

POSTAL SERVICES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Restructuring of Royal Mail Group

Summary and Background

25. **Part 1** of the Act is concerned with the restructuring of the Royal Mail group of companies, including Post Office Limited which is currently a subsidiary of Royal Mail Group Limited. In particular, the provisions ensure that any Post Office company engaged in the provision of post offices remains wholly owned by the Crown, except where it moves to a mutual ownership structure.
26. Furthermore, this Part of the Act includes provisions to lift all restrictions on the sale of shares in Royal Mail, and provides for an employee ownership scheme to be established prior to a sale of shares in the company.
27. To facilitate the internal group restructuring that will be necessary before any sale of shares in Royal Mail, this Part of the Act contains transfer scheme provisions which enable the transfer of property, rights or liabilities between companies in the Royal Mail group.
28. This Part also contains provisions to ensure that there are no unintended tax consequences resulting from the group restructure, and reporting requirements relating to the post office network and to Royal Mail's activities in relation to the Royal Mail archive and the British Postal Museum collection.

Removal of existing statutory restrictions on ownership

Section 1: Removal of restrictions on ownership of Royal Mail Holdings plc etc

29. Subsection (1) repeals sections 65 to 67 of the Postal Services Act 2000. These sections contain restrictions on the issue and transfer of shares or share rights in Royal Mail Holdings plc and its relevant subsidiaries. Sections 65 and 66 prevent the issue or disposal of shares or share rights to anybody other than the Secretary of State, the Treasury (or either's nominees) or, in the case of a relevant subsidiary, Royal Mail Holdings plc unless approved under section 67. A relevant subsidiary, as defined in the 2000 Act, includes Royal Mail Group Limited and Post Office Limited. Section 67 enables, subject to Parliamentary approval, the issue or disposal of shares or share rights in certain limited circumstances
30. Subsection (2) of this section indicates that new restrictions on the issue and transfer of shares and share rights in Post Office companies (which will cover Post Office Limited) are included in section 4 of the Act.

Ownership of the Royal Mail

Section 2: Report on decision to dispose of shares in a Royal Mail company etc

31. This section places a duty on the Secretary of State to report to Parliament when a decision has been made to undertake a relevant disposal of shares or share rights in a Royal Mail company owned by the Crown. The Secretary of State also has a duty to report if he has decided that another person (e.g. Royal Mail Holdings plc or Royal Mail Group Limited) may undertake such a disposal.
32. The Secretary of State's report must include: the kind of disposal that will be undertaken, e.g. whether it is subject to an auction or an Initial Public Offering; the timescale for the disposal process; and the objective intended to be achieved by the disposal.
33. The Secretary of State's report must also give information about the expected commercial relationship, after the proposed disposal, between the Royal Mail company in question and any Post Office company (as defined in section 6).
34. When shares are proposed to be put into the employee share scheme (as defined in section 3) for the first time, the Secretary of State's report must also give details of the scheme.
35. A relevant disposal is defined in subsection (5) as the issue or transfer of shares or share rights that reduces the proportion of a Royal Mail company owned by the Crown.
36. Subsection (6) defines a Royal Mail company as a company that provides a universal postal service and is or has been in the same group as:
 - a) Royal Mail Holdings plc ("the original holding company") or
 - b) another company that is or has at any time been a Royal Mail company
37. The latter is intended to ensure that the definition covers any companies providing a universal postal service that may no longer be a subsidiary of Royal Mail Holdings plc when a relevant disposal is made.

Section 3: Establishment of employee share scheme

38. Subsection (1) requires that the Secretary of State must ensure that arrangements have been made for the establishment of an employee share scheme before a relevant disposal is made in relation to a Royal Mail company (as defined in section 2).
39. Subsection (2) requires that the arrangements made under subsection 1 must ensure, either at or before the time the Crown no longer owns any of the company, that the proportion of it owned by or on behalf of the employee share scheme is or has been at least 10%.
40. Subsection (3) clarifies that shares held directly by employees, and shares held by the scheme on behalf of employees, are to be included within the calculation of the percentage set out in Subsection (2).
41. Subsection (4) defines an employee share scheme as being a scheme for encouraging or facilitating the holding of shares or share rights by or for the benefit of persons who are or include employees of a Royal Mail company (or another company in the same group).

