

POSTAL SERVICES ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Postal Services Act which received Royal Assent on 28 July 2000. They have been prepared by the Department of Trade and Industry in order to assist the reader of the Act and help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Postal Services Act 2000 provides for the Post Office to be converted from a statutory corporation to a public limited company formed and registered under the Companies Act 1985, with ownership remaining with the Crown.
4. The Act introduces a new system of licensing and regulation for postal service operators/providers operating in the area of the market currently reserved largely as a monopoly for the Post Office. This is called the reserved (or licensed) area. The Act gives the independent regulator, the new Postal Services Commission (the Commission), new duties and powers to protect the interests of users of postal services. In particular, it enshrines the universal service obligation in primary legislation and makes it the duty of the Commission to ensure the delivery of this universal service at a uniform tariff. Subject to this duty, the Commission is required to further the interests of users, wherever appropriate by the promotion of greater competition in postal markets. The Commission will be able to promote competition through recommending changes to the scope of the reserved area and by permitting licensed competition within the reserved area. The Commission will also have responsibility for setting quality standards and regulating prices.
5. Consumers are given greater protection through replacing the Post Office Users' National Council with the Consumer Council for Postal Services. The creation of this body brings consumer representation in the postal services market into line with the provision for other utilities.

BACKGROUND

6. This Act implements measures proposed in the White Paper, *Post Office Reform: a world class service for the 21st century*, published on 8 July 1999. The White Paper sets out the Government's proposals to modernise the Post Office and postal services markets through a number of key reforms. The reforms are intended to:
 - introduce a more arm's-length commercial relationship with Government, including the approval of a five year strategic plan within which the Post Office and the future Post Office company have greater freedom to develop new products and services; invest; price commercially; and borrow for growth investments;

*These notes refer to the Postal Services Act 2000
(c.26) which received Royal Assent on 28 July 2000*

- create a new independent regulator, the Postal Services Commission, to promote and protect customer interests, regulate prices, and promote competition;
 - strengthen consumer representation through the restructuring of the Post Office Users' National Council which will become the Consumer Council for Postal Services;
 - increase resources for the Post Office company, by more than doubling the proportion of post tax earnings which the Post Office company can use for investment;
 - convert the Post Office to a plc to underline the commercialisation of the business;
 - protect the universal service obligation and uniform tariff;
 - maintain a commitment to a nationwide network of post offices with the Government for the first time setting minimum criteria for access to counters' services.
7. A number of these measures have been implemented already, through administrative action. These include giving greater commercial freedom to the Post Office Board to run the business within the terms of an agreed five-year strategic plan, increasing the proportion of profits that the Post Office can use for investment and giving the Post Office greater freedom to borrow. The [Postal Services Regulations 1999 \(SI 1999/2107\)](#) completed the implementation of the EU Directive into UK law and created a Postal Services Commission. The aim of the Postal Services Act 2000 is to enable Government to complete this package of reforms. The reforms comply with the requirements of the EU Postal Services Directive ([97/67/EC](#)). The Act will re-enact those obligations set out in the Regulations.
8. The Post Office is currently a publicly owned, statutory corporation, established under the Post Office Act 1969. That Act and the British Telecommunications Act 1981 set out the responsibilities of Government towards postal services and give the Post Office its powers and duties. Since the 1969 Act became law the postal services market has developed significantly, and the Postal Services Act 2000 redefines the roles of the Government and the Post Office to reflect those changes. The Postal Services Act 2000 will enable the Post Office to be transformed into a public limited company formed and registered under the Companies Act 1985 and subject to normal company law. The Memorandum and Articles of Association of the Post Office company will be published in the normal way. All the shares in the new company will be owned by the Crown. There can be no disposal of shares without further primary legislation, except in the case of a share sale or swap between the Post Office company and a partner to cement a commercial alliance, which will require approval from both Houses of Parliament. Similar restrictions apply to the disposal of shares in any subsidiary company directly engaged in providing the universal postal service.
9. Decisions relating to the Post Office monopoly are currently taken by the Secretary of State for Trade and Industry under provisions in the British Telecommunications Act 1981. The Postal Services Regulations 1999, tabled on 26th July 1999, designated the Postal Services Commission as a new independent regulator for postal services, responsible for advising the Secretary of State on postal issues. Provisions in the Act replace this advisory body with a new fully independent regulatory body, along the lines of those in the privatised utility industries (e.g. Office of Telecommunications), by giving the Commission statutory duties and powers to issue licences, to regulate prices, to enforce the monopoly, to introduce greater competition and to maintain a universal service at a uniform tariff.
10. At present, the Post Office has the exclusive privilege of delivering mail costing less than £1 (or weighing less than 350 grams) within the UK, subject only to a handful of exceptions provided through niche and class licences. The Act makes it necessary

for any person operating in the reserved area, including the Post Office company, to be licensed by the Postal Services Commission. The Commission will be responsible for recommending the level of the reserved area in future and judging how far to open up the market to further competition. It will also be given powers of investigation and enforcement, including the power to impose monetary penalties for breach of licence conditions.

11. The Post Office Users' National Council, which represents consumer interests, is replaced by the Consumer Council for Postal Services. The Bill provides this new body with a central role in the new regulatory framework, monitoring service standards that users can expect and acting as a focus for consumer issues and complaints. Its powers are strengthened, in particular through wider access to relevant information from the Post Office company and other licence holders.
12. The main pieces of legislation currently governing the Post Office are the Post Office Acts 1953 and 1969 and the British Telecommunications Act 1981. This Act seeks to consolidate the postal services provisions in these Acts, by repealing or redrafting relevant sections, to provide a more simple and modern legal framework in which the Post Office company and other licensed persons can operate.

COMMENTARY ON SECTIONS

Part I Introductory

Section 1: The Postal Services Commission

13. *Section 1* creates the *Postal Services Commission*. This body will be the independent regulator of licensed postal operators and replaces the advisory body, also called the Postal Services Commission, which is abolished by the Act. In these Notes, references to "the Commission" are to the Commission established by section 1.

Section 2: The Consumer Council for Postal Services

14. *Section 2* creates a new consumer body to be known as the *Consumer Council for Postal Services*. The existing user-representative bodies in the UK, which are limited in their scope to representing users of Post Office services, are abolished. In these notes, references to "the Council" are to this Council.

Section 3: Duty of the Commission to ensure provision of a universal postal service

15. *Section 3* sets out the primary duty of the Commission, which is to exercise its functions in a manner best calculated to ensure the provision of a universal postal service. In pursuance of this duty it has power to require a person licensed to provide postal services under Part II of the Act ("a licence holder") to provide a universal service or part of such a service. This is to be read with *section 5* which sets out other duties of the Commission.

Section 4: Provision of a universal postal service: meaning

16. *Section 4* sets out the meanings of a universal postal service and of a universal service provider. These definitions comply with those required under the EU Postal Services Directive (97/67/EC). A universal service provider is described for the purposes of this Act as any person who the Secretary of State has notified to the European Commission as being a provider of universal postal services in the UK and on whom the Secretary of State has served a notice informing him of that fact. It also provides that in the event that the Directive lapses (and with it the requirement to notify the Commission of universal service providers) that references in the Act to a universal service provider are to be construed as references to any person who is treated by the Secretary of State as a universal service provider for the purposes of the Act and on whom the Secretary of State has served a notice informing him of that fact.

Section 5: Other duties of the Commission in the consumer interest

17. Subject to the duty to ensure the provision of a universal postal service as set out in section 3, [section 5](#) places a duty on the Commission to exercise its functions in a manner which will further the interests of users of postal services, wherever appropriate by promoting competition.
18. In performing these duties the Commission is to have regard to, amongst other things, the interests of the disabled or chronically sick, pensioners, those on low incomes, and those located in rural areas. It also provides for the Commission to have regard to the promotion of efficiency and economy on the part of postal operators; and the need to ensure that they are able to finance activities authorised or required by their licences.

Part II Licences for Postal Services

Section 6: Restriction on provision of postal services

19. The Post Office currently has the exclusive privilege of delivering letters within the United Kingdom with a value of less than £1 or weighing less than 350 grams and it is an offence to infringe the privilege.
20. Under the Act, the monopoly will be replaced by a system of licensing. Licence holders will be able to convey, in accordance with the terms of their licence, letters worth less than £1 or weighing less than 350 grams (see [section 7](#)). *Subsection (2)* makes it an offence to convey letters without the necessary licence.
21. *Subsection (1)* establishes that no person shall convey a letter without a licence granted by the Commission. Exceptions to this prohibition are set out at [section 7](#).
22. *Subsections (2) to (5)* create three methods of enforcing the prohibition in subsection (1). The first is to bring criminal proceedings for an offence under subsection (2). The second is to bring civil proceedings for an injunction interdict or other appropriate relief or remedy under subsection (4). Criminal prosecutions can only be instituted by or on behalf of the Commission or the Secretary of State or, in Scotland, will be dealt with by the Lord Advocate. (The Lord Advocate generally controls prosecutions in Scotland.) Civil proceedings under subsection (4) may be brought by, or on behalf of, the Commission or the Secretary of State. There is also provision in subsection (5) enabling civil proceedings to be brought by any person who suffers loss or damage.
23. *Subsection (6)* makes clear that conveyance for the purposes of section 6 and [section 7\(1\)](#) includes the incidental acts of receiving the letter, collecting or delivering it.

Section 7: Exceptions from section 6

24. [Section 7](#) sets out exceptions from the general prohibition in section 6(1).
25. *Subsection (1)* exempts letters conveyed for a payment of not less than £1 or weighing not less than 350 grams.
26. *Subsection (2)* sets out further detailed exceptions. They include activities currently exempted as “class licences”, such as the document exchange system used by lawyers and other professionals. The section then defines exactly what is meant by these exceptions.

