

POSTAL SERVICES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules

Schedule 1: Transfer Schemes

393. This Schedule contains further provision about transfer schemes under section 8.
394. [Paragraph 1](#) defines various terms used in Schedule 1.
395. [Paragraph 2](#) provides that a transfer scheme may identify property, rights and liabilities to be transferred by specifying or describing them, and may specify the way in which property, rights or liabilities of any description may be identified.
396. [Paragraph 3](#) contains further provisions as to the property, rights and liabilities that may be transferred under a scheme and the basis on which they are to be transferred.
397. [Paragraph 4](#) provides that the transfer scheme may contain provision for the creation or transfer of an interest or a right in, or in relation to, property transferred and property retained. It may also contain provision for the creation of new rights and liabilities between different transferees and as between a transferee and a transferor. It also allows for the transfer scheme to contain provision to cover the interests, rights or liabilities of third parties.
398. [Paragraph 5](#) provides that an obligation may be imposed on a transferee or transferor to enter into an agreement to effect the transfer(s) and allows for this to be enforced by an injunction or any other appropriate remedy.
399. [Paragraph 6](#) provides that the transfer and creation of the relevant property, interests, rights and liabilities vest in the transferee at the time specified in the scheme, save where it is to be effected by an agreement or instrument entered into or executed pursuant to an obligation imposed under paragraph 5(1).
400. [Paragraph 7](#) provides that where a person would be entitled to terminate, modify, acquire or claim an interest or right, or treat an interest or right as modified or terminated by virtue of anything done or likely to be done in connection with a transfer scheme, then that right is not enforceable until after the transfer of the interest or right under the scheme and only to the extent that the scheme provides for the interest or right to have been transferred subject to that person's entitlement.
401. [Paragraph 8](#) provides that a transfer scheme may contain incidental, supplementary, consequential and transitional provision, and that different provision may be made for different purposes.
402. Under Paragraph 9, a transfer scheme may provide, in relation to transfers in accordance with the scheme, that the transferee is treated as the same person in law as the transferor, for things done by the transferor to be treated as done by the transferee and for

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

proceedings commenced by or against the transferor to be continued by or against the transferee.

- 403. [Paragraph 10](#) makes provision for the transfer of foreign property. Paragraph 11 provides that a transfer scheme may make provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or by virtue of) a transfer scheme. It also provides for the appointment of an arbitrator to determine disputes about compensation.
- 404. [Paragraph 12](#) provides that a transfer scheme may make provision for certain disputes to be resolved by arbitration.
- 405. [Paragraph 13](#) makes provision for persons entitled, in consequence of a transfer scheme, to possession of a document relating in part to the title to land or other property or the management of such property or land to have been treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it.
- 406. [Paragraph 14](#) provides for proof of title by certificate issued by the Secretary of State.
- 407. [Paragraph 15](#) provides that the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the transfer under a transfer scheme of rights or liabilities under a contract of employment. Paragraph 16 provides that where an employee of the transferor becomes an employee of the transferee the period of employment with the transferor is to be treated as a period of employment of the transferee and the transfer is not to be treated as a break in service.
- 408. [Paragraph 17](#) allows for modification of a transfer scheme within three years of the vesting of a transfer, provided it is agreed by the transferor and transferee and approved by the Secretary of State.
- 409. [Paragraph 18](#) disapplies certain provisions of the Companies Act 2006 (distributions), together with rules of law relating to distributions or the maintenance of capital by companies, in relation to transfers by or under a transfer scheme.
- 410. [Paragraph 19](#) provides that in relation to anything done by or under a transfer scheme the Secretary of State, the Treasury, anyone employed by or acting on their behalf or their nominees are not to be regarded as shadow directors of a transferor or transferee.

