

POSTAL SERVICES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.