

## SCHEDULES

### SCHEDULE 1

Section 8

#### TRANSFER SCHEMES

##### *Introduction*

1 In this Schedule—

“transfer scheme” means a transfer scheme under section 8,

“transferee”—

- (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme, and
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created,

“transferor”—

- (a) in relation to a transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme, and
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created, and

“third party”, in relation to a transfer scheme, means any person other than a transferor or transferee.

##### *Identification of property etc to be transferred*

- 2 (1) A transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

##### *Property, rights and liabilities that may be transferred*

- 3 (1) A transfer scheme may transfer—
  - (a) property situated in any part of the world,
  - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a transfer scheme include—
  - (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time specified under paragraph 6(1),

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- (b) rights and liabilities arising after that time in respect of matters occurring before that time,
  - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (3) The transfers to which effect may be given by a transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
- (5) Sub-paragraph (3) has effect where shares in a subsidiary of the transferor are transferred as if the reference to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

*Dividing and modifying transferor's property, rights and liabilities*

- 4 (1) A transfer scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
  - (b) for giving effect to a transfer by the creation, in favour of the transferee, of an interest or right in or in relation to property or rights retained by a transferor, and
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking into a contract—
- (a) between different transferees, or
  - (b) between a transferee and a transferor.
- (3) A transfer scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor, and
  - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) Paragraph 3(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

*Obligation to effect transfers etc*

- 5 (1) A transfer scheme may impose on a transferee or transferor an obligation—
- (a) to enter into an agreement (specified or described in the scheme) with another person on whom a corresponding obligation is, could be or has been imposed as a result of this paragraph (whether in the same or a different scheme), or
  - (b) to execute an instrument (specified or described in the scheme) in favour of such a person.
- (2) A transfer scheme that imposes such an obligation may provide that paragraph 3(3) applies (to the extent specified in the scheme) in relation to—
- (a) a transfer made by or under an agreement or instrument made in pursuance of the obligation, and
  - (b) interests or rights created by or under such an agreement or instrument.
- (3) Subject to that, nothing in paragraph 3 enables—
- (a) an agreement or instrument made in pursuance of such an obligation, or
  - (b) anything done under such an agreement or instrument,
- to give effect to a transfer, or to create an interest or right, that could not otherwise have been made or created by or under the agreement or instrument.
- (4) An obligation imposed as a result of sub-paragraph (1) may be enforced by the person with, or in favour of, whom the agreement or instrument is to be entered into or executed, in proceedings for any of the following—
- (a) an injunction,
  - (b) specific performance of a statutory duty under section 45 of the Court of Session Act 1988,
  - (c) any other appropriate remedy or relief.

*Effect of transfer scheme: general*

- 6 (1) At the time specified in the scheme—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
  - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this sub-paragraph, to vest in the transferee.
- (2) Sub-paragraph (1) is subject to any provision of the scheme that provides that the transfer or creation of any property, interests, rights or liabilities is to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 5(1).

*Effect of transfer scheme on right to terminate or modify interest etc*

- 7 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
  - (b) to treat an interest or right as modified or terminated.

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- (2) The entitlement—
  - (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
  - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the transferor are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.
- (4) A transfer scheme that (as a result of paragraph 5(1)) contains an obligation to enter into or execute an agreement or instrument may provide for sub-paragraphs (1) to (3) to apply to interests or rights affected by—
  - (a) the agreement or instrument, or
  - (b) a proposal for the agreement or for the execution of the instrument.
- (5) Where the scheme does so provide, sub-paragraphs (1) to (3) apply in relation to the interests or rights as if references there to the transfer scheme included the agreement or instrument.

