postal service prior to the day the Act is passed.

263. Under paragraph 3 OFCOM may designate provisionally the universal service provider, but this designation ceases to have effect when the first designation is made under clause 31.

264. Under paragraph 4 OFCOM must determine before the end of the transitional period the regulatory conditions applying to postal operators when Part 3 of the Act generally comes into force. These initial conditions must be similar to the current licence conditions for either the designated universal service provider or other operators, save where they appear to OFCOM unnecessary to maintain the current conditions. The general test for imposing regulatory conditions (paragraph 1 of Schedule 6) applies subject to this requirement that initial conditions must be similar to those in place before the Act comes into force generally, save where they appear unnecessary. Any modifications to those initial conditions must not result in conditions that could not have been imposed under Part 2 of the Postal Services Act 2000. The procedures under Schedule 6 (relating to the imposition, modification or revocation of conditions), and under clause 48 (appeals against price control decisions) apply to the imposition of initial conditions.

265. During the transitional period, the provisions in relation to the universal postal service order, the designation of the universal service provider, and the imposition of conditions apply to the extent necessary for OFCOM to be able to work on the universal postal service order, designation and imposition of conditions. This work includes market assessment and consultation. The provisions in relation to information provision (clause 50 and Schedule 8) also apply to the extent necessary for OFCOM to carry out their functions during or after the transitional period. The provisions of clause 51 (general restriction on disclosure of information) have effect accordingly.

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266. During the transitional period, Postcomm must consult OFCOM before doing anything with a view to modifying or revoking a licence.

Schedule 10: Minor and consequential amendments and repeals

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

268. Part 2 of the Schedule covers minor and consequential amendments to the Communications Act 2003.

269. Part 3 of the Schedule covers minor and consequential amendments to other enactments.

270. Part 4 of the Schedule covers general modifications and applies to enactments other than those amended elsewhere by the Schedule.

271. Part 5 of the Schedule contains other repeals.

FINANCIAL EFFECTS & PUBLIC SECTOR MANPOWER

272. Tackling the Royal Mail's pension deficit will involve establishing a new public sector pay-as-you-go scheme being established, and all liabilities in the Royal Mail Pension Plan (RMPP) accrued before December 2008 being transferred into this new scheme.

273. This will leave the ongoing RMPP with approximately £3bn of liabilities and £3bn of matching assets. The new government scheme will hold the balance of liabilities (approx £29.5bn). This scheme will then make payments to scheme members as payments fall due.

274. The assets transferred to the government will be sold over time and the proceeds transferred to the Consolidated Fund. There are, in addition, costs associated with the initial set-up of the new government scheme and the ongoing administration costs of this new scheme.

275. Implementation costs comprise:

- Initial implementation costs largely consisting of professional advice and services (estimated to be in the range of £10 – 15m).
- In addition there will be costs associated with the disposal of the assets of the RMPP. This cost is estimated to be in the range of £190 – 210m in total. This will be offset by an annual saving on scheme investment costs of approximately £20m per annum

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276. Ongoing administration costs for the new government scheme are estimated to be in the region of £7 – 10m per annum. Currently, this administration function is performed by an in-house team of approximately 100 employees at Royal Mail. The Government intends to do further work to determine the best way to administer the new scheme. One option may be for Royal Mail to continue to perform this function. If the administration function is outsourced, it is expected that the additional public sector manpower requirement would be minimal.

277. In addition there will be costs during the transitional period of the merger of Postcomm with OFCOM. However, in the longer term there are likely to be associated cost savings, particularly the annual funding for Postcomm (of which Royal Mail is a large contributor), which for 2007-08 was just over £10m.

SUMMARY OF THE IMPACT ASSESSMENT

278. The Better Regulation Executive guidance requires the government to publish an impact assessment when it introduces legislation that will:

- Impose or reduce costs on business or the third sector
- Impose or reduce costs on the public sector above a threshold of £5m
- Attract high levels of political or media interest

279. An impact assessment covering all parts of the Bill has been published alongside the Bill and sets out the costs and benefits to the postal services sector, the private and public sectors and the government. Copies have been placed in the Vote Office of the House of Commons and the Printed Paper Office of the House of Lords. In addition, the full impact assessment is available on the BERR website at <http://www.berr.gov.uk/consultations/ria/index.html>

280. The impact assessment estimates that the total cost of implementing the Hooper package of measures will be £6.2bn and the total benefit will be between £8.8 and 9.2bn (present values estimated over a 10 year period). The best estimate of net benefit is £2.8bn.

281. The monetised costs include: staff time spent on modernisation (£8-11m); new pension provisions implementation costs (£205m); and a transfer of historic pension liabilities from Royal Mail to the government (£6bn). The monetised benefits include: efficiency savings (£2.6-£3.0bn); pension administration benefits (£190m); and a transfer of historic pension liabilities/assets from Royal Mail to the government (£6bn).

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282. Key non-monetised costs include: financial costs associated with modernisation (are already accounted for in the ‘do nothing’ option and therefore does not represent an additional cost); costs of merging OFCOM and Postcomm; costs associated with diversification and expansion. Key non-monetised benefits include: social and economic benefits of sustaining the universal postal service; less management time spent on relationship with the Regulator; more effective regulation of the sector; proceeds from sale of minority shareholding; further benefits of diversification and expansion.

283. Specific impact tests, including equalities impacts, are contained in an annex to the Impact Assessment.

CARBON ASSESSMENT

284. The Bill will not have a significant impact on the environment or carbon emissions.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

285. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

286. Lord Mandelson, Secretary of State for Business, Enterprise and Regulatory Reform has made the following statement:

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

287. The Postal Services Bill engages Article 6, Article 8, Article 14 and Article 1 of the First Protocol of the European Convention of Human Rights, but does not breach them.

