These notes refer to the Postal Services Act 2011 (c.5) which received Royal Assent on 13 June 2011

POSTAL SERVICES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Royal Mail Pension Plan

Summary and background

85. Part 2 of the Act gives power to the Secretary of State to remove historic pension liabilities from the Royal Mail and transfer them to government. In particular, the Secretary of State is given power to:

a) establish a new statutory scheme which may be used to provide benefits to certain members of the Royal Mail Pension Plan (“RMPP”);

b) transfer rights and remove liabilities from the Royal Mail Pension Plan (“RMPP;

c) transfer assets from the Royal Mail Pension Plan (“RMPP to the government;

d) divide the Royal Mail Pension Plan (“RMPP into sections and to allocate assets and liabilities between those sections.

86. When exercising the powers conferred by this Part, the Secretary of State must ensure that the pension provision in respect of anyone in the Royal Mail Pension Plan (“RMPP (or who has benefits transferred to the new statutory scheme) is in all material respects at least as good immediately after the power has been used as it was before that use of the power (section 20). This protection covers existing members of the plan, their dependants and contingent beneficiaries and beneficiaries who are already in receipt of death benefits. In addition, where the Secretary of State transfers assets to the government the ratio of assets to liabilities in the scheme after the transfer must be at least as good as the ratio before any assets transfer and attendant transfer of benefits (section 22).

Introduction

Section 16: Introduction

87. Subsection (1) defines the three main concepts in this Part of the Act.

88. The first concept is “qualifying member of the Royal Mail Pension Plan (“RMPP”. This means a group of persons who are or have been members of the Royal Mail Pension Plan (“RMPP specified by the Secretary of State by an order under this Part.

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

90. The third concept is “qualifying accrued rights”. These are the entitlements under the Royal Mail Pension Plan (“RMPP scheme that may be transferred to the new scheme under section 17. Qualifying accrued rights will cover

a) rights of qualifying members or their beneficiaries to future benefits under the Royal Mail Pension Plan (“RMPP;

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

91. Subsection (2) provides that “qualifying accrued rights” exclude money purchase benefits, but include other benefits related to additional voluntary contributions (for example those relating to the purchase of added years of service), and also include pension credit rights, which are pension rights provided to the ex-spouse of a member if that member’s pension benefit is divided between them pursuant to a pension sharing order on divorce.

92. Subsection (3) provides that, if “qualifying members” include members who are in service after the qualifying time, their “qualifying accrued rights” will be calculated as if they had left the scheme at the qualifying time. So, in the case of current or active (rather than retired) members, the right that is transferred is to be calculated by reference to service up to the qualifying time and by reference to the member’s salary at or near the qualifying time, in accordance with the Royal Mail Pension Plan (“RMPP rules. If further rights accrue in respect of service before the qualifying time (e.g. where the pension is linked to the member’s final salary), amendments to the Royal Mail Pension Plan (“RMPP scheme will make it clear that these further rights will remain in the Royal Mail Pension Plan (“RMPP scheme. The Secretary of State has power to amend the Royal Mail Pension Plan (“RMPP scheme under section 19 to achieve this.

Powers exercisable

Section 17: Transfer of qualifying accrued rights to new public scheme

93. Subsection (1) confers power on the Secretary of State to establish a new scheme for pensionable service in the Royal Mail Pension Plan (“RMPP up to the qualifying time in respect of members designated as qualifying members.

94. Subsection (2) allows the Secretary of State to transfer “qualifying accrued rights” of such members to this new scheme.

95. Subsection (3) allows for the discharge of liabilities of the Royal Mail Pension Plan (“RMPP trustees in respect of the qualifying accrued rights which are transferred to the new scheme.

96. Subsection (4) provides that the benefits payable by a new scheme may be increased on such basis as the Secretary of State may determine and gives the Secretary of State power to pay a transfer value in respect of a member’s qualifying accrued rights. It also enables the Secretary of State to include provision in the scheme for further payments to active members of greater value than a deferred pension. In addition it provides that the new scheme can accept transfers from the Royal Mail Pension Plan (“RMPP scheme. This provision will enable members of the Royal Mail Pension Plan (“RMPP who have bought money purchase additional voluntary contributions (AVCs) to transfer a proportion of their AVC fund from the Royal Mail Pension Plan (“RMPP to the new Government scheme immediately prior to their retirement so as to ensure that members can take as much of their AVCs in cash as they could immediately before the exercise of the power to set up a new scheme under section 17(1). Without this flexibility members may not be able to take as much of their AVCs as a lump sum from the Royal Mail Pension Plan (“RMPP due to the HMRC limit on lump sums as 25 per cent of benefit value.