*Supplementary provisions of schemes*

- 8 (1) A transfer scheme may—
  - (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 9 to 13 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a transfer scheme includes the creation in accordance with a transfer scheme of an interest, right or liability.
- 9 (1) A transfer scheme may provide, in relation to transfers in accordance with the scheme—
  - (a) for a transferee to be treated as the same person in law as the transferor,
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to a transferee,
  - (c) for references in any document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and
  - (d) for proceedings commenced by or against the transferor to be continued by or against a transferee.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.
- 10 (1) A transfer scheme may contain provision about—
  - (a) the transfer of foreign property, rights and liabilities,

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- (b) the creation of foreign rights, interests and liabilities.
- (2) For the purposes of this paragraph property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.
- 11 (1) A transfer scheme may contain provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or as a result of) a transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.
- 12 A transfer scheme may make provision for disputes as to the effect of the scheme—
  - (a) between different transferees, or
  - (b) between a transferee and a transferor,to be referred to such arbitration as may be specified in or determined under the scheme.
- 13 (1) This paragraph applies if, in consequence of a transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
  - (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person’s right to production of the document and to delivery of copies of it, and
  - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
  - (a) the transfer had been effected by deed, and
  - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
  - (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person’s right to production of the document and to delivery of copies of it, and
  - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

*Proof of title by certificate*

- 14 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

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### *Staff*

- 15 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).
- 16 If an employee of the transferor becomes an employee of a transferee as a result of a transfer scheme—
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and
  - (b) the transfer to the transferee is not to be treated as a break in service.

### *Modification of scheme*

- 17 (1) If—
- (a) before the end of the period of 3 years beginning with the time specified under paragraph 6(1), the transferor and transferee agree in writing that the scheme is to be treated as having come into force at that time with such modifications as are specified in the agreement, and
  - (b) the Secretary of State, with the consent of the Treasury, approves the agreement,
- the scheme as modified is to be treated for all purposes as having come into force at that time.
- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances.

### *Disapplication of certain company law provisions etc*

- 18 Nothing in—
- (a) Part 23 of the Companies Act 2006 (distributions), or
  - (b) any rule of law relating to distributions by companies or the maintenance of capital by companies,
- applies in relation to a transfer of property, rights or liabilities, or the creation of rights or interests, by or under a transfer scheme.
- 19 For the purposes of any enactment none of the following persons are to be regarded as shadow directors of a transferor or transferee in relation to anything done by or under a transfer scheme—
- (a) the Secretary of State or the Treasury (or a nominee of either of them), or
  - (b) a person employed by, or acting on behalf of, anyone within paragraph (a).

## SCHEDULE 2

Section 10

### TAXATION PROVISIONS RELATING TO RE-STRUCTURING ETC

#### *Transfer of securities of subsidiaries of original holding company to Crown etc*

- 1 (1) This paragraph applies where—
  - (a) there is a disposal of securities of a subsidiary of the original holding company to the Secretary of State or the Treasury (or a nominee of either of them) or to a company wholly owned by the Crown, and
  - (b) immediately before the disposal, the subsidiary was wholly owned by the original holding company.
- (2) For the purposes of the Taxation of Chargeable Gains Act 1992 the disposal is to be treated in relation to—
  - (a) the person making the disposal, and
  - (b) the person to whom the disposal is made,as made for a consideration such that no gain or loss accrues to the person making the disposal.
- (3) The degrouping provisions are not to apply by reason of the disposal or any agreement to make the disposal (if they otherwise would).
- (4) In this Schedule a “degrouping provision” means—
  - (a) section 179 of the Taxation of Chargeable Gains Act 1992 (company ceasing to be member of group), or
  - (b) paragraph 3 of Schedule 7 to the Finance Act 2003 (withdrawal of SDLT group relief).
- (5) Stamp duty is not chargeable on the instrument effecting the disposal.
- (6) This paragraph applies whether or not the disposal is made by or under a transfer scheme under section 8.
- 2 (1) This paragraph applies where—
  - (a) paragraph 1(3) has applied at any time in relation to a disposal or an agreement to make a disposal,
  - (b) there is a subsequent disposal of securities of the subsidiary in relation to which paragraph 1(3) does not apply, and
  - (c) immediately before the subsequent disposal or the making of an agreement to make it, the subsidiary was a member of a new group.
- (2) For the purposes of the application of a degrouping provision in the case of that disposal or agreement—
  - (a) the company from which the subsidiary acquired relevant assets or chargeable interests is to be treated as if it had been a member of the new group at the time the relevant assets or chargeable interests were acquired, and
  - (b) that company is to be treated as if it were a member of the new group immediately before the disposal or the making of the agreement mentioned in sub-paragraph (1)(c).
- (3) “Relevant assets or chargeable interests” means assets or chargeable interests in relation to which, but for paragraph 1(3), the degrouping provision in question would

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have applied by reason of the disposal or agreement mentioned in sub-paragraph (1) (a).