Section 8: Power to modify section 7 by order

27. [Section 8](#) allows the Secretary of State acting on the recommendation of the Commission to modify by order section 7. This could, for example, be used to add a further exception to the general prohibition or modify the value or weight specified at section 7(1)(a) and (b). Such an order would be subject to approval by a

resolution of both Houses of Parliament. Where the Secretary of State has received a recommendation from the Commission to amend the reserved area and the Secretary of State does not act upon it, he must place a report containing his reasons before Parliament.

Section 9: General power to suspend the restriction

28. Under *section 9* the Secretary of State may, on the recommendation of the Commission, suspend the operation of section 6 and allow any person to convey letters.

Section 10: Emergency power to suspend the restriction

29. Under *section 10* the Secretary of State may in the national interest suspend the licensing regime for a time-limited period not exceeding six months. Non-licensed persons would then be able to convey letters within the reserved area without penalty.

Section 11: Licences: general

30. *Section 11* allows the Commission to grant licences authorising the licence holder to carry out the activities described by the licence. To that extent the general prohibition in section 6(1) does not apply to him.

Section 12: Licences: grant

31. *Section 12* details the procedures that must be followed before a licence is issued including provisions about giving notice and receiving representations.

Section 13: Licences: conditions and other provisions

32. *Section 13* gives the Commission the authority to include in a licence such provisions as it considers appropriate, including provisions which do not relate to anything authorised by the licence (including, for example, the provision of all or part of a universal postal service). Under *subsection (4)* the Commission must consult a person who is to be granted a licence about the conditions it intends to include in their licence.

Section 14: Modification of licences by agreement

33. *Sections 14 – 21* provide a system for licence modification, similar to that seen in utilities regulation. Section 14 allows for licence modifications to be made by agreement between the licence holder and the Postal Services Commission. Before making any such modification the Postal Services Commission must publish a notice stating what the modifications are, the effect of them and the reasons for them and serve copies on the Secretary of State, the licence holder and the Council. Under *subsection (5)* the Secretary of State may direct the Postal Services Commission not to make a proposed modification if he considers that the modification should be made, if at all, following a Competition Commission reference under the procedures in this Part.

Section 15: References to the Competition Commission

34. *Section 15* allows the Postal Services Commission to make references to the Competition Commission requiring the latter to investigate and report on whether:-
- matters specified in the reference and which relate to the provision of postal services whose provision is authorised or required by a licence operate against the public interest or may be expected to do so; and
 - if so, whether the effects adverse to the public interest which the matters have or may be expected to have could be remedied or prevented by modifying conditions of the licence.

35. The Postal Services Commission may vary the terms of a reference. They may also specify what adverse effects they believe matters specified in the reference may be expected to have and any modifications of the licence by which it considers that those effects could be remedied or prevented. The Postal Services Commission shall give the Competition Commission any related information or assistance that it considers appropriate or which has been requested by the Commission.

Section 16: Reports on references

36. *Section 16* provides that the Competition Commission shall make definite conclusions on the matters referred to it, and specify remedies where appropriate. The Competition Commission's report shall be made to the Postal Services Commission who shall, if required to do so by the Secretary of State, exclude from the published report such matters he believes may be against the public interest or the commercial interest of a person.

Section 17: Modification following report

37. Under this section, where the Competition Commission has identified matters operating against the public interest and concluded that remedies could be made by licence modifications, the Postal Services Commission shall make such modifications to the licence conditions as it considers appropriate for the purpose of remedying or preventing the adverse effects specified in the report.
38. The Postal Services Commission shall give notice of its intended modifications. After this the Postal Services Commission shall make such modifications if after four weeks the Competition Commission has not issued a direction under *section 18*.

Section 18: Power of intervention of the Competition Commission

39. This section allows the Competition Commission the power to direct the Postal Services Commission not to make modifications under section 17 if it considers that the modifications proposed by the Postal Services Commission are not appropriate for the purpose of remedying or preventing all or any of the adverse effects specified by its report. Under *subsection (5)* of this section the Competition Commission may make its own licence modifications.

Section 19: Procedural requirements in relation to modifications

40. *Section 19* sets out the procedural requirements for licence modifications following a report by the Competition Commission.

Section 20: Application of competition legislation to references etc.

41. *Section 20* provides for the application of competition legislation to references. The purpose and effect of this section is to ensure consistency between the Competition Commission's procedures in relation to a reference under this Part of the Act and with its procedures in relation to its (relevant) functions under competition legislation. For example, it deals with the treatment of witnesses and documents, time limits on reports and penalties for false and misleading information. Details of these provisions are set out in the relevant legislation and not in this Act.

Section 21: Modification by order under other enactments

42. *Section 21* allows for the modification of licences as a result of investigations and reports under the Fair Trading Act 1973.

Section 22: Final orders

43. *Sections 22-29* lay down the powers of the Commission to make final and provisional enforcement orders in relation to breaches of licence conditions, and the procedures to be followed. Under *section 22*, final orders may be issued where the Commission is satisfied that a licence holder is contravening any condition of his licence or is likely to do so. An order makes such provision as is needed to secure compliance with the licence condition and shall require the licence holder to do, or not to do, such things as specified.

Sections 23 and 24: Provisional orders

44. Where the Commission is not satisfied, but nonetheless it appears to the Commission that there is or is likely to be a contravention and that an order should be made, it may impose a provisional order lasting up to 3 months. If the Commission is subsequently satisfied, it shall confirm the provisional order.

Section 25: Exceptions from the duty to make or confirm enforcement orders

45. This section provides that the duty to make orders does not apply where the duties imposed under sections 3 and 5 on the Commission preclude it from doing so, the licence holder has agreed to take and is taking all the steps that the Commission considers appropriate, or the contraventions are trivial.

Sections 26 and 27: Procedural requirements

46. These sections set out the steps the Commission must follow when making orders, such as notice provisions.

Section 28: Validity of enforcement orders

47. This section allows a licence holder to whom a final or provisional order relates to appeal to the court on the grounds that the making of the order by the Commission was not within their powers under sections 22, 23 or 24 or that any of the requirements of sections 26 and 27 were not met. The court may quash the order.

Section 29: Effect of enforcement orders

48. *Section 29(1)* makes it a duty of licence holders to comply with a final or provisional order.
49. *Section 29(6)* makes it clear that if the Commission brings civil proceedings to enforce a final or provisional order, it shall not prevent others with a right to claim from bringing their own actions against the licence holder.

Section 30: Financial penalties

50. *Section 30* gives the Commission power, where it is satisfied that a licence holder has contravened or is contravening a condition of his licence, to impose a penalty on the licence holder. The penalty must be of such amount as is reasonable and is limited to a maximum of 10% of the turnover of the licence holder determined in accordance with provisions to be specified in an order made by the Secretary of State.

Section 31: Statement of policy in relation to penalties

51. *Section 31* provides that the Commission shall after consulting the Council and others prepare and publish a statement of their policy in relation to the imposition of penalties and the determination of their amount.

Sections 32 and 33: Penalties

52. *Sections 32 and 33* lay down the procedures the Commission must follow before imposing a financial penalty including giving notice and allowing for representations, and procedures that may follow from the notice including variation of penalties.

Section 34: Time-limits on the imposition of penalties

53. *Section 34* sets out time limits on the Commission's ability to impose financial penalties.

Sections 35 and 37: Interest and payments by instalments; recovery of penalties

54. *Sections 35 and 37* cover the payment of interest on unpaid penalties and the recovery of unpaid penalty payments.

Section 36: Appeals

55. *Section 36* allows licence holders to appeal against penalties to the court (the High Court in England and Wales or Northern Ireland or the Court of Session in Scotland). The court may quash the penalty or order a reduction in the penalty or in certain cases substitute a different date for payment of the penalty.

Section 38: Register

56. *Section 38* requires the Commission to keep a register of licences, licence modifications, revocations and surrenders, directions, determinations, consents and approvals given under a licence, the terms of final and provisional orders and revocations, and penalties imposed. Safeguards are provided to ensure that as far as practicable matters relating to the affairs of a person are not entered in the register if that could be seriously prejudicial to that person's interests. In addition, the Secretary of State may direct the Commission not to make an entry where it would in his view be against the public interest or a person's commercial interests to do so. The register is to be available to public inspection, and copies may be obtained, subject to a reasonable fee.

Section 39: Recovery of costs of the Council etc.

57. *Section 39* enables the Secretary of State to direct that licence conditions shall include paying for the Consumer Council and its start up costs. It also enables the Secretary of State to direct the Commission in any matter falling to be determined under such a licence condition.

Section 40: Directors' remuneration

58. *Section 40* requires companies which are also licence holders under the Act to disclose the links, if any, between the achievement of service standards in the activities covered by their licence and the remuneration of their directors. If no such links exist, this must also be disclosed. The section sets out the criteria for determining whether a licence holder must comply with the provisions of the section and the disclosure requirements which then apply. The requirement to disclose what links, if any, exist between service standards and remuneration is intended to encourage companies to establish and strengthen such links and to stimulate improvement to service standards.

Section 41: Free services for the blind and partially sighted

59. *Section 41* gives the Secretary of State powers to direct the Commission to impose a licence condition requiring the licensee to provide free postal services for blind or partially sighted people. The Secretary of State shall consult the Commission and the Council before giving any directions. The section is designed to ensure the continuation of existing non-statutory practice by the Post Office who convey certain items, known as Articles for the Blind, free of charge for blind and partially sighted people.