Ownership of the Post Office

Section 4: Restrictions on issue and transfer of shares and share rights in a Post Office company etc

42. This section prohibits a sale of the Post Office by preventing a disposal of the Crown's interest in a Post Office Company (as defined in section 6) save where the disposal is to a relevant mutual (as defined in section 7). Disposals of the Crown's interest in a Post Office company to a relevant mutual may be made as a result of either a transfer of existing shares or share rights or an issue of new shares or share rights by a Post Office company.
43. Under subsection (2) the Secretary of State is given powers to make an order to direct a Post Office company to issue shares or share rights to a relevant mutual or to direct a company that owns shares or share rights in a Post Office company to transfer them to a relevant mutual. Such directions may only be given where the company the subject of the direction is wholly owned by the Crown.
44. Subsection (3) deals with issues and transfers of shares or share rights to a relevant mutual other than as a result of a direction by the Secretary of State. In these circumstances, the Secretary of State's approval by order is required.
45. Subsection (4) provides that any order by the Secretary of State to direct or approve the disposal of the Crown's interest in a Post Office company to a relevant mutual is subject to the affirmative resolution procedure.
46. Subsection (5) ensures that once a relevant mutual has taken ownership of shares or share rights in a Post Office company, it may not transfer them, save where the transfer is to another relevant mutual, the Secretary of State or the Treasury (or a nominee of either of them), or a company wholly owned by the Crown.
47. Should an attempt be made to dispose of the Crown's interest in a Post Office company in contravention of these restrictions (for example a sale to a company that is not wholly owned by the Crown or a relevant mutual), subsection (6) provides that this would have no effect.
48. Subsection (8) explains what is meant by a disposal of a person's interest in a Post Office company. In relation to shares, it means an issue or transfer of shares the effect of which is to reduce the proportion of the Post Office company owned by the person. In relation to share rights, it means an issue or transfer of share rights to a person the effect of which would be, if the shares to which those share rights relate were transferred to the person, to reduce the proportion of a Post Office company owned by the person.
49. [Section 14](#) contains provisions which define what is meant by ownership of a company in these circumstances.

Section 5: Report on a transfer of an interest in a Post Office company to a relevant mutual

50. [Section 5](#) requires the Secretary of State, before making any order directing or approving the disposal of the Crown's interest in a Post Office company to a relevant mutual, whether by the issue or transfer of shares or share rights, to lay a report before Parliament on the issue or transfer in question.
51. Subsection (3) sets out requirements as to the content of the report. A report must give details of the proposed issue or transfer, including the expected time-scale for the issue or transfer. It must also name the body to which shares or share rights are to be issued or transferred. Finally it must explain how that body satisfies the conditions for being a relevant mutual set out in section 7.

Section 6: Meaning of “Post Office company”

52. Subsection (1) defines a Post Office company as one which meets three criteria: the company must be engaged in the provision of post offices (as defined in section 15); the company must also be designated as a Post Office company by order made by the Secretary of State; finally, the company must also be (or have been) either a subsidiary of Royal Mail Holdings plc (referred to in the Act as “the original holding company”) or in the same group as a company that is or was designated as a Post Office company by order made by the Secretary of State. Only if all three criteria are satisfied will the company be a Post Office company for the purposes of the Act.
53. Subsection (2) places a limitation on the circumstances in which the Secretary of State can designate a company under subsection (1). This can only happen if the company is wholly owned by the Crown immediately before designation. Subsection (3) provides that a designation order under subsection (1) may not be amended or revoked.
54. Subsection (4) prevents the commencement of section 1 (removal of restrictions on ownership of Royal Mail Holdings plc etc) until the Secretary of State has designated Post Office Limited as a Post Office company. This provision therefore ensures that at all times the Crown’s ownership of Post Office Limited is subject either to the restrictions set out in sections 65 to 67 of the Postal Services Act 2000, or those in this legislation.