Schedule 2: Taxation provisions relating to re-structuring etc

- 411. The purpose of this schedule is to ensure that the restructuring of the Royal Mail group enabled by Part 1 of the Act does not give rise to unintended tax consequences. Paragraphs 1 and 2 refer to the transfer of securities of subsidiaries of Royal Mail Holdings to the Secretary of State, the Treasury, a nominee of either of them, or a company wholly owned by the Crown. Paragraphs 3-6 apply to the transfers of property, rights and liabilities under the transfer schemes as set out in Schedule 1. Paragraphs 7 and 8 refer to the transfer of securities of Royal Mail Holdings or a subsidiary of Royal Mail Holdings where the Crown owns 51% of the company immediately before the disposal.
- 412. [Paragraph 1\(1\)](#) sets out the circumstances in which paragraph 1 applies and paragraph 1(2) provides that such a disposal will be treated as a no gain/no loss disposal for capital gains purposes. Paragraphs 1(3) and 1(4) prevent degrouping charges arising for the purposes of corporation tax on chargeable gains and stamp duty land tax, as a result of such a disposal. Paragraph 1(5) ensures that stamp duty will not be chargeable as a result of the disposal.
- 413. [Paragraph 2](#) ensures that the effect of paragraph 1 will not prevent a degrouping charge arising if the subsidiary leaves a new group as a result of a subsequent disposal of securities of the subsidiary.

- 414. [Paragraph 3](#) defines a “relevant transfer”, “transferor” and “transferee” with regard to the provisions in paragraphs 4-6 which relate to the transfer of property, rights and liabilities by Schedule 1 transfer schemes
- 415. [Paragraph 4](#) ensures that a relevant transfer is treated as a no gain/no loss transfer for capital gains purposes.
- 416. [Paragraph 5](#) provides continuity of treatment for corporation tax purposes in relation to the transfer of loans.
- 417. [Paragraph 6\(1\)](#) treats a transfer of a chargeable intangible asset as tax neutral for corporation tax purposes. [Paragraph 6\(2\)](#) disapplies transfer pricing rules in relation to the transfer. [Paragraph 6\(3\)](#) prevents an asset created or acquired before 1 April 2002 from becoming a chargeable intangible asset of the transferee.
- 418. [Paragraph 7\(1\)](#) sets out the circumstances in which [paragraph 7\(2\)](#) applies and [paragraph 7\(2\)](#) prevents degrouping charges arising for the purposes of corporation tax on chargeable gains and stamp duty land tax, as a result of such a disposal.
- 419. [Paragraph 8](#) ensures that the effect of [paragraph 7](#) will not prevent a degrouping charge arising if Royal Mail Holdings or a subsidiary leaves a new group as a result of a subsequent disposal of securities of Royal Mail Holdings or the subsidiary

Schedule 3: Access conditions

Part 1 Provision that may be made by access conditions

- 420. [Paragraph 1](#) introduces Part 1 of the Schedule and states that access conditions of the kind set out in Part 1 may be imposed.
- 421. [Paragraph 2](#) provides that an access condition may include provision relating to the terms and conditions, on which a person is willing to offer access, or require such modifications as OFCOM may direct to any offer of access.
- 422. [Paragraph 3](#) provides that an access condition may include provision imposing such price controls as OFCOM may direct. An access condition may also impose rules about the identification of costs and rules about the use of cost accounting systems. An access condition may also impose an obligation to have compliance with those systems audited annually by a qualified independent auditor, including meeting the costs of the audit, and an obligation to adjust prices following a direction from OFCOM.
- 423. [Paragraph 4](#) provides that an access condition may include provision requiring the application of presumptions in the fixing or determining costs and charges for the purposes of price control set out in [paragraph 3](#).
- 424. [Paragraph 5](#) sets out the publication and information requirements that may form part of an access condition which imposes rules on the use of cost accounting systems.
- 425. [Paragraph 6](#) makes provision for access requirements to be imposed on another person, other than the postal operator, where the access required is subject to an arrangement between the postal operator and that person and the access requires that person’s agreement. However, such requirements can not have the effect of requiring that person to do more than they would otherwise be required to do.
- 426. [Paragraph 7](#) provides that, where an access condition requires accounting separation, the condition may provide for the separation to be maintained for different services, facilities or products (including those provided in different areas) and may impose requirements about the accounting methods to be used.
- 427. [Paragraph 8](#) provides that an access condition may include a restriction on the use for any other purpose of information which is obtained in connection with the giving of access.