Part III Other Functions of the Commission and the Council

Section 42: Duties in relation to public post offices

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

Section 43: Duties in relation to social and environmental matters

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

Section 44: Review and information

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

Section 45: Annual and other reports: the Commission

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

Section 46: Publication of information and advice: the Commission

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

Section 47: Power of the Commission to require information

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

Section 48: Information powers: enforcement

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

Section 49: Powers of entry and seizure

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

Section 50: Codes of practice

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

Section 51: Relevant postal issues

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

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

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

Section 53: Publication of information to users

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

Section 54: Exercise of functions: general

73. *Section 54(1)* requires the Council to have regard to the interests of different users of relevant postal services including the interests of users in different areas.
74. *Subsection (2)* requires the Council to have regard to the interests of certain specified groups. The specified groups are qualified to make clear however, that this is not intended to be an exhaustive list and it should not be taken as implying that regard should not be had to the interests of other descriptions of persons.

75. *Subsection (3)* requires the Council, as far as practicable, to collect and review information about the provision of postal services and the interests and views of users and matters affecting them.
76. *Subsection (4)* requires or allows the Council to set up certain committees. It requires committees to be set up for each of Wales, Scotland, and Northern Ireland and for there to be at least one committee in relation to England. It allows for committees to be set up for England and for areas within England, Wales, Scotland, and Northern Ireland.
77. *Subsection (5)* sets out the purposes of a committee established under subsection (4), which are to provide advice and information to the Council about relevant postal issues affecting the area for which it is established and such other purposes as the Council may determine.
78. *Subsection (6)* requires the Council to maintain in each of England, Wales, Scotland, and Northern Ireland at least one office where users can apply for information.

Section 55: Annual and other reports: the Council

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

Section 56: Complaints referred to the Council

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

Section 57: Power of the Council to investigate other matters

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

seriously or prejudicially affect the interests of the person to whom it relates (unless that person consents).

Section 58: Power of the Council to require information

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

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

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

Section 60: Memorandum of understanding

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

Section 61: Forward work programmes

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

Part IV Reorganisation of the Post Office

Section 62: Transfer of property etc. to nominated company

91. *Section 62* permits the Secretary of State, after consulting the Post Office, to transfer by order all the property, rights and liabilities of the Post Office to a company wholly owned by the Crown which has been formed under the Companies Act 1985. He may vary or revoke the order with a subsequent order before any transfer has taken place. Further provisions about the transfer are made in *Schedule 3*.

Section 63: Government holding in the Post Office company and certain subsidiaries

92. *Section 63* requires the Post Office company or any of its wholly owned subsidiaries to issue securities (securities are defined in *section 82*) upon the direction of the Secretary of State with the consent of the Treasury. Those securities shall, as directed by the Secretary of State, be issued to the Treasury or the Secretary of State, or to a person approved for the purpose of a disposal under *section 67*, or to the Post Office company or a relevant subsidiary (as defined in *subsections (8) and (9)*). *Section 79* has the effect that nominees may be appointed by the Treasury or the Secretary of State for the purpose of receiving securities issued under this section. The Secretary of State's power to direct for the purpose of section 63 ceases in the event that the Crown no longer wholly owns the Post Office company.

93. Securities issued under this section can be issued at such times and on such terms as the Secretary of State directs, but any shares issued will bear a nominal value, as directed by the Secretary of State and be treated as if fully paid for the purposes of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.
94. A relevant subsidiary is defined in subsection (8) as one which delivers, collects, receives, sorts or conveys relevant postal packets (of the type defined in section 4) in the United Kingdom or which provides a registered postal service in the United Kingdom or any other subsidiary of the Post Office company which holds shares or share rights in, or is connected to, any such subsidiary. A subsidiary is connected to another under subsection (9) for the purpose of the section if it forms part of a chain of subsidiaries of the Post Office company, each holding shares or share rights in the other, which includes the relevant subsidiary.

Section 64: Government investment in securities of the Post Office company and its subsidiaries

95. *Section 64* empowers the Treasury or the Secretary of State (with Treasury consent) to acquire any securities issued by the Post Office company or any of its subsidiaries. The Secretary of State can only dispose of such securities with the consent of the Treasury. The Secretary of State does not require the consent of the Treasury for disposals permitted under *section 67* nor for a disposal to the Treasury or the Treasury's nominee. *Section 79* has the effect that nominees may be appointed by the Treasury or the Secretary of State for the purpose of this section.

Section 65: Restriction on issue of shares to third parties

96. *Section 65* prevents shares or share rights in the Post Office company or any relevant subsidiary being issued to anyone other than the Treasury and the Secretary of State (or any nominee of either of them), unless approval has been given by Parliament under the procedure set out in *section 67* to dispose of shares to a named third party. *Subsection (2)(b)* also permits shares or share rights in relevant subsidiaries being issued to the Post Office company or another relevant subsidiary of which the subsidiary concerned is itself a subsidiary.

Section 66: Restriction on disposals of shares to third parties

97. *Section 66* prohibits the Treasury and the Secretary of State (or any nominee) disposing of shares or share rights in the Post Office company (or any relevant subsidiary) other than to each other, as permitted by *subsection (3)*. However, the prohibition does not apply if the prior approval of Parliament has been obtained in accordance with *section 67*. This follows the policy, set out in the Government's White Paper (Post Office Reform, cmd 4340), that after transformation to a Companies Act company, the Post Office company would remain Government-owned and shares would only be exchanged or sold in order to cement commercial strategic alliances.
98. *Subsection (2)* prohibits the Post Office company or any of its subsidiaries (or their nominees) disposing of shares or share rights in any relevant subsidiary (as defined in section 63), though *subsection (4)* permits their disposal to the company or another subsidiary (or their nominees). Again, in accordance with *subsection (5)*, the prohibition does not apply if Parliamentary approval has been obtained under the procedure in *section 67*.

Section 67: Approved disposals

99. *Section 67* sets out the procedure to be followed in order to obtain the approval of Parliament to make share issues or disposals of shares or share rights which would otherwise be prohibited by sections 65 and 66.

100. *Subsection (2)* specifies the minimum information to be contained in a motion to be presented for the approval of both Houses.
101. *Subsection (3)* sets out the conditions that must be met before a motion relating to the disposal of shares or share rights in the Post Office company may be moved, notably that the company has agreed to take part in a joint venture or other partnership which it considers to be in its commercial interests, which involves the issue or disposal of shares or share rights in the Post Office company. In addition the motion may not be moved unless the Post Office company has recommended to the Secretary of State that the disposal takes place, the Secretary of State is satisfied that the issue or disposal secures the proposed arrangement and that it is in the commercial interests of the company; and the Treasury has given consent to the proposed issue or disposal.
102. *Subsection (4)* sets out the pre-conditions to be met before moving a motion relating to issue or disposal of shares or share rights in a relevant subsidiary (as defined in section 63) in order to enable the Post Office company or a relevant subsidiary to take part in a joint venture or other partnership. The pre-conditions are generally similar to those set out in subsection (3).

Section 68: Loans by the Secretary of State to the Post Office company and its subsidiaries

103. *Section 68* empowers the Secretary of State, with the approval of the Treasury, to lend to the Post Office in any currency once it becomes a company and authorises the necessary funds to be provided from the National Loans Fund. The section provides for lending either to the Post Office company or direct to any of its subsidiaries on terms to be agreed (with the Treasury's consent) between the Secretary of State and the Post Office company/subsidiary, except that interest rates are to be as directed by the Secretary of State with the approval of the Treasury. The lending and issues from the National Loans Fund may be in any foreign currency if the loan is to be in that currency, as well as sterling. Any monies repaid to the Secretary of State in respect of interest or capital on the loan will be repaid into the National Loans Fund. The provisions of this section make section 5 of the National Loans Act 1968 applicable to the rate of interest payable on loans and the rate will be subject to the requirements of that section.

Section 69: Guarantees by the Secretary of State for the Post Office company and its subsidiaries

104. *Section 69* empowers the Secretary of State to give guarantees in respect of any financial obligation of the Post Office company or its subsidiaries. This power is taken because under Treasury guidance, it is usual practice for nationalised industries which are borrowing from non-Government sources (e.g. to provide an overdraft facility) to obtain a Government guarantee to secure the cheapest available funds for the public sector. However, this may not be appropriate in all circumstances, and it is not envisaged that this power would be used often in the case of the Post Office or its subsidiaries.
105. The Secretary of State must make a statement to Parliament about the giving of any such guarantees as soon as practicable after they have been given. If any payments are made by the Secretary of State under a guarantee, the Secretary of State will direct the terms (as to interest and capital) on which the monies are repayable by the Post Office company or, as relevant, by the subsidiary.
106. As soon as practicable after the end of any financial year in which any monies were paid by the Secretary of State in respect of a guarantee, a statement will be laid before each House of Parliament stating the sums paid. A statement will also be laid before each House as soon as practicable after the end of each financial year regarding the amount of any outstanding debt or obligation which is the subject of the guarantee given by the Secretary of State. This will allow Parliament to be informed about the remaining risk under any outstanding guarantees. In addition, the statement laid must include any amounts received by the Secretary of State during the financial year concerned in

repayment of sums, or interest on sums, paid by the Secretary of State in fulfilment of any guarantee given under this section. The statement must also include any amount outstanding and unpaid at the end of the financial year in respect of the sums paid by the Secretary of State. This will allow Parliament to be informed of what has been paid back to the Government by the Post Office company or its subsidiaries in respect of any guarantees fulfilled by the Secretary of State and what amounts remain to be repaid. These statements will cover both the principal and the interest and are intended as an aid to public accountability.