Section 7: Meaning of “relevant mutual”

55. Section 7 sets out the conditions which the Secretary of State must consider are (and will continue to be) met for a body to be a relevant mutual. Under the ownership restrictions in section 4, a relevant mutual is the only body permitted to own shares or share rights in a Post Office company other than the Crown (directly or indirectly).
56. The first condition, set out in subsection (2), is that the purpose (or main purpose) for which the body exists is to act for the public benefit by promoting the use by the public of services provided by a Post Office company or at its post offices.
57. The second condition, set out in subsection (3), is that the members of the body are persons who have an interest in the use by the public of services provided by a Post Office company or at its post offices. This would include employees of the Post Office company and other persons engaged in the provision of the Post Office company’s post offices (for example, subpostmasters). Other members of a relevant mutual could include the Crown, or potentially customers of a Post Office company. Persons who act on behalf of, or represent persons who have an interest in the use by the public of services provided by a Post Office company or at its post offices (for example trustees) are also permitted to be members of a relevant mutual.
58. The third condition, set out in subsection (4), is that the body has in place arrangements for the prevention of disposals of property or rights by the Post Office company that would be inconsistent with the purpose (or main purpose) for which the body exists.

Transfer of property etc

Section 8: Transfer schemes

59. This section enables the Secretary of State or original holding company (Royal Mail Holdings plc), if wholly owned by the Crown, to make one or more transfer schemes. Transfer schemes may transfer property, rights and liabilities (or create interests, rights and liabilities) between:
 - a) the original holding company and a subsidiary of that company, provided they are wholly owned by the Crown,

- b) any of those companies and the Secretary of State, the Treasury, a nominee of either of them or another company that is wholly owned by the Crown.
60. The power to make transfer schemes will enable the Secretary of State to ensure that in any restructuring the appropriate property, rights and liabilities are located in the appropriate company in the group. Transfer schemes made by the original holding company have to be approved by the Secretary of State and can be modified by the Secretary of State (subsection (4)). The Secretary of State must consult the original holding company (Royal Mail Holdings plc) before making a transfer scheme or modifying a scheme made by the company (subsection (5)). Under subsection (6), the Secretary of State may also direct the original holding company (Royal Mail Holdings plc) to make a transfer scheme, provided it is wholly owned by the Crown.
61. Subsection (9) requires a company that could be the subject of a transfer scheme to provide the Secretary of State with any information or other assistance that the Secretary of State may reasonably require for the purposes of, or in connection with, the making of a transfer scheme. This duty is enforceable in civil proceedings and overrides any contractual or other requirement to keep information in confidence (subsections (10) and (11)).
62. Further detailed provisions relating to transfer schemes are set out in Schedule 1.

Section 9: Transfer of employees otherwise than under transfer scheme

63. This section ensures that the protections set out in the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(SI 2006/246\)](#) (“the TUPE Regulations”) will apply to staff affected by the proposed reorganisation of the Royal Mail group of companies. For example, staff working for Post Office Limited are currently employed by Royal Mail Group Limited and seconded to Post Office Limited. Prior to any disposal of shares in a Royal Mail company those staff will need to transfer across to formal employment arrangements with Post Office Limited. This transfer could be effected by agreement between the relevant companies or by transfer scheme made under section 8. Where the transfer is to be made by agreement the provisions in this section will ensure that the TUPE Regulations apply to the transfer. Where the transfer is to be made under a transfer scheme the equivalent provisions are set out in paragraphs 15 and 16 of Schedule 1.
64. Subsections (2) and (3) provide that the section relates to any agreement between companies in the Royal Mail group of companies which are wholly owned by the Crown which provides:
- a) for employees’ rights and liabilities under contracts of employment with one company to be transferred to another company in the group; or
 - b) for the cessation of arrangements under which one company in the Royal Mail group of companies provides employees to another company in the group in circumstances where that other company now intends to employ those employees.
65. Pursuant to subsection (4) the Secretary of State may, at any time before any agreement comes into force, designate (by specification or wider description – see subsection (5)) any contract of employment the right and liabilities under which it is agreed are to be transferred and any employee of a Royal Mail group company currently provided to another member of the Group. Pursuant to subsection (6) on the coming into force of any agreement covered by this section the TUPE Regulations will apply in relation to the transfer of the designated contracts of employment or cessation of the provision of designated employees whether or not the provision made by the agreement would otherwise constitute a relevant transfer under the TUPE Regulations. Subsection (7) makes provision for continuity of employment.