97. A new scheme established under this section will not otherwise come within the definition of an occupational pension scheme in section 1(1) of the Pension Schemes Act 1993. Subsection (5) therefore provides that a new scheme may be deemed to be an

occupational pension scheme for the purposes of applying any legislation to the scheme as may be prescribed by the Secretary of State.

98. Subsection (6) provides that an order by the Secretary of State may provide for a new scheme to be treated as a contracted-out scheme and as capable of providing contracted-out benefits for the purposes of Part 3 of the Pension Schemes Act 1993. This will allow benefits which are contracted out under the Royal Mail Pension Plan (“RMPP scheme to transfer to the new scheme.

99. Subsection (7) permits an order to have retrospective effect. This power may be used to enable the new scheme to be established with effect from a date before an order is made under this section. This may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order. In addition this power would enable the Secretary of State to amend the new scheme rules to have retrospective effect, for example, to ensure that the rules complied with changes in legislation.

100. Under subsection (8) the Secretary of State may provide for a new scheme to be administered by any person and may delegate to any person any functions exercisable by the Secretary of State under a new scheme.

Section 18: Division of the Royal Mail Pension Plan (“RMPP into different sections

101. Subsection (1) allows the Secretary of State by order to divide the Royal Mail Pension Plan (“RMPP into sections and to allocate assets, rights, liabilities and obligations between different sections, and to provide for different companies to participate in different sections. The Government expects to use this power in order to create a section in the Royal Mail Pension Plan (“RMPP for Post Office Limited.

102. Subsection (2) allows an order under this section to have retrospective effect. As with a new scheme established under section 17, this may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order.

Section 19: Amendments of the Royal Mail Pension Plan (“RMPP

103. Subsection (1) provides that the Secretary of State may by order make amendments to the Royal Mail Pension Plan (“RMPP in such a way as the Secretary of State considers appropriate in connection with an order under section 17 or 18.

104. Subsection (2) provides that these amendments can cover benefits payable in respect of pensionable service before and after the qualifying time. This would enable amendments to the scheme rules in relation to benefits payable in addition to the qualifying accrued rights, so that it was clear whether these benefits were met from the Royal Mail Pension Plan (“RMPP scheme or from the new scheme established under section 17. It would also enable amendments to be made to any other documents governing or relating to the financial support provided to the Royal Mail Pension Plan (“RMPP, to address the effect of dividing the Royal Mail Pension Plan (“RMPP into sections.

105. Subsection (3) allows an order under this section to have retrospective effect. As with sections 17 and 18, this may be necessary if an effective date for the purpose of the transfer of liabilities has been agreed as part of a wider arrangement with a third party which precedes the date of an order.

Section 20: Protection against adverse treatment

106. This section provides two forms of protection against Royal Mail Pension Plan (“RMPP members’ benefits being adversely affected.

107. Subsections (1) to (3) provide that the Secretary of State must secure that the pension provision for current and past members of the Royal Mail Pension Plan (“RMPP (including any such persons in a new scheme established under section 17) accrued under the Royal Mail Pension Plan (“RMPP is, in all material respects, at least as good immediately after the exercise of any power provided under this Part to transfer liabilities from the Royal Mail Pension Plan (“RMPP to the new scheme, divide the Royal Mail Pension Plan (“RMPP into sections, and/or amend the Royal Mail Pension Plan (“RMPP, as such provision was immediately before the power was exercised. These provisions only apply to the Secretary of State when exercising those powers, and are not intended to constrain the ability of Royal Mail and the trustees of the Royal Mail Pension Plan (“RMPP to make amendments to the Royal Mail Pension Plan (“RMPP. Nor do the provisions affect the ability of the Secretary of State to make any changes that may be required to the new scheme in the future, which is instead constrained by subsection (6).

108. Subsection (4) makes clear that subsections (1) to (3) do not require the Secretary of State to include any provision in a new scheme established under section 18 that would be incompatible with any UK or EU law, should any questions concerning compatibility arise.

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

110. Subsection (6) provides that the power of the Secretary of State to make any changes that may be required to the new scheme in the future may not be exercised in any manner which would, or might, adversely affect any provision of the scheme in respect of qualifying accrued rights, unless any member affected has given consent in accordance with requirements prescribed under subsection (7), or the modification has been made in a prescribed manner. This reflects the current protection for Royal Mail Pension Plan (“RMPP members under section 67 of the Pensions Act 1995.

Section 21: Transfer of assets of the Royal Mail Pension Plan (“RMPP

111. This section enables the Secretary of State to provide by order for the transfer of assets from the Royal Mail Pension Plan (“RMPP to the Secretary of State, or the Treasury, or a fund established by the Secretary of State to hold the assets before they are disposed of and the proceeds paid into the Consolidated Fund.

112. Subsection (2) provides that this power can only be exercised where there has been an order under section 17 (transferring accrued rights to a new scheme) or such an order is being made.