Sections 70, 72 and 74: Provisions about financial restructuring

107. *Sections 70 and 72* are intended to facilitate the restructuring of the balance sheet by 1 April 2002, as announced in the White Paper. The balance sheet will be restructured in order to place the Post Office company on a more commercial footing and allow benchmarking against its competitors. At present the Post Office holds on its balance sheet the government securities and deposits with the National Loans Fund (NLF) which represent accumulated reserves, in effect accumulated dividends, which were not payable to the Consolidated Fund.
108. *Section 70* empowers the Secretary of State with the consent of the Treasury by order to cancel any liability of the Post Office company or any of its subsidiaries, including any in respect of sums paid in fulfilment of guarantees, but not principal of or interest on loans owed to the Secretary of State and payable into the National Loans Fund or any form of taxation duty or fine. The Secretary of State must consult the Post Office company before extinguishing any of its liabilities and must consult that company and the subsidiary concerned before extinguishing any liabilities of a subsidiary. However, the Secretary of State may by order repeal the section, with the consent of the Treasury, and it would be the intention to do so once the purpose of the section is spent, i.e. the restructuring of the balance sheet of the Post Office company is complete.
109. *Section 72* empowers the Secretary of State, after consultation with the Post Office company and with the consent of the Treasury, to give directions to the Post Office company requiring it to allocate amounts to general reserves or to reserves for a particular purpose; and to reallocate those reserves to other specified purposes. The Secretary of State may also direct the Post Office company to cause any of its subsidiaries to create such reserves or to reallocate them for other purposes.
110. The Secretary of State may also direct how amounts allocated to a reserve are to be applied and may require such amounts to be paid out as if they were profits available for distribution within the meaning of section 263(1) of the Companies Act 1985 or Article 271(1) of the Companies (Northern Ireland) Order 1986 (distributions to be made out of profits). This provision therefore enables the Secretary of State to require the payment of dividends out of these reserves.
111. *Subsection (4)* provides that no reserve created under this section shall count as an undistributable reserve for the purposes of section 264(3)(d) of the Companies Act 1985 or Article 272(3)(d) of the Companies (Northern Ireland) Order 1986 (restriction on distribution of assets). However, under *subsection (5)*, amounts allocated to reserves, apart from any amounts which the Secretary of State has authorised to be applied as if they were profits available for distribution, shall be treated as if they were unrealised profits of the company (for the purpose of section 264(3)(c) of the Companies Act 1985 or article 272(3)(c) of the Companies (Northern Ireland) Order 1986). This means that the reserves created under this section would only be distributable once the Secretary of State has given a direction requiring their application as distributable profit.
112. This section enables the Government to extract as a dividend, payable to it and then into the Consolidated Fund, the Post Office company's holdings of government securities and deposits with the National Loans Fund which represent accumulated reserves.

113. *Section 74* gives the Secretary of State further powers for the purposes of restructuring the balance sheet of the Post Office company by April 2002 by injecting debt to create a commercial level of gearing and removing from it value representing reserves accumulated because the company could not as a statutory corporation pay government a dividend. It enables the Secretary of State to create debt owed by the Post Office company including debt in the form of debentures or bonds. These powers are only to be exercised after consultation with the Post Office company and with the consent of the Treasury. They are not limited to the time when the company is wholly owned by the Crown as the timing of restructuring in relation to any commercial partnering of the Post Office cannot be predicted and flexibility is required. However the Secretary of State may by order repeal the section and it would be the intention to do so once the purpose of the section is spent, i.e. the balance sheet of the Post Office company has been restructured. The section contains a definition of “debt securities” for the purpose of Part IV of the Act and this includes debentures, bonds and loan stock.

Section 71: Limit on loans and other arrangements with government

114. *Section 71* sets a limit of £5,000 million on the total of the Crown’s financial arrangements with the Post Office company and any of its subsidiaries and defines what is to be included in the calculation of the figure. The Secretary of State may increase the limit set out in the Act by an order approved by a resolution of the House of Commons. The limit is in part required in order to provide assurance to Parliament that the Post Office company and its subsidiaries are not being afforded unlimited access to the National Loans Fund. The limit also provides assurance that unlimited calls may not be made on monies to be provided by Parliament.

Section 73: Statutory accounts of the Post Office company

115. *Section 73* provides for continuity in the business across the transfer from statutory corporation to public limited company by providing that the Post Office’s closing accounts are in effect also the Post Office company’s opening statutory accounts. The section will mean that assets and liabilities of the Post Office are to be taken as transferred at the value given by the accounts of the Post Office for its last accounting year. It also means that anything done by the Post Office is treated for accounting purposes as if it had been done by the Post Office company. For example, the profits of the Post Office are carried forward and treated as profits of the Post Office company and the same would be true of losses, if there were any.

Section 75: Dissolution of the Post Office

116. *Section 75* provides for the Post Office to continue in existence after the day of transfer of the business of the Post Office to the Post Office company, for a transitional period. It gives the Secretary of State the power to dissolve the Post Office by order, following consultation with the Post Office and Post Office company, once he is satisfied that nothing further remains to be done under *paragraph 9 of Schedule 3* or an order made under the Act.

Section 76: Accounts of the Secretary of State in relation to loans

117. *Section 76* requires the Secretary of State, at the Treasury’s direction, to prepare an account in the form required by the Treasury showing:
- sums issued to him from the National Loans Fund for lending to the Post Office company and its subsidiaries;
 - repayments to him in respect of those loans and payments of interest on them; and
 - how he disposed of the sums issued to him for lending and of the repayments of and interest on loans made by him, the repayments and interest being payable by him into the National Loans Fund.

118. The account must be sent to the Comptroller and Auditor General by 30 November following the end of the financial year in question and he will examine, certify and report on the account and lay copies of it and his report before each House.

Section 77: Publicity requirements for certain accounts and reports of the Post Office company

119. *Section 77* requires the Post Office company to send to the Secretary of State:
- a copy of all annual accounts on which the company's auditors have made a report under section 235 of the Companies Act 1985, and
 - a copy of the auditor's report
- as soon as is practicable after the report is made. The Post Office company must also send to the Secretary of State a copy of its directors' report made in respect of each financial year under section 234 of the Companies Act 1985 as soon as is practicable after the report has been approved and signed. The Secretary of State is required to lay a copy of the accounts and reports before both Houses of Parliament. In this section, "annual accounts" means annual accounts within the meaning of Part VII of the Companies Act 1985 which relate to any year which includes the appointed day or to any subsequent year.

Section 78: Information requirements on the Post Office company

120. *Section 78* empowers the Treasury to require the Post Office company to provide information (for example, forecasts of its capital expenditure and profits) for the performance of its functions in relation to public sector finance. The Treasury may apply to the court for any default under section 78 to be made good.

Section 79: Exercise of functions through nominees

121. *Section 79* empowers the Treasury, or the Secretary of State with the Treasury's consent, to appoint a person to act as their nominee for the purposes of section 63 (government holding in the Post Office company and its subsidiaries), section 64 (government investment in securities of the Post Office company) and section 74(3) and (4) (further provisions relating to the capital structure of the Post Office company). Any nominees shall hold and deal with the securities or debt securities on such terms and manner as directed by the Treasury, or with the consent of the Treasury, the Secretary of State.

Section 80: Shadow directors

122. *Section 80* exempts the Secretary of State and the Treasury from certain administrative duties which would be imposed on them under the Companies Acts in respect of the Post Office company, in the event that either of them fell within the definition of "shadow director". A shadow director is defined by section 741(2) of the Companies Act 1985 as "a person in accordance with whose directions or instructions the directors of a Company are accustomed to act;". As detailed in the White Paper, the Government aims to reserve to itself controls over certain functions of the Post Office company, but the formulation of strategy and the running of the company will be the responsibility of the board of directors.
123. This section does not remove any of the substantive obligations and duties falling on a shadow director. The Secretary of State or the Treasury would still bear the same substantive responsibilities and liabilities as any other director of the Post Office company in so far as those responsibilities would require the Secretary of State or the Treasury to behave with due care and diligence towards the company. But, in the event that the Secretary of State or the Treasury was a shadow director, no useful purpose is served by obliging them to comply with the provisions specified which are of an administrative nature, such as section 288 which imposes obligations on a company

to keep particulars of its directors (name, address and occupation) and to notify the registrar of any changes.

Section 81: Tax

124. *Section 81* gives effect to the provisions in *Schedule 4*, which sets out the tax provisions in relation to the transfer of property, rights and liabilities from the Post Office to the Post Office company. The provisions ensure that the transfer is tax neutral i.e. the Post Office company will not gain any tax advantage from the transfer or suffer any tax disadvantage.

Section 82: Interpretation

125. *Section 82(1)* defines various terms used in Part IV of the Act. *Subsections 2 and 3* clarify the interpretation of property, rights and liabilities of the Post Office.

Part V Offences in Relation to Postal Services

Section 83: Interfering with the mail: postal operators

126. *Section 83* provides for it to be an offence for a person engaged in the business of a postal operator to delay or open postal packets without reasonable excuse. It amalgamates the content of offences previously included in the Post Office Act 1953. It specifies a number of cases that are not to be regarded as offences under the section.

Section 84: Interfering with the mail: general

127. *Section 84(1)* provides for it to be an offence if persons intentionally delay or open postal packets without reasonable excuse. It amalgamates the content of offences previously included in the Post Office Act 1953.
128. *Subsection (3)* makes it an offence for a person, intending to act to a person's detriment and without reasonable excuse, to open a postal packet which he knows or suspects has been incorrectly delivered to him.
129. *Subsections (2) and (4)* specify a number of cases that are not to be regarded as offences under the section.