- 428. [Paragraph 9](#) provides that an access condition may set time limits for compliance.
- 429. [Paragraph 10](#) provides that an access condition may include provision for securing fairness and reasonableness when dealing with requests for access.
- 430. [Paragraph 11](#) provides that an access condition may include a requirement of non-discrimination in relation to the giving of access.
- 431. [Paragraph 12](#) provides that an access condition may include a requirement to publish all such information as OFCOM directs, for transparency in access matters, or the terms and condition on which the person is willing to offer access.

Part 2 Resolution of access disputes by OFCOM

- 432. Under Paragraphs 13 to 15, postal operators and users may refer disputes concerning the terms and conditions of access, including price, to OFCOM who will decide if it is appropriate from them to handle the dispute. If OFCOM does handle the dispute it must consider the dispute and make a binding determination for resolving it as soon as reasonably practicable.
- 433. [Paragraph 16](#) sets out the powers that may be exercised by OFCOM when making a determination. OFCOM's powers include: (a) setting out the rights and obligations of parties (b) fixing the terms or conditions of transactions between parties (c) imposing an obligation on parties to enter into a transaction on the terms and conditions fixed by OFCOM (d) requiring the payment, by way of an adjustment, of an underpayment or overpayment (e) requiring a party to a dispute to pay another parties costs and expenses incurred in connection with the dispute (f)) requiring a party to a dispute to pay OFCOM's costs in frivolous or vexations cases.
- 434. [Paragraph 17](#) stipulates that the resolution of access dispute procedure is the procedure OFCOM considers appropriate. OFCOM must send a copy of their determination, and statement of reasons, to every party to the dispute and must publish so much of their determination as they consider appropriate (having regard in particular to commercial confidentiality).
- 435. [Paragraph 18](#) provides that a reference to OFCOM does not prevent a person from bringing other legal proceedings. OFCOM is not prevented by a reference from exercising their powers.
- 436. [Paragraph 19](#) provides that, where a dispute has been referred to OFCOM, OFCOM may require information to be provided to them.

Schedule 4: Recovery of administrative charges incurred by OFCOM

- 437. [Paragraph 1](#) provides that a postal operator providing services within the scope of the universal postal service must pay OFCOM any applicable administrative charge fixed by OFCOM. OFCOM can only fix an administrative charge if they have set out in a statement the principles they propose to apply in determining charges. The principles must be such that on OFCOM's estimates the total amount payable (from all operators combined) each year meets but does not exceed OFCOM's costs of carrying out their postal functions. OFCOM may impose different charges on different operators.
- 438. [Paragraph 1](#) further provides that at the end of each charging year OFCOM must publish a financial statement setting out total charges received that year, total charges outstanding that year, and cost to OFCOM of carrying out their postal service functions. Any surplus or deficit is to be carried forward and taken into account in determining charges for the following year.
- 439. [Paragraph 2](#) defines OFCOM's postal services functions for the purposes of paragraph 1. Those functions extend to incidental functions (as defined by paragraph 2(3)),

including any preparatory or facilitatory steps taken by OFCOM before as well as after the Act comes into force (as provided for in paragraph 2(4)).