Section 10: Taxation provisions relating to re-structuring

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

Supplementary provisions

Section 11: Annual report on post office network

67. Subsection (1) requires a Post Office company to submit a report to the Secretary of State on its post office network each year. Under the interpretation provisions in section 15(3), a Post Office company's network of post offices comprises the post offices it is engaged in providing, not just the ones it directly owns. This ensures that, for example, details of sub post offices (which are owned and managed by subpostmasters under contractual arrangement with Post Office Limited) are included in a report.
68. Subsection (2) sets out the details of what that report must contain. Paragraph (a) requires information about the number and location of post offices in England, Wales, Scotland and Northern Ireland. Paragraph (b) specifies that the report must include details of the services offered at those post offices, including in particular the postal services, services provided under arrangements with a government department and other services (which would, for example, include financial services). Under paragraph (c), a Post Office company must also report on the accessibility of the post offices to those who use the services.
69. Subsection (3) clarifies that the report must include details of postal services provided under arrangements between a Post Office company and a universal postal service provider.
70. Under subsection (4) there is a requirement for a Post Office company to provide specific information in the report about the accessibility of post offices to particular groups or individuals. These include individuals living in rural and in urban areas, small businesses, disadvantaged individuals, individuals with low incomes, individuals with disabilities and elderly individuals.
71. Under the power contained in subsection (5) the Secretary of State can also require a Post Office company to include other information in the report.
72. Subsection (6) requires the Secretary of State to lay a copy of the annual report before Parliament.
73. Subsection (7) requires the Secretary of State to give a copy of the report to the Scottish Ministers, the Welsh Ministers and the Office of the First Minister and Deputy First Minister in Northern Ireland.
74. Subsection (8) provides that a Post Office company's duty to provide an annual report on the network of post offices is enforceable by the Secretary of State through civil proceedings.

Section 12: Annual report on postal museum collection and archive

75. Subsection (1) requires a Royal Mail company to report annually to the Secretary of State on its activities in relation to the British Postal Museum Collection and the Royal Mail Archive, and subsection (5) clarifies that this applies irrespective of whether the name of these entities change.
76. Subsection (2) requires that before preparing the report, a Royal Mail company must consult any Post Office company.
77. Subsection (3) requires the Secretary of State to lay a copy of the report before Parliament.

78. Subsection (4) provides that a Royal Mail company's duty to report is enforceable through civil proceedings.

Section 13: Directions

79. This section provides that directions given under this Part of the Act must be in writing and may be varied or revoked by further directions. A person in receipt of a direction has a duty to comply with it and that duty is enforceable in civil proceedings.
80. Powers of direction are contained in sections 4(2) and 8(6) of this Part.

Interpretation

Section 14: Ownership of companies

81. This section sets out what is meant by ownership of a company for the purposes of Part 1.
82. Subsections (2) and (3) clarify that the references to ownership are to the ownership of a company's issued share capital and include indirect ownership. An example of indirect ownership is where a person owns all the shares in a holding company and, therefore, has ownership of that company's subsidiary or subsidiaries. At present, the Crown owns all the shares in Royal Mail Holdings plc and has indirect ownership of its subsidiary, Royal Mail Group Limited.
83. Subsection (4) clarifies that a reduction in the proportion of a company owned by the Crown includes the disposal of all of the issued share capital held by the Crown.
84. Subsection (5) makes it clear that the property and rights of the Secretary of State, the Treasury or a nominee of either of them shall be regarded as those of the Crown.