Section 85: Prohibition on sending certain articles by post

130. *Section 85* sets out criminal offences of sending postal packets by post which either contain:
- articles, creatures or anything likely to injure other postal packets in the course of transmission by post or postal workers. This does not apply where the postal operator has given general or specific permission for anything to be enclosed in a postal packet; or
 - indecent or obscene material. It is also an offence if such material is on the packet or cover of the packet.
131. The offences apply to postal packets handled by any postal operator. The section replaces section 11 of the Post Office Act 1953.

Section 86: Prohibition on affixing advertisements on certain letter boxes etc.

132. *Section 86* contains criminal offences in relation to the fixing of advertisements, documents, boards or things onto post offices, post boxes or other property belonging to, or used by universal service providers in connection with the provision of a universal postal service, and other damage or disfigurement to such property. This section replaces section 61 of the Post Office Act 1953.

Section 87: Prohibition on misleading descriptions

133. *Section 87* contains criminal offences intended to prohibit a person unless he has the authority of the universal service provider concerned from:
- maintaining a letter box or post office and placing on them marks, words or letters with the purpose of deceiving members of the public into believing that a post box or post office is operated by a universal service provider;
 - using words, letters or marks which signify or imply that a ship, vehicle, aircraft or premises are used by a universal service provider to collect, receive, sort, deliver or convey postal packets in connection with the provision of a universal postal service; or
 - using words, letters or marks which imply that that person is authorised by a universal service provider to collect, receive, sort, deliver or convey packets in connection with the provision of a universal postal service.
134. A person also commits an offence by failing, without reasonable excuse, to comply with a notice given to him by the universal service provider to remove the words etc, or remove/close up the letter box. This section replaces section 64 of the Post Office Act 1953.

Section 88: Obstruction of business of universal service providers

135. *Section 88* sets out criminal offences in relation to:
- the obstruction, without reasonable excuse, of persons engaged in the business of a universal service provider in execution of their duty in connection with the provision of a universal postal service;
 - the obstruction, without reasonable excuse, of the business of a universal service provider while in any universal service provider's post office or related premises; and
 - failing, without reasonable excuse, to leave a universal service provider's post office or related premises when asked to do so by a person engaged in the business of a universal postal service provider on the basis that they suspect the person is obstructing their business.
136. It also enables the police to remove from the premises a person who is reasonably suspected of committing an offence under this section. This section replaces section 65 of the Post Office Act 1953.

Part VI Universal Postal Service: Supplementary

Sections 89, 90, 91 and 92: Schemes and limitation of liability

137. *Sections 89, 90, 91 and 92* concern the legal relationship between a universal service provider and its customers in connection with the provision of universal postal services. They replace sections 28 to 30 of the Post Office Act 1969 which dealt only with the relationship between the Post Office and its customers. The new provisions provide for the same privileges to apply to a universal service provider if a condition of his licence is that he should provide a universal postal service.
138. These sections enable a universal service provider to make and operate schemes setting out terms and conditions for the provision of universal postal services (in place of contracts), which limit liability, in particular the liability for consequential losses. The purpose of having such schemes is to ensure that the universal service will continue to be provided. Where a universal service is provided through the use of post boxes (as is the case at present) there is no proof of posting or of the value of contents. The removal of immunity could result in universal service providers being forced to require

proof of posting to determine eligibility for any compensation for service failure. These provisions provide for all universal service providers to have immunity to avoid this.

Section 93: Power to modify sections 89 to 92

139. *Section 93* creates a power for the Secretary of State to modify sections 89 to 92 by order having first consulted the Commission, the Council, licence holders and any such persons as the Secretary of State considers appropriate. It is intended that the need for and scope of the provisions in sections 89 to 92 should be reviewed to ensure that they continue to be in the best interests of users of postal services. The purpose of this power is to ensure that the conclusions of any such review could be implemented without unnecessary delay.

Section 94: Power to require carriage of mail-bags by ship or aircraft

140. *Section 94* provides that a universal service provider can in circumstances where there is no ready access to addresses by road, serve notice on the owner or operator of a ship or aircraft to carry mail bags in connection with the universal service. If the remuneration for providing such a service cannot be agreed, it can be determined by the Transport Tribunal or, where relevant, the Department for Regional Development in Northern Ireland.

Section 95: Provision relating to land

141. *Section 95* gives effect to the provisions of *Schedules 5 and 6*, which relate, respectively to the compulsory acquisition of land by universal service providers and other provisions relating to land.

Section 96: Immunity from prosecution

142. *Subsections (1) and (2)* provide equivalent protection for persons engaged in the business of universal service providers against prosecution for possession of articles in the post where such articles are prohibited under any enactment or fail to comply with restrictions under any enactment on carriage or delivery as if they were a government department.

Section 97: Harbour charges on mail-bags

143. *Section 97(1) and (2)* protect the goods in the mail-bags of universal service providers and foreign postal administrations from harbour charges in respect of those goods.
144. *Subsection (3)* protects the mail-bags of universal service providers and foreign postal administrations from being detained by a harbour authority for non-payment of charges for a period of eight weeks so that they cannot be held up by a demand for immediate payment. This replaces section 66 of the Post Office Act 1969.

Section 98: Mail-bags not to be subject to control by harbour authorities

145. *Section 98* sets out four cases in which harbour authorities may not detain mail-bags. It overrides any other statutory provisions. This replaces section 67 of the Post Office Act 1969 and extends the protection to mail-bags of all universal service providers. The cases are:-
- where a universal service provider is carrying the mail-bags himself in connection with the provision of a universal postal service;
 - where another is carrying the mail-bags of a universal service provider on his behalf either within the UK or to a foreign destination;
 - where mail-bags of a foreign administration are being carried by a universal service provider: and

- where a universal service provider is in charge of the mail-bags of foreign administrations in the United Kingdom in connection with the provision of a universal postal service.

Section 99: Common carriers

146. *Section 99* states that universal service providers (so far as they are providing a universal postal service) are not “common carriers”. According to the common law, a “common carrier” is a person who carries all goods of all persons wishing to use his services. He is bound to accept goods that are offered to him for carriage, but he may refuse to do so if he believes that he has lawful ground for such refusal. Being a “common carrier” has implications in terms of liability. Without this exemption universal service providers might be regarded as common carriers, which could make them absolutely responsible for the safety of goods entrusted to them for carriage. This would mean that they could be liable in certain circumstances if the goods they carry are lost or damaged, even without fault on their part.

Section 100: Certain exemptions from postage etc.

147. *Section 100* provides for the exemption from postal charges for certain petitions and addresses forwarded or sent to Her Majesty, or to the Secretary of State for Northern Ireland, or sent to a member of either House of Parliament, the Scottish Parliament (or its Clerk), the Northern Ireland Assembly or of the Welsh Assembly. It also limits the amount of postage that the universal service provider may recover for the delivery of parliamentary proceedings.

Part VII Miscellaneous and Supplementary

Section 101: Directions in interests of national security etc.

148. *Section 101* provides a power to the Secretary of State to direct the Commission or a licence holder as he considers appropriate if he considers it expedient to do so either in the interest of national security or in order to discharge an international obligation; to meet the object of an international organisation of which the Government is a member or agreement to which they are party; or to enable the Government to become a member of such an organisation or party to such an agreement. The Directions should generally be laid before Parliament but there are exceptions to this on specified grounds. It is an offence to contravene a direction or, in certain circumstances, to disclose it.

Section 102: Power to ensure compliance with the Postal Services Directive

149. *Section 102* provides a power for the Secretary of State to ensure compliance with the EU Postal Services Directive. The purpose of this power is to ensure that the Government’s obligations are always met, in particular in the event that the reserved area is removed and with it the ability to impose the universal service obligation and related requirements through licence conditions.
150. The power only applies where the Secretary of State is satisfied that a Community obligation under the Postal Services Directive is not being met or will not be met and where he has been unable to obtain any undertakings from any person which are sufficient to satisfy him that the situation will be remedied. In that case the Secretary of State may make by order such provision as he considers appropriate to ensure that a universal service is provided.
151. An order under this section may in particular: confer or modify the functions of the Commission or the Council; require a postal operator to provide all or part of a universal postal service; specify terms and conditions for such services; provide for payment from public funds for any purpose of the order; and for the enforcement of provisions in the order.

152. In deciding whether to make any such order the Secretary of State will have regard to the likely impact of the order on the person on whom the requirement is to be imposed. Before making such an order he will consult with any such person.

Section 103: Subsidy for public post offices

153. This section will allow the Secretary of State to make a scheme for payments for the purpose of assisting in the provision of public post offices or assisting in the provision of services to be provided from public post offices. Where the payments are made for services, they must ultimately assist in the provision of public post offices.
154. The Secretary of State must set the terms of the scheme, but may specify another person to make the payments. If that person is a statutory body or an office holder the Secretary of State has power to alter their statutory functions to allow them to undertake functions under any scheme set up under this section.

Section 104: Inviolability of mails

155. *Section 104(1) and (2)* provide for mail-bags, packets in the post and their contents, which are not the property of the Crown, to be given the same immunity from examination, seizure or detention, as if they were the property of the Crown.
156. *Subsection (3)* provides for exceptions to the above immunities where the Commission is investigating an offence of delivery of letters without a licence or where Customs and Excise is to exercise its powers.