440. [Paragraph 3](#) provides for the procedure under which a charge is to be fixed by OFCOM under paragraph 1.
441. [Paragraph 4](#) provides that OFCOM may only bring proceedings against a person for recovery of a charge imposed under paragraph 1 if they have given the person notification, in accordance with the procedure set out, of the amount they are seeking to recover. OFCOM must also specify the period that the person has to make representations about the notification and to pay the outstanding amount. The period must be at least one month, but it can be shorter if the two parties agree. It can also be shorter if OFCOM believe the contravention is a repeated one and they have determined that under such circumstances a shorter period would be appropriate. OFCOM may also allow a longer period.
442. Under paragraph 6, OFCOM may impose a penalty on a person acting in contravention of a requirement to pay a charge as outlined under paragraph 1 and the procedures detailed under paragraph 4 have been followed, and the person has still not paid the outstanding amount.
443. The amount of the penalty is to be determined by OFCOM and must be appropriate and proportionate to the contravention. It cannot be more than twice the charge fixed for the year in relation to which the contravention occurred. In determining the amount OFCOM must have regard to representations made by the person and to any steps the person has taken towards paying the outstanding amounts.
444. If OFCOM decide to impose a penalty they must notify the person within one week of making their decision and fix a period by which the penalty is to be paid.
445. Under paragraph 7 OFCOM may give a direction to a contravening operator to suspend or restrict their services.
446. For this to happen four conditions must be met. The first is that the contravening operator is or has been in serious and repeated (as provided for in paragraph 8(7)) contravention of requirements to pay charges. The second is that the bringing of proceedings for the recovery of amounts outstanding has not secured compliance by the contravening operator and has no reasonable prospect of doing so. The third is that the imposition of penalties under paragraph 6 failed to secure compliance. And the fourth is that giving the direction is appropriate and proportionate to the seriousness of the contraventions.
447. [Paragraph 8](#) explains that such a direction will be for an indefinite period unless otherwise stated.
448. A direction may also impose such conditions on the operator as appear to OFCOM to be appropriate to protect users of the operator's services. These may require making compensation payments for loss or damage, or for inconvenience. OFCOM may only give the direction if they have notified the contravening operator, provided the operator with an opportunity of making representations and proposals as to how to remedy the situation, and considered those representations. The period for this must be at least one month.
449. OFCOM may revoke a direction if they consider it appropriate.
450. Under paragraph 9 a person commits an offence if they provide a service while the entitlement to do so is suspended by a direction under paragraph 7 or in contravention of restriction contained in that direction.
451. If a person is guilty of an offence then they are liable to a fine on conviction.

Schedule 5: Approval of redress schemes

452. This Schedule sets out the considerations OFCOM must have regard to deciding whether to approve a redress scheme for the purposes of section 52. These include the scheme's provisions, how it will operate, the interests of users of postal services, and best practice in relation to schemes for providing redress to consumers. It further sets out certain requirements for a redress scheme, namely that it must be open to all postal operators, that the independent adjudicator may require members to provide complainants with the minimum types of redress (which include apologies and compensation), and that it must make satisfactory provision about other matters including what complaints may be considered and the independent adjudicator's powers. Redress schemes may make provision for the expulsion of their members. OFCOM may determine the manner for approval of a redress scheme and OFCOM must be notified of any changes to the scheme. There are also provisions regarding applications for approval and the processes that OFCOM must follow in refusing or withdrawing approval of a redress scheme.

Schedule 6: Imposition, modification or revocation

453. **Paragraph 1** provides that OFCOM can only impose or modify a regulatory condition if they are satisfied that this is objectively justifiable, non-discriminatory, proportionate to the intent, and transparent.
454. **Paragraph 2** states that the power of OFCOM to impose a regulatory condition includes powers to make directions, consent, approvals and recommendations, discretions, different provisions for different cases, and revocation and modification.
455. **Paragraph 3** sets out that the procedure for imposing, modifying or revoking a regulatory condition. OFCOM must publish a notification setting out its intention to impose, modify or revoke a regulatory condition, setting out the effect and giving its reasons for making the proposal and giving at least one month for the making of representations. OFCOM must consider every representation about the proposal and have regard to every international obligation notified to them by the Secretary of State. The publication of the notification must be in a manner which brings its contents to the attention of the persons who are likely to be affected by its contents, in the case of a designated USP condition, a USP access condition or USP accounting condition, or to the attention of such persons as OFCOM consider appropriate, in any other case.
456. **Paragraph 4** provides that directions, approvals or consents for the purpose of imposing a regulatory condition are subject to similar provisions as apply to the imposition of conditions, as set out in paragraphs 1 to 3.
457. **Paragraph 5** deals with the delivery of copies of notifications, directions, approvals or consents or modifications and withdrawals. The Secretary of State must receive a copy of any publication required under either paragraph 3 or 4. Additionally, with respect to a designated USP condition or general universal service condition, a copy of must be sent to the European Commission. The responsibility of sending any copy rests with the person who has published it or has given, modified or withdrawn it unless it relates to a proposal published by OFCOM under paragraph 4, in which case OFCOM have the duty.