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

Section 22: Restriction on power to transfer assets

114. This section places a limit on the assets that the Secretary of State may transfer out of the Royal Mail Pension Plan (“RMPP using the powers under section 21.

115. Subsection (1) requires that the ratio of assets to liabilities in the Royal Mail Pension Plan (“RMPP is no worse immediately after the transfer of assets under section 21 than it was immediately before the transfer.

116. Under subsection (3) the valuation of assets and liabilities are to be made by a person, and in a manner, determined by the Secretary of State.

117. Subsection (4) disapplies any provision in the Royal Mail Pension Plan (“RMPP which limits the calculation of the scheme’s liabilities by reference to the scheme assets. This has been included because pension scheme rules typically include provisions limiting the scheme’s liabilities by reference to the assets available in the event that the scheme is wound up.

118. Subsection (5) ensures that, where assets are moved from the Royal Mail Pension Plan (“RMPP to government in multiple transfers, the effective date of transfer is the same date. Any adjustments made to account for investment and market movement in the time since the initial transfer are to be disregarded when assessing the ratio of assets to liabilities in the Royal Mail Pension Plan (“RMPP under subsection (1).

Supplementary provisions

Section 23: Taxation

119. Subsections (1) and (4) of this section allow the Treasury by regulations to modify the way in which any relevant tax would otherwise have effect in relation to the new scheme, the members of the new scheme or a fund within section 21(1)(c).

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

121. Subsections (3) and (4) allow the Treasury by regulations to modify the taxation treatment that could otherwise arise as a consequence of the changes effected by an order under Part 2 of this Act. This will allow tax provision to be made in respect of the Royal Mail Pension Plan (“RMPP, members of the Royal Mail Pension Plan (“RMPP, and Royal Mail group companies in relation to payments made, directly or indirectly, in relation to the Royal Mail Pension Plan (“RMPP or its members. These subsections will enable tax provision to be made mitigating the tax charges that might otherwise have arisen in respect of transfers of assets and in respect of tax consequences for the Royal Mail group companies of the changes to the pension arrangements.

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

123. Subsection (6) enables the Treasury to make regulations to extinguish trade losses, made by companies in the Royal Mail group, in a qualifying accounting period, that the Treasury consider are attributable to deductions relating to contributions in respect of qualifying members of the Royal Mail Pension Plan (“RMPP. Such regulations would prevent companies in the Royal Mail group from using the losses to offset future tax liabilities.

124. Subsection (7) defines a qualifying accounting period for the purpose of subsection (6).

125. Subsection (8) ensures that regulations under subsection (6) only have effect if the company is wholly owned by the Crown on the day before an order is made establishing a new public scheme or transferring qualified accrued rights to a new public scheme.

126. Subsection (9) lists the taxes for which provision can be made and defines terms used in the section

Section 24: Information

127. Subsection (1) enables the Secretary of State to make provision, by order, requiring prescribed persons to disclose information required by the Secretary of State for any purpose under Part 2 of the Act.

128. Subsection (2) ensures that information relating to pensions or other benefits under the Royal Mail Pension Plan ("RMPP or the new public scheme may be shared among the relevant persons defined in subsection (3), which includes the Secretary of State, the administrators of the new public scheme, the Trustee of the Royal Mail Pension Plan ("RMPP and any of the Trustee's administrators, and the employer of qualifying members of the Royal Mail Pension Plan ("RMPP.

129. Subsection (4) ensures that the information sharing arrangements also apply to any section of the Royal Mail Pension Plan ("RMPP that is constituted as a separate pension scheme, where that separate scheme consists of or includes persons who are qualifying members of the Royal Mail Pension Plan ("RMPP.

Section 25: Orders and regulations

130. Subsection (1) of this section provides that before the Secretary of State exercises his powers under section 17(1) or (2) to establish a new scheme or transfer qualifying accrued rights, or exercises his powers under any other section in this Part, the Royal Mail Pension Plan ("RMPP trustees and a Royal Mail company (as defined in section 2(5)) must be consulted.

131. Subsection (2) provides that the Secretary of State may not make an order under this Part, other than under section 24, without the consent of the Treasury.

132. Subsection (4) allows the Secretary of State to commence any order (or any provision of any order) made under this Part of the Act on a specified day.

Section 26: Interpretation of Part 2

133. This section sets the meanings and definitions of terms used in Part 2 of the Act. In subsection (2) it is made clear that the power of the Secretary of State to amend the rules of the Royal Mail Pension Plan ("RMPP (section 19) also applies to related documents put in place to provide financial support to the Royal Mail Pension Plan ("RMPP (a specific example being the escrow agreement put in place at the time of the March 2006 triennial valuation).