Section 105: Application of Customs and Excise enactments to certain postal packets

157. *Section 105* applies customs legislation to postal packets. It re-enacts and updates the provisions contained in section 16 of the 1953 Post Office Act.
158. *Subsection (1)* applies customs and excise legislation to postal packets that are being imported, exported or in transit through the UK from or to any place outside the UK.
159. *Subsection (2)* provides a power, similar to the one in the 1953 Act, for HM Treasury to make regulations specifying how the legislation should apply. The power allows HM Treasury to make regulations:
- specifying which postal packets the section applies to;
 - making any exceptions or modifications in how those acts apply;
 - enabling a postal operator to perform the duties of an importer, exporter or remover;
 - giving effect to arrangements for foreign postal packets;
 - securing observance of the acts; and
 - punishing contravention of the regulations.
160. *Subsection (3)* allows duties and charges applied through this section to be recovered by the postal operator concerned and *subsection (4)* allows for a certificate from the relevant postal operator to be evidence in proceedings for that recovery.
161. *Subsection (5)* defines the term “foreign postal packet” used in this section.

Section 106: Power to detain postal packets containing contraband

162. *Section 106* permits postal operators to forward postal packets to the Commissioners of Customs and Excise. It re-enacts and updates the provisions contained in section 17 of the 1953 Post Office Act.

- 163. *Subsections (1) and (2)* allow postal operators to detain and forward to the Commissioners of Customs and Excise, any postal packet that they suspect contains goods which are subject to duty which has not been paid, or which are subject to legislation prohibiting or restricting their import or export.
- 164. *Subsection (4) and (5)* allow the Commissioners to open any postal packet that is forwarded to them under this section, in the presence of the addressee, or - if the addressee has been notified but fails to turn up or the address is overseas - in the addressee's absence.
- 165. *Subsection (6)* enables the Commissioners if they find any goods that are prohibited or on which duty has not been paid to take proceedings in relation to them. *Subsection (7)* specifies that if, upon opening, the Commissioners do not find any such goods they must forward or deliver the package to the addressee.

Section 107: Conditions of transit of postal packets

- 166. *Section 107* permits a postal operator in certain circumstances to refuse transmission of a postal packet, detain and open it, make additional charges, return to its sender or forward it to its destination, or destroy or otherwise dispose of the packet. *Subsection (2)* has the effect that the provisions in *subsection (1)* should not be construed as placing any restriction on postal operators applying other terms and conditions to the transmission by post or otherwise of a postal packet. *Subsection (3)* makes it clear that the fact that a postal packet does not reach its destination because it is detained or destroyed or disposed of by a postal operator (on the grounds of a contravention of section 85 or other terms and conditions), should not prevent proceedings being brought against the sender. This applies to proceedings under this or other legislation.

Sections 108/109/110: Evidential provisions

- 167. *Sections 108, 109 and 110* are intended to prevent delays in court cases arising from hearsay arguments.
- 168. *Section 108* enables official marks of universal service providers in connection with the provision of the universal service or a foreign administration to be sufficient proof of the amount of postage due on a postal packet. It allows in legal proceedings for the recovery of postage or other sums due in respect of postal packets that the production of the packet with a universal service provider's or a foreign administration's stamp or endorsement on it is sufficient proof that the packet has been refused or rejected, is unclaimed or cannot be delivered for any other reason. It also states that a certificate of a universal service provider is sufficient proof that any mark, stamp or endorsement has been made by that universal service provider unless the contrary is shown. The section makes it clear that, in any legal proceedings, the person from whom a postal packet seems to have come will, unless the contrary is shown, be taken to be the sender of the packet.
- 169. *Section 109* enables, on prosecution of an offence under the Act, evidence that an article is in the course of transmission by post or has been accepted by a postal operator for transmission by post will be sufficient proof that it is a postal packet. This applies to any offence in the Act. *Subsections (2) and (3)* apply certain provisions of the Theft Act to offences under sections 83 and 84 of the Postal Services Act.
- 170. *Section 110* enables certification by a universal service provider to be sufficient proof, unless the contrary is shown, that any box or receptacle was provided by the provider for receiving and onward transmission of postal packets in connection with the provision of a universal postal service.
- 171. These sections replace sections 19, 72 and 78 of the Post Office Act 1953.

Section 111/112/113/114: Provisions relating to postal and money orders

172. These provisions, which replace those for postal and money orders in the 1953 and 1969 Post Office Acts, protect the Post Office company and bankers by limiting liability in certain circumstances (*Section 111*); allow the Post Office company to make schemes in relation to postal and money orders (*Section 112*); make provisions for the recoupment of losses on money orders wrongly paid to bankers (*Section 113*); and set out the treatment of special money orders issued by the Post Office company under an arrangement with a foreign Government or postal administration (*Section 114*). These provisions only apply to the Post Office company.

Section 115: Extension of existing powers relating to the Post Office

173. *Section 115* extends certain existing powers of the Post Office (the statutory corporation) and the Crown under the Post Office Act 1969 and the British Telecommunications Act 1981 prior to the Post Office becoming a company. The purpose is to support the Government's policy of allowing the Post Office greater commercial freedom. The section provides:
- for the Post Office to enter into any financial transactions not already empowered by section 7 of the Post Office Act 1969 and the power will include, for example, power to enter into currency swaps required in connection with the business of the Post Office and its expansion outside the United Kingdom;
 - for the Secretary of State, with the approval of the Treasury, also to make loans direct to any subsidiaries of the Post Office, and not only to the Post Office itself;
 - for the Secretary of State, with the approval of the Treasury, to make loans in foreign currencies to the Post Office or its subsidiaries. The monies will continue to be issued from the National Loans Fund, but may be issued in sterling or a foreign currency if the loan is to be in that currency;
 - for the Post Office correspondingly to have powers to borrow in a foreign currency from the Secretary of State;
 - for the limit on the Post Office's total indebtedness, as permitted under the British Telecommunications Act 1981 and including borrowing by any subsidiary, to be increased from £1,200 million to £5,000 million and for the removal of the ceiling up to which the limit may be increased, although any increase will still need to be authorised by an affirmative resolution order.

Section 116: The Postcode Address File

174. *Section 116* requires the owner (currently the Post Office) of the database of United Kingdom postcodes (known as the Postcode Address File) to make it available to those who wish to use it, on reasonable terms and on possible payment of a charge. It also requires the owner to maintain it.

Section 117: Records of the former Postmaster General's department

175. *Section 117* recreates a power similar to that in section 75(2) of the Post Office Act 1969 to enable the Secretary of State by order to vest in the Post Office company the property in the pre-1969 records of the Postmaster General and to give directions to the Post Office company in respect of making those records available to the Crown for inspection and copying. The order-making power in section 75(2) of the 1969 Act has never been exercised, and so the vesting of the pre-1969 records remains an outstanding matter from the 1969 Act.

Section 118: Supplementary provisions relating to the Council

176. *Section 118* provides transitional provisions to facilitate the transfer of functions from the Post Office Users' National Council and the Country Councils for Scotland, Wales and Northern Ireland to the new Consumer Council for Postal Services. *Subsections (1) and (2)* enable the Secretary of State to make an order transferring property, rights and liabilities of the Post Office Users' National Council to the Council. *Subsection (3)* applies the provisions in Schedule 3 concerning vesting of property etc and other third party rights to the Post Office Users' National Council and the Council. *Subsections (4) and (5)* preserve the employment rights of any staff seconded from the civil service that choose to transfer to the Council.

Section 119: General restrictions on disclosure of information

177. *Section 119* provides that the provisions of *Schedule 7*, which makes provision about disclosure of information, shall have effect.

Section 120: Offences by body corporate

178. *Section 120* allows the directors, managers or other officers of a body corporate, to be subject to prosecution if a corporate body is found guilty of an offence under the Act, and it is proved that the offence has been committed with their consent, connivance or neglect.

Section 121: Service of documents

179. *Section 121* provides for the ways in which documents may be served on persons, bodies corporate and partnerships.

Section 122: Orders and regulations

180. *Section 122* sets out how the Secretary of State is to exercise his powers to make orders or regulations under the Act, and makes additional provisions in respect to his powers. It also sets out how the Treasury can exercise their power to make regulations under the Act.

Section 123: Directions

181. *Section 123* requires a person to whom a direction is given to give effect to it. It further provides that any power conferred by this Act to give a direction includes the power to vary or revoke any such direction. Finally it provides that such directions should be in writing.

Sections 124 to 131 General and financial provisions

182. *Section 124* summarises the financial provisions for the Act.
183. *Section 127(1)* confers the power to make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient for the general purposes, or any particular purpose of the Act or in consequence of any provision made by or under the Act or for giving full effect to the Act or any such provision.
184. *Section 128* confers a similar power to section 127(1), but in relation to local enactments.
185. *Section 130* provides that most of the provisions of the Act will be brought into force by commencement orders made by the Secretary of State. It permits different commencement dates for different purposes or areas. Some provisions come into force on Royal Assent, and section 115 (extending certain existing powers of the Post Office) comes into force two months after Royal Assent.