Schedule 7: Enforcement of regulatory requirements

458. This Schedule provides for the enforcement of regulatory requirements imposed on postal operators (or those party to an arrangement through which access is required as a result of paragraph 6 of Schedule 3) by OFCOM. A regulatory requirement means any regulatory conditions imposed under Part 3 of the Act, as well as directions in relation to schemes about the terms and conditions for the provision of postal services (section 89A of the Postal Services Act 2000), directions in relation to the Postcode Address File (under section 116(2A) of the Postal Services Act 2000) and in relation to

the enforcement of requirements to give information to the National Consumer Council (section 25(5) of the Consumers, Estate Agents and Redress Act 2007).

459. Paragraphs 2 to 4 provide for contravention notifications. OFCOM may give a notification that they have reasonable grounds to believe a person is contravening or has contravened a regulatory requirement. A notification must specify a period giving the person notified the opportunity to make representations, comply and remedy the consequences. That period must be one month, or less than a month by agreement, because of repeated contravention, or because the case is urgent, and OFCOM may also specify a longer period. OFCOM may give a further notification for the same contravention only if certain conditions are met. OFCOM may not give a notification if they decide that the more appropriate way of proceeding would be under the Competition Act 1998.
460. The Schedule provides for various sanctions for contraventions and a power to deal with urgent cases in case of contravention.
461. Paragraph 5 provide for enforcement notifications, where a contravention notification has been given, OFCOM have allowed an opportunity for representations, and the period for representations has ended. OFCOM may give an enforcement notification if they are satisfied that the person is in contravention and steps have not been taken for complying with the requirement and remedying the consequences of the contravention. This requires the person notified to comply with requirements and/or take remedial steps. There is a duty to comply with the notification, which is enforceable in civil proceedings.
462. As set out in paragraphs 6 and 7, OFCOM may impose, in addition to an enforcement notification, a penalty on a person who has been given a contravention notification, when OFCOM have allowed an opportunity for representations, and the period for representations has ended. Penalties must be appropriate, proportionate and not more than 10% of turnover of the person's postal services business for the relevant period, calculated in accordance with rules made in order by the Secretary of State. Such an order is subject to affirmative resolution procedure. OFCOM must have regard to representations made by that person and any steps taken to comply or remedy the consequences of the contravention.
463. Paragraphs 8 to 10 relate to the power to deal with urgent cases. A case is urgent if the contravention results in or creates a serious threat to the safety of the public, to public health or to national security, or serious economic or operational problems for other postal operators or users. OFCOM can give a direction suspending or restricting the entitlement of the contravening person to provide postal services. In doing so, OFCOM may also impose conditions appropriate to protect users of the contravening person, including making payments for compensation. If there is a direction in an urgent case, an opportunity for making representations and for proposing remedial steps must be given as soon as reasonably practicable after making the direction. At the end of that period, OFCOM must determine whether there was a contravention and whether treating the case as urgent was justified. If so, then OFCOM may then confirm the direction. If not OFCOM must modify or revoke the direction.
464. Under paragraphs 11 to 14, OFCOM may give a direction to suspend or restrict the entitlement of a contravening person to provide postal services. OFCOM may give a direction under these paragraphs only if: (a) the contravening person has been or is in serious or repeated breach, (b) a previous attempt (through an enforcement notification or penalty) to secure compliance has failed and (c) it is appropriate and proportionate. A direction may impose conditions, including payments for compensation. Before giving a direction OFCOM must notify the contravening person, give an opportunity to make representations and propose remedying the situation, and must consider every representation. OFCOM must give one month's minimum notice, except in urgent cases.

465. In relation to urgent cases or suspension or restriction of the entitlement of providing postal services, a person is guilty of an offence if it provides any service while it is suspended or in contravention of the restrictions imposed.
466. The duty to comply with regulatory requirements or requirements imposed by an enforcement notification, a suspension direction or a direction for urgent cases is owed to every person who may be affected by a contravention of it. A breach of that duty that causes loss or damage, or an act which intentionally causes the breach of that duty and results in loss and damages, is actionable. It is a defence for the contravening persons to show they took all reasonable steps and exercised all due diligence. Bringing proceedings for contravening the underlying regulatory obligation requires the consent of OFCOM.