(4) In this paragraph—

- (a) references to a group have the same meaning as in the degrouping provision in question, and
- (b) references to a new group are to a group other than a group of which the subsidiary was a member immediately before the making of a disposal or an agreement in relation to which paragraph 1(3) applied.

*Transfers of property, rights and liabilities by transfer schemes*

3 In paragraphs 4 to 6—

a “relevant transfer” means a transfer of any property, rights or liabilities by or under a transfer scheme under section 8, and

“transferor” and “transferee” have the same meaning as in Schedule 1.

4 For the purposes of the Taxation of Chargeable Gains Act 1992 a disposal constituted by a relevant transfer is to be treated in relation to the transferor and transferee as made for a consideration such that no gain or loss accrues to the transferor.

5 For the purposes of Chapter 4 of Part 5 of the Corporation Tax Act 2009 (loan relationships: continuity of treatment on transfers within groups or on reorganisations) the transferor and transferee are to be treated in relation to a relevant transfer as if, for the purposes of the transfer, they were members of the same group.

6 (1) For the purposes of Part 8 of the Corporation Tax Act 2009 (intangible fixed assets) a relevant transfer of a chargeable intangible asset is to be treated as tax-neutral.

(2) Part 4 of the Taxation (International and Other Provisions) Act 2010 (transfer pricing) does not apply in relation to a transfer to which sub-paragraph (1) applies.

(3) For the purposes of section 882 of the Corporation Tax Act 2009 (application of Part 8 to assets created or acquired on or after 1 April 2002) assets acquired by a transferee on a relevant transfer are to be treated as if they were acquired from a person who at the time of the acquisition was a related party.

*Transfers of securities of original holding company or its subsidiaries*

7 (1) This paragraph applies where—

- (a) there is a disposal of securities of the original holding company or any of its subsidiaries, and
- (b) immediately before the disposal, the original holding company or (as the case may be) the subsidiary was a 51% subsidiary of the Crown.

(2) The degrouping provisions are not to apply by reason of the disposal or any agreement to make the disposal (if they otherwise would).

(3) For the purposes of this paragraph “51% subsidiary” has the same meaning as it has for the purposes of the Corporation Tax Acts (see Chapter 3 of Part 24 of the Corporation Tax Act 2010), but—

- (a) the Crown is to be treated as a body corporate, and
- (b) for the purpose of determining beneficial ownership the making of an agreement to make the disposal is to be ignored.



- 8 (1) This paragraph applies where—
- (a) paragraph 7 has applied at any time in relation to a disposal or an agreement to make a disposal,
  - (b) there is a subsequent disposal of securities of the original holding company or any of its subsidiaries in relation to which paragraph 7 does not apply, and
  - (c) immediately before the subsequent disposal or the making of an agreement to make it, the original holding company or (as the case may be) the subsidiary was a member of a new group.
- (2) For the purposes of the application of a degrouping provision in the case of that disposal or agreement—
- (a) the company from which the original holding company or (as the case may be) the subsidiary acquired relevant assets or chargeable interests is to be treated as if it had been a member of the new group at the time the relevant assets or chargeable interests were acquired, and
  - (b) that company is to be treated as if it were a member of the new group immediately before the disposal or the making of the agreement mentioned in sub-paragraph (1)(c).
- (3) “Relevant assets or chargeable interests” means assets or chargeable interests in relation to which, but for paragraph 7, the degrouping provision in question would have applied by reason of the disposal or agreement mentioned in sub-paragraph (1)(a).
- (4) In this paragraph—
- (a) references to a group have the same meaning as in the degrouping provision in question, and
  - (b) references to a new group are to a group other than a group of which the original holding company or (as the case may be) the subsidiary was a member immediately before the making of a disposal or an agreement in relation to which paragraph 7 applied.

## SCHEDULE 3

Sections 38 and 50

### FURTHER PROVISION ABOUT ACCESS CONDITIONS

#### PART 1

##### PROVISION