186. The Act is to apply throughout the United Kingdom.

Schedule 1

The Postal Services Commission

187. *Schedule 1* sets out a series of detailed provisions regarding the membership and constitution of the Commission, staffing and supplementary powers.
188. *Paragraph 1* provides that the Commission shall consist of a chairman and no fewer than three other members, each appointed to the Commission by the Secretary of State, and the chief executive.
189. *Paragraph 2* gives a power to the Secretary of State to determine the terms of appointment of members of the Commission and requires appointed members to hold and vacate office in accordance with such terms.
190. *Paragraph 3* provides that any appointment shall be for a period of not more than five years; but that previous membership does not preclude a further term.
191. It also provides that a member may resign, and that the Secretary of State may remove a member on grounds of incapacity or misbehaviour.
192. *Paragraph 4* makes provision for the Commission to pay and remunerate its members. It also makes provision for the Secretary of State to authorise the Commission to pay compensation where a person ceases to be a member where in his view there are special circumstances.
193. *Paragraph 5* provides the Commission with the duty to appoint a chief executive, and power to appoint other staff, on such terms and conditions of service as the Minister for the Civil Service may approve.
194. *Paragraph 6* provides the Commission with a power to establish committees and sub-committees; and that these may include persons other than members of the Commission.
195. *Paragraph 7* provides for the Commission to regulate its own proceedings, including quorum.
196. *Paragraph 8* provides for the authentication of the Commission's common seal.
197. *Paragraph 9* provides for a document executed under the seal to be received in evidence.
198. *Paragraph 10* sets out the power of the Commission to delegate to any member, member of staff or any committee who is authorised by the Commission for that purpose.
199. *Paragraph 11* provides supplementary powers for the Commission. It provides that the Commission has a power to do anything (except borrow money) which is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions, in particular the formation of advisory bodies.

Schedule 2

The Consumer Council for Postal Services

200. *Schedule 2* sets out a series of detailed provisions regarding the membership and constitution of the Council.
201. *Paragraph 1* provides for the membership of the Council. There must be a Chairman appointed by the Secretary of State. The Chairmen of the regional committees for Wales, Scotland and Northern Ireland and any committee for England are members by virtue of their office. The Secretary of State may appoint such other members as he

may from time to time determine subject to consulting the Chairman before making any such appointments.

- 202. *Paragraph 2* provides that the regional committees for Wales, Scotland and Northern Ireland and any committee for England shall consist of a Chairman appointed by the Secretary of State after consultation with the Chairman of the Council and other members appointed by the Council. It also makes provisions about the formation of regional committees and the appointment of the Chairmen.
- 203. *Paragraph 3* provides that the Council in consultation with the Secretary of State shall decide the nature of regional committees and make provisions about the procedure for making changes to such committees.
- 204. *Paragraph 4* allows both the Council and any of its committees to establish other committees and that the members may include persons who are not members of the Council or of its committees and makes provisions about members vacating office.
- 205. *Paragraph 5* provides that subject to this schedule the Chairmen and all members of the Council shall hold and vacate office in accordance with the terms of their appointments.
- 206. *Paragraph 6* provides that the Chairmen and all members of the Council may resign by giving notice to the Secretary of State and provides that the Secretary of State may remove any Council member on grounds of incapacity or misbehaviour. It also provides that where a person ceases to be the Chairman of the Wales, Scotland or Northern Ireland regional committees or of any committee for England then he shall cease to be a member of the Council. Previous service in any capacity on the Council does not disqualify someone from being appointed again.
- 207. *Paragraph 7* makes provision for the Council to pay and remunerate its members. It also makes provision for the Secretary of State to authorise the Council to pay compensation where a person ceases to be a member where in his view there are special circumstances.
- 208. *Paragraph 8* provides the Council with a duty to appoint a principal officer, and a power to appoint other staff, on such terms and conditions of service as the Minister for the Civil Service may approve.
- 209. *Paragraph 9* provides for the Council's staff to be eligible for schemes under the Superannuation Act 1972. This allows staff to have pensions analogous to those of civil servants.
- 210. *Paragraph 10* provides that the Council may regulate its own proceedings including its quorum.
- 211. *Paragraph 11* provides for the authentication of the Council's common seal.
- 212. *Paragraph 12* provides for a document executed under the seal of the Council, or signed on its behalf, to be received in evidence.
- 213. *Paragraph 13* sets out the power of the Council to delegate to any member, or member of staff, of the Council or a Committee who is authorised for that purpose.
- 214. *Paragraph 14* provides supplementary powers for the Council. It provides that the Council has power to do anything (except borrow money) which is calculated to facilitate, or which is incidental or conducive to, the performance of any of its functions.
- 215. *Paragraph 15* provides that the Council must perform duties of a financial nature specified in notices from the Secretary of State which have been approved by Treasury.
- 216. *Paragraph 16* requires the Council to prepare annual accounts that give a true and fair view of its financial affairs and for such accounts to be sent to the Secretary of State and laid before each House of Parliament.

217. *Paragraph 17* provides that the Secretary of State may pay such amounts in respect of the expenses of the Council as he may determine.

Schedule 3

Transfer to the Post Office company: supplementary provisions

218. *Schedule 3* sets out a series of provisions regarding the vesting of property, rights and liabilities of the Post Office in the Post Office company.
219. *Paragraph 1* provides that anything (including any legal proceedings) which is being done by or in relation to the Post Office immediately before the appointed day may be continued to be done by or in relation to the Post Office company after the appointed day. Anything done by or in relation to the Post Office for the purpose of the transfer to the Post Office company will, if it is in force immediately before the appointed day, have effect as if it were done by or in relation to the Post Office company in so far as that is required for it to have continuing effect after the transfer. The transfer to the Post Office company does not affect the validity of anything done by or in relation to the Post Office before the transfer.
220. Any agreement or any document which was made before the appointed day will have effect for the purposes or consequences of the transfer to the Post Office company as if any reference to the Post Office were references to the Post Office company and any references to an employee or other person serving the Post Office in a specified capacity were references to such a person as the Post Office company may appoint or, in default, to the officer who most closely corresponds with the original member or officer of the Post Office. *Sub-paragraph (5)* contains an order-making power for the Secretary of State to disapply, or apply with modifications, the provisions in *subsections (1) to (4)* of paragraph 1. The order-making power could be used to deal with an instance where it is inappropriate for a reference to the Post Office in a current document to be construed as a reference to the Post Office company after vesting day. Only sub-paragraphs (1) to (4) of paragraph 1 are subject to any provision made by or under the Act.
221. *Paragraph 2* provides for the Post Office company to be liable, as from the appointed day, for the pension arrangements of the Post Office. In particular, *paragraph 2(1)* imposes the Post Office's previous liabilities under the 1969 Act on the new Post Office company. *Paragraph 3* confers similar powers in relation to the new Post Office company to those which currently exist in relation to the Post Office in respect of certain previous employees of the Cable and Wireless company. *Paragraph 4* provides that certain moneys in the pension schemes which were provided under the Post Office Act 1969 are to be held by trustees – just as they are currently held by trustees. The Post Office's pension funds are currently held by a corporate trustee company (Post Office Pensions Trustees Ltd), and the Trustee Board operates independently of the Post Office. The effect of *paragraph 4(1)* is to permit such arrangements to continue. *Paragraph 4(2)* provides that the Trustees in office immediately before the "appointed day" will remain the Trustees after the transformation, and the trusts themselves will be equally unaffected in substance by the transformation. *Paragraph 4(3)* defines the boundaries of the trusts which are held within the ambit of these transfer provisions – it is drawn in such a way as to embrace all the current pension schemes.
222. *Paragraph 5* ensures that managers of welfare and other funds for persons (and their relatives and dependants) who are or have been engaged in the business of the Post Office have the power to alter these funds to take account of the transfer of the Post Office to the Post Office company. It maintains the rights of persons eligible for assistance under the existing funds and allows persons (and their relatives and dependants) who become engaged in the business of the Post Office company to become eligible.
223. *Paragraph 6* provides that no relevant land right of third parties will operate or become exercisable by virtue of the vesting of the rights and liabilities of the Post Office in the

Post Office company. “Relevant land right” is defined in sub-paragraph (2). A relevant land right will have effect in the case of vesting of the rights and liabilities of the Post Office in the Post Office company as if the Post Office company were the same person in law as the Post Office and no transfer of land had taken place. Fair compensation will be paid by the Post Office company to any person having a relevant land right but who cannot exercise it because of the provisions in this paragraph. The paragraph makes provision for the appointment of an arbitrator to deal with any dispute over such compensation.

- 224. *Paragraph 7* deals with any other rights or liabilities of a third party which were enforceable against or by the Post Office and which by virtue of the Act have become enforceable against or by the Post Office company, and the value of any property or interest of the third party which is consequently reduced. “Third party” in this paragraph means any other person other than the Post Office and the Post Office company. Fair compensation will be paid by the Post Office company in such circumstances and any dispute as to whether and how much compensation should be payable, and provision is made for the appointment of an arbitrator.
- 225. *Paragraph 8* provides that a person dealing with the Post Office company in respect of land transferred under section 62 of the Act shall not be bound or entitled to enquire whether Treasury consent to any previous dealing with the land was needed or, if it was needed, whether or not it was given. It re-enacts section 62 of the Post Office Act 1969 but modifies it to apply to the Post Office company.
- 226. The Post Office still owns much of the land purchased with Treasury consent. The proposed section has the effect of allowing third parties to deal solely with the Post Office company in respect of dealings in land. It removes the burden on third parties to enquire whether Treasury consent was given in respect of past dealings in land and also provides protection in the unlikely event that Treasury consent was not given. The provision will remove the risk that dealings in respect of land between the Post Office company and third parties could be prejudiced.
- 227. *Paragraph 9* provides for the transfer of any foreign property, right or liability.
- 228. *Paragraph 10* defines “the transitional period” referred to in this schedule as the period of continued existence of the Post Office after the appointed day.