Schedule 8: Information provisions

Part 1 Requirements to provide information to OFCOM

467. [Paragraph 1](#) enables OFCOM to require information necessary to carry out their functions from current or former postal operators, those providing facilities or access points or who have provided them, or any other persons who appear to OFCOM to have information required by OFCOM to pursue their functions in relation to postal services. It gives examples of the purposes for which the information would be required.
468. [Paragraph 2](#) limits the circumstances where OFCOM may require information for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application, which are defined as a regulatory condition other than a designated USP condition, a USP condition or a USP accounting condition. OFCOM must have had a complaint, have decided to carry out an investigation, have reason to suspect a contravention, or be considering universal service burden sharing directions.
469. [Paragraph 3](#) enables OFCOM to require information to carry out comparative overviews of the quality and prices of postal services, and for statistical purposes.
470. Information required by OFCOM to carry out their functions or related purposes must be provided in the manner and within a reasonable period specified by OFCOM, and OFCOM must describe what the information is and why it is required. Such demand for information must be contained in a notice, except where information is required by OFCOM to ascertain who is liable to administrative charges payable as a result of Schedule 4.

Part 2 Enforcement

471. Under paragraphs 5 and 6, if OFCOM have reasonable grounds for believing that a person is contravening an information demand, they may give that person a notification. The notification must set out the determination and the requirement and contravention in question, and specify the period for making representations and for complying. This period must be at least one month, unless OFCOM and the person notified agree a shorter period, or OFCOM believes there is a repeated contravention and OFCOM considers a shorter period is appropriate. OFCOM may also extend this period. A notification may deal with more than one contravention. OFCOM may give a further notification in respect of the same contravention only in certain circumstances.
472. [Paragraph 7](#) enables OFCOM to impose a penalty when a notification of contravention of information requirements has been given and not complied with. The penalty can be up to £50,000. The Secretary of State may substitute a different maximum amount by order. This order is subject to affirmative resolution procedure.
473. [Paragraphs 8 to 11](#) enable OFCOM to give a direction to suspend or restrict the entitlement of a contravening person to provide postal services. OFCOM may give a direction only if: (a) the contravening person has been or is in serious or

repeated breach (b) a previous attempt to secure compliance has failed and (c) it is appropriate and proportionate. A direction may impose conditions, including payments for compensation. Before giving a direction OFCOM must notify the contravening person, give an opportunity to make representations and propose remedying the situation, and consider every representation and give one month's minimum notice, except in urgent cases (which are provided for in paragraph 11).

474. Under paragraph 12, it is an offence for a person to provide a service when entitlement to do so is suspended or restricted, punishable by a fine.
475. [Paragraph 13](#) provides that it is an offence to fail to provide information in accordance with a requirement, punishable by a fine. An offence is not committed if it was not reasonably practicable to comply or reasonable steps have been taken. It is an offence to provide false information knowingly or recklessly, punishable by a fine and to imprisonment for no more than two years.

Part 3 Supplementary provisions

476. [Paragraph 14](#) requires OFCOM to publish a statement of their general policy on the exercise of their information powers and the uses to which they propose to put information obtained by them.
477. Under paragraph 15, OFCOM must comply within one week with requests by persons as to whether they need to notify OFCOM before they carry on postal services, whether the person's notification satisfies the relevant requirements, and information about the person's rights in relation to access negotiation.