Part 1

288. The transfer schemes may engage Article 1, Protocol 1. However, it is considered that the measures are necessary for a smooth and timely group re-organisation, strike a fair balance, are proportionate and in the public interest and are therefore in compliance with Article 1, Protocol 1, particularly in light of the possibility of an award of compensation to an affected third party.

289. The transfer scheme dispute resolution provisions may engage Article 6, but it is considered that the appointment of an independent arbiter is sufficient to ensure compliance with Article 6.

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Part 2

290. The transfer of the accrued pension rights may engage Article 1, Protocol 1, however, it is considered that the measures are in the public interest and that a fair balance is struck. It is concluded that the transfer of the accrued pension rights is therefore in compliance with Article 1, Protocol 1.

291. In the event of any indirect discrimination resulting from the Secretary of State's exercise of the transfer powers, which could engage Article 14 of the ECHR, it is considered that this difference in treatment can be objectively justified. The consequences of the transfer are not disproportionate and it is not considered that any group will be in worse position following the transfer, although there will be differences in treatment between the groups, this difference in treatment has been minimised. It is concluded that these transfer provisions are in compliance with Article 14.

292. The division of the Royal Mail Pension Plan ("RMPP") into separate segregated sections may engage Article 1, Protocol 1 as an interference with possessions. It is considered this any division would be in the public interest and strikes a fair balance, such that a division would be compatible with Article 1, Protocol 1.

293. An order for the transfer of assets from RMPP to the government may engage Article 1, Protocol 1. It is considered that such a transfer is in the public interest and that the safeguards in the Bill are sufficient to ensure that there is a fair balance.

294. The power to make regulations altering taxation consequences is likely to engage Article 1, Protocol 1, however it is envisaged that any inference will be fair and proportionate and compatible with Article 1, Protocol 1.

295. The order making power in respect of the disclosure of information may engage Article 8 of the ECHR, but it is considered that any inference is proportionate.

Part 3

296. The imposition, modification or revocation of conditions by OFCOM will engage Article 1, Protocol 1, however, it is considered that any interference with this right is in the public interest and proportionate and therefore justified, particularly considering the safeguards and limitations set out in the Bill.

297. It is considered that it is unlikely that the setting of tariffs in respect of a universal service provider would engage Article 1, Protocol 1 (as potential profit is unlikely to be considered a possession). In any event, OFCOM's power in this area is limited and any inference would be proportionate and justified.

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298. The requirement to pay an administrative charge engages Article 1, Protocol 1, affecting an operator's ability to deal with his property. Procedural safeguards are built into the charging system and there is a requirement for consultation. It is in the public interest that OFCOM's costs for regulating postal services are recoverable.

299. The power to make regulations requiring contributions to the universal service provider's costs from other postal service providers will engage Article 1, Protocol 1. The safeguards in the Bill ensure that any interference is necessary and proportionate.

300. The enforcement provisions engage Article 1, Protocol 1. There is a public interest in ensuring that the universal service is protected and that competition is promoted. The procedural safeguards in the Bill help to ensure that the enforcement measures are necessary and proportionate and it is considered that, on balance, these provisions comply with the ECHR.

301. Article 1, Protocol 1 would be engaged in the event that a provider's entitlement to provide a service is suspended or restricted. The Bill sets out high thresholds before this power can be exercised and it is considered that these thresholds provide sufficient safeguards and any interference with the right is proportionate. In urgent cases, where these thresholds do not apply, the public interest justifies any interference.

302. Any condition requiring payment as a condition of a suspension or restriction of a provider's service could engage Article 1, Protocol 1. The justification in these circumstances is that it is in the interest of consumers who have been prejudiced by the interruption to the expected service and this is clearly in the public interest.

303. If OFCOM exercises the power to impose financial penalties this would engage Article 1, Protocol 1. The safeguards governing the exercise of this power ensure that any interference with the right will only occur in justifiable circumstances. The imposition of penalties may also engage Article 6. It is considered that the availability of judicial review is sufficient to remedy to cure any defects in the setting of penalties by OFCOM and to ensure that the right is protected.

304. With respect to the appeal of OFCOM decisions, Article 6 is engaged. In the case of price control decisions, the opportunity for an appeal to the Competition Commission, which provides an independent fact-finding stage, along with the opportunity for judicial review protects the Article 6 right. In respect of all other regulatory decisions, it is considered that the availability of judicial review provides a sufficient safeguard in respect of the Article 6 right.

305. OFCOM's power to investigate and take enforcement action could potentially engage Article 1, Protocol 1. However, these powers extend no further than the powers currently exercised by the OFT and therefore the potential effect upon postal operators' rights will in

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principle be no greater than exists at present. Considering OFCOM's position as an independent regulator, it is considered that any interference with Article 1, Protocol 1 would be proportionate and the public interest in dealing with anti-competitive behaviour would be addressed.

306. The determination of complaints and imposition of financial penalties by OFCOM may engage Article 6. As this is an extension of the OFT's powers to OFCOM, the effect of these measures upon persons subject to a determination or a requirement to supply information is unaltered. It is considered that the decision-making powers of OFCOM and the opportunity of an appeal to the Competition Appeal Tribunal are sufficient to ensure compliance with the Article 6 right.

POSTAL SERVICES BILL [HL]

EXPLANATORY NOTES

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as introduced in the House of Lords on 25th February 2009
[HL Bill 24]*

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