Schedule 4

Transfer to the Post Office company: Tax

- 229. This Schedule sets out the tax provisions in relation to the transfer of property, rights and liabilities from the Post Office to the Post Office company. The effect of these provisions is to make the transfer tax neutral. They ensure that the Post Office company will not receive any tax advantage as a result of the transfer and equally ensure that the Post Office company does not suffer any disadvantage.
- 230. The Post Office is currently chargeable to corporation tax, as will the Post Office company. *Paragraph 1* enables that, for the purposes of corporation tax, the Post Office company shall be treated as if it were the same person as the Post Office. It will ensure tax neutrality. The Post Office company will avoid charges to corporation tax resulting from the transfer of property, rights and liabilities from the Post Office. It will also allow the Post Office company the same tax reliefs as would have been available to the Post Office.
- 231. *Paragraph 2* covers the treatment of any shares issued under section 63 of the Act. It enables such shares to be treated for the purposes of the Corporation Tax Acts as if they had been issued wholly for consideration of a subscription paid to the Post Office company of an amount equal to the nominal value of the share. Without this provision, shares would be deemed to be issued for no consideration with the consequence the

issuing of the shares would be deemed to be a distribution which would attract a tax charge.

- 232. *Paragraph 3* covers the treatment of any securities issued under sections 63 or 74 of the Act. It enables such securities to be treated for the purposes of the Corporation Tax Acts as if they had been issued for consideration of a loan made to the Post Office company of an amount equal to the principal sum payable under the security. If securities were issued for no consideration, interest payments by the company could be considered a distribution and attract a tax charge.
- 233. *Paragraph 4* makes provision for any debt assumed by the Post Office company under Section 74(1) to be treated for the purposes of the Corporation Tax Acts as if it had been assumed wholly in consideration of a loan made to the Post Office company of an amount equal to the principal sum payable under the debt. If the debt were treated as having been assumed for no consideration, interest payments by the company could be considered a distribution and attract a tax charge. It is intended to maintain a position of tax neutrality for the Post Office company during the restructuring of the company's balance sheet.
- 234. *Paragraph 5* ensures that the existence or exercise of the powers of the Secretary of State under section 62 of the Act does not constitute or create arrangements within the meaning of section 410 of the Income and Corporation Taxes Act 1988. Without this amendment, there is the possibility that the Post Office company and its subsidiaries may not be able to obtain group relief from the time that arrangements are in place to transfer the Post Office subsidiaries to the company.
- 235. *Paragraph 6* makes it clear that nothing in Part IV of the Act and nothing done under it shall be regarded as a scheme or an arrangement for the purposes of section 30 of the Taxation of Chargeable Gains Act 1992. Without this provision, section 30 would confer on the Post Office company a tax free benefit as a result of the transfer of property, rights and liabilities from the Post Office which could give rise to an additional tax liability.
- 236. *Paragraph 7* ensures that the Taxation of Chargeable Gains Act 1992 applies to a disposal by the Post Office company of any assets acquired by the Post Office under Part III of the Post Office Act 1969. In such instances, the acquisition or provision of an asset by the Crown will be deemed to be an acquisition or provision by the Post Office company. This provision gives the Post Office company the capital gains base cost for things such as buildings that will be owned by the Post Office at the time of transfer. Without this provision the Post Office company would not be entitled to the base cost.
- 237. *Paragraph 8* enables that, for the purpose of value added tax, the Post Office company shall be treated as if it were the same person as the Post Office. This paragraph has the same effect for value added tax as paragraph 1 has for corporation tax.
- 238. *Paragraph 9* makes it clear that the transfer of property, rights and liabilities under section 62 of the Act will not give rise to any liability to stamp duty.
- 239. Amendments to the Value Added Tax Act 1994 as set out in *Schedule 8* of the Act are also intended to ensure that the transfer of the property, rights and liabilities of the Post Office to the Post Office company is tax neutral.

Schedule 5

Acquisition of Land

- 240. *Schedule 5* sets out the detailed provisions on the compulsory acquisition of land by a universal service provider. Under Part I, any universal service provider who requires to make a compulsory acquisition of land for the purpose of the provision of a universal postal service will require authorisation from the Secretary of State. As planning law

differs within the UK, the Schedule provides separate powers for England and Wales, Scotland and Northern Ireland.

- 241. *Paragraph 1(2)* expands the power to make a compulsory purchase of land and rights over land so that it includes the power to acquire a right over land by creating a new right. Unlike the Acquisition of Land Act 1981, the Compulsory Purchase Act 1965 does not contain provision for such new rights and so *paragraphs 5 to 13* make the necessary modifications to that Act.
- 242. *Paragraph 2(2)*, like paragraph 1(2), provides for the acquisition of land by means of the creation of a new right over land. *Paragraphs 15 to 28* make provision similar to that in paragraphs 5 to 13 and for the same reason.
- 243. Part IV of the Schedule contains procedures for the compulsory purchase of land by universal service providers in Northern Ireland. It applies, with modifications, Schedule 6 to the Local Government Act (Northern Ireland) 1972 and Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972. It provides that any compensation due as a consequence of a compulsory purchase is to be assessed in the same way as when land is vested in a district council by virtue of Schedule 6 to the 1972 Act.

Schedule 6

Further provisions relating to land

- 244. *Schedule 6* contains further provisions relating to land.
- 245. *Paragraph 1* gives universal service providers the power to execute street works in relation to the placing of letter boxes and pouch-boxes. *Sub-paragraph (3)* applies Part III of the New Roads and Street Works Act 1991 and the Street Works (Northern Ireland) Order 1995. Pouch-boxes are secure receptacles from which postmen and women collect additional mail sacks without returning to a Delivery or Sorting Office.
- 246. *Paragraph 2(1)* permits a person authorised by a universal service provider to enter and survey land to ascertain whether it is suitable for any purpose in connection with the provision of a universal postal service.
- 247. *Paragraph 2(2)* allows the authorised person to search and bore to ascertain the nature of the subsoil of the land.
- 248. *Paragraph 2(3)* limits the power in paragraph 2(1) to circumstances where the land is not covered by a building (or does not have planning permission to be covered). *Paragraph 2(4)* extends the meaning of “building” to include a garden etc. belonging to the building.
- 249. *Paragraph 3(1) and (2)* contains the conditions with which the universal service provider must conform to obtain entry to any land.
- 250. *Paragraph 3(3)* provides that, if the land is owned by a statutory undertaking, the authority of the appropriate Minister (as defined in *paragraph 3(4) to 3(6)*) will need to be obtained if the survey of the land would be detrimental to the undertakings’ activities.
- 251. *Paragraph 4* makes it an offence to obstruct an authorised person carrying out their work.
- 252. *Paragraph 5(1)* provides that the owner of the land may seek compensation from the universal service provider if the authorised person causes damage to the land.
- 253. *Paragraph 5(2) to (4)* sets out the procedures for the determination of compensation in England and Wales, Scotland and Northern Ireland.

- 254. *Paragraph 6* applies, for England and Wales, the relevant provisions of Part I of the Compulsory Purchase Act to the acquisition of land by a universal service provider by agreement.
- 255. *Paragraph 7* applies, for Scotland, the relevant provisions of the Town and Country Planning (Scotland) Act 1997 (incorporation of Land Clauses Acts) to the acquisition of land by a universal service provider by agreement.
- 256. *Paragraph 8* applies, for Northern Ireland, the relevant provisions of the Land Clauses Acts to the acquisition of land by a universal service provider by agreement.
- 257. *Paragraph 9* permits the Duchy of Lancaster to sell land owned by the Crown to a universal service provider for use in the provision of a universal postal service.
- 258. *Paragraph 10* has the effect that land acquired by a universal service provider by agreement under paragraphs 6-9 shall be deemed for all purposes to have been acquired for the purposes of the provider's undertaking as a universal service provider.

Schedule 7

Disclosure of information

- 259. *Schedule 7* sets out the basis upon which information obtained under the Act can be disclosed. Information obtained under this Act (except for that obtained under section 62 or section 118) which relates to the affairs of a person or business may only be disclosed if it falls within one of the criteria in this schedule. *Paragraph 3(1)* allows disclosures to be made for certain purposes which are listed there. One of these purposes (see *paragraph 3(1)(b)*) is to facilitate the carrying out by a person or body listed in *paragraph 3(2)* of any function conferred by the Acts and other legislation listed in *paragraph 3(3)*. The Secretary of State may modify paragraph 3 by Order. There are comparable provisions in the Telecommunications Act 1984. The Act makes it an offence to disclose information in contravention of Schedule 7.

Schedule 8

Amendments of enactments

- 260. *Schedule 8* amends a number of enactments in consequence of the Act.

Schedule 9

Repeals and revocations

- 261. *Schedule 9* repeals and revokes a number of enactments in consequence of the Act or which are obsolete or unnecessary.

COMMENCEMENT

- 262. Some technical provisions of the Act will come into force on Royal Assent. The substantive provisions of the Act other than section 115 will come into force on such a day, or days, as the Secretary of State shall determine. Section 115 will come into force at the end of the period of two months beginning with the day on which the Act received Royal Assent.

HANSARD REFERENCES

- 263. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

*These notes refer to the Postal Services Act 2000
(c.26) which received Royal Assent on 28 July 2000*

<i>Stage</i>	<i>Date (all year 2000)</i>	<i>Hansard reference</i>
House of Commons		
Introduction	27 January	Column 593
Second Reading	15 February	Columns 802 - 880
Committee	22 and 29 February; 2, 7, 9, 14, 16 and 21 March.	House of Commons Official Report – Standing Committee B
Report and Third Reading	18 April	Columns 834 - 952
House of Lords		
Introduction	19 April	Column 707
Second Reading	2 May	Columns 931 –945; 956 – 986
Committee	8 and 15 June	Columns 1242 – 1307; 1323 – 1362; 1762 - 1828
Report	29 June	Columns 1073 - 1146
Third Reading	11 July	Columns 167 - 196
House of Commons		
Consideration of Lords Amendments	27 July	Columns 1361 - 1381
House of Lords		
Royal Assent	28 July	Column 766
House of Commons		
Royal Assent	28 July	Column 1457