Schedule 9: Transitional provisions for Part 3

478. [Schedule 9](#) enables OFCOM to carry out certain functions during the transitional period. The transitional period is the period between the day the Act is passed and the date when OFCOM take on responsibility for postal regulation, when the provisions of Part 3 of the Act generally come into force.
479. [Paragraph 2](#) provides that until the first universal postal service order is made by OFCOM, the universal service is defined by reference to section 4 of the Postal Services Act 2000 (defining the universal service), and services within the scope of the universal service are decided by reference to section 7A of the Postal Services Act 2000, which describes the services not outside the scope of the universal postal service prior to the day the Act is passed. Paragraph 2 also makes clear that, during the transitional period, the duty to secure the provision of the universal postal service (section 28) applies to Postcomm as well as OFCOM.
480. Under paragraph 3 OFCOM may designate provisionally one or more universal service provider, but any such designation ceases to have effect when the first designation is made under section 35.
481. Under paragraph 4, OFCOM must determine before the end of the transitional period the regulatory conditions applying to postal operators when Part 3 of the Act generally comes into force. These "initial conditions" must be similar to the current licence conditions for either the designated universal service provider or other operators, save where they appear to OFCOM unnecessary to maintain the current conditions. The general test for imposing regulatory conditions (paragraph 1 of Schedule 6) applies subject to this requirement that initial conditions must be similar to those in place before the Act comes into force generally, save where they appear unnecessary.
482. [Paragraph 5](#) provides that OFCOM may impose conditions ("transitory conditions") which replicate existing licence conditions, which they would otherwise not be able to do under Part 3. This paragraph also provides that transitory conditions are automatically revoked when the first universal service order is made, and that references to 'initial conditions' in paragraph 4 includes 'transitory conditions'.

483. **Paragraph 6** provides that any modifications to initial conditions must not result in conditions that could not have been imposed under Part 2 of the Postal Services Act 2000. The procedures under Schedule 6 (relating to the imposition, modification or revocation of conditions), Schedule 7 (enforcement of regulatory conditions) and under sections 57-59 (appeals) apply to the imposition of initial conditions. This paragraph, other than when revoking a transitory condition, also generally applies to transitory conditions.
484. **Paragraph 7** provides that, in the first year that OFCOM recovers its charges under Schedule 4, OFCOM must prepare a statement of principles that they are proposing to apply in fixing administrative charges but that, for that first year, there is no requirement for OFCOM to have the statement in place at the start of the year or at the time the charges are fixed.
485. **Paragraph 8** gives the Secretary of State power to make an order amending a provision in the universal service provider's licence to extend a volume adjuster mechanism to allow a volume forecast index to continue to an index year ending 31 March 2012. The order made by the Secretary of State may adopt a forecast figure which has been produced by Postcomm using the same methods as used by it to determine the forecast figures for the index years currently set out in the licence condition. Before making the Order, the Secretary of State must consult the universal service provider and such other persons as he considers appropriate for a period of 21 days, and consider representations that might be received.
486. **Paragraphs 9, 10 and 11** provide that, during the transitional period, the provisions relating to the universal postal service order, the designation of a universal service provider, and the imposition of conditions apply to the extent necessary for OFCOM to be able to work on those matters. This work includes market assessment and consultation. The provisions in relation to information provision (section 55 and Schedule 8) also apply to the extent necessary for OFCOM to carry out their functions during or after the transitional period. The provisions of section 56 (general restriction on disclosure of information) have effect accordingly.
487. **Paragraphs 12 and 13** provide that OFCOM can rely on any work conducted by or in relation to Postcomm prior to the passing of the Act and that, during the transitional period, Postcomm must consult OFCOM before doing anything with a view to modifying or revoking a licence condition.
488. **Paragraph 14** gives OFCOM the power to take forward in any way they see fit (including discontinuing) legal proceedings or other action begun by Postcomm in respect of licence condition contraventions (or anything that Postcomm considered might be a contravention) under Part 2 of the Postal Services Act 2000. Furthermore, Paragraph 15 gives OFCOM the power, after repeal of that Part, to begin legal proceedings themselves (or to do anything else they consider appropriate) if they believe a person contravened a licence condition prior to that repeal.

Schedule 10: Conduct of postal administration

489. This Schedule contains provisions applying the provisions of Schedule B1 to the Insolvency Act 1986, and certain other enactments, to a postal administration (see Section 73). Schedule B1 of the Insolvency Act 1986 sets out the framework for administrations conducted under that Act. Schedule 10 is divided into 3 parts:

a) Part 1: Modifications of Schedule B1 to 1986 Act

This Part makes modifications to a number of paragraphs in Schedule B1 to adapt them to the postal administration regime established by Part 4 of the Act. It makes general modifications e.g. where the Schedule B1 uses the term "administrator", that is to be read as "postal administrator", and further specific modifications where a simple substitution of words is not sufficient.

b) Part 2: Further modifications of Schedule B1 to 1986 Act: foreign companies

This part makes further modifications to Schedule B1 to adapt that Schedule as it applies to foreign companies. In particular, section 68(4) provides that a postal administration in respect of a foreign company only affects that company's UK affairs, business and property. This Part makes modification to Schedule B1 to give effect to that limitation.

c) Part 3: Other modifications

This Part makes further modifications, both general and specific to provisions elsewhere in the Insolvency Act and in other legislation that refers to administrations. Specific modifications are made to the provisions of the Insolvency Act 1986 relating to company voluntary arrangements so that these do not interfere with the conduct of a postal administration.

490. [Paragraph 32](#) grants the Secretary of State a power to amend Schedule 10 by adding further modifications to the provisions of insolvency law having effect in the case of foreign companies (defined in section 85(1) as a company incorporated outside the United Kingdom).

491. [Paragraph 46](#) grants the Secretary of State the power to amend Part 3 of Schedule 10 by adding further modifications of insolvency law where the Secretary of State considers the modifications appropriate in relation to the postal administration regime in Part 4.

Schedule 11: Postal transfer schemes

492. This Schedule contains provisions for transfer schemes to achieve the objective of a postal administration (see Section 73).

493. The Schedule sets out the content, effect and process for transfer schemes that can be made under section 69(3) where the postal administrator transfers a universal service provider's undertaking or part of their undertaking to another company or several companies. The transfer may include any of the property, rights or liabilities of the universal service provider. This could include mail operations such as mail centres or delivery offices as well as the transfer of contracts or leases involving vehicles and machinery. It may be the case that all the property etc is transferred to one company (or divided up between several). All transfers are subject to veto or amendment by the Secretary of State.

494. [Paragraphs 1 to 3](#) of Schedule 11 enable a universal service provider (through its postal administrator) to make a scheme or schemes for the transfer of property, rights and liabilities to a new company subject to the approval of the Secretary of State, who in turn must consult OFCOM. The Secretary of State can also modify transfer schemes (paragraph 4).

495. [Paragraphs 5 and 6](#) set out what is covered by property, rights and liabilities and paragraph 7 allows for dividing these so that those relating to the universal postal service could, where appropriate, be split from those for non-universal postal services. It also allows for the creation of new rights and liabilities.

496. [Paragraph 8](#) permits the new company to be treated as having been designated by OFCOM as a universal service provider and provides for the transfer of obligations under regulatory conditions from the old company to the new company.

497. [Paragraph 9](#) permits the transfer of statutory functions, e.g. those relating to the acquisition of land, to a new company or for those functions to be carried out concurrently by the old and the new company.

498. [Paragraphs 11 to 18](#) deal with a number of matters which provide for the smooth transition of property, rights etc from the universal service provider to the new

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

company. These set out for example that the new company may be treated as the same person in law as the old company and references in agreements, instruments etc in relation to the old company can be treated as if these were to the new company. They include (at paragraph 15) a provision that a postal transfer scheme may contain provision for the payment of compensation to third parties if their property, rights, interests or liabilities have been affected by (or as a result of) a postal transfer scheme.

- 499. Paragraphs 19 and 20 deal with the transfer of employees and paragraph 21 deals with the case where the old company is a foreign company.
- 500. Paragraph 22 deals with the situation where there are two or more postal transfer schemes making transfers to new companies.

Schedule 12: Minor and consequential amendments

- 501. Part 1 of this Schedule contains minor and consequential amendments to the Postal Services Act 2000.
- 502. Part 2 of this Schedule contains minor and consequential amendments to the Communications Act 2003.
- 503. Part 3 of this Schedule contains minor and consequential amendments to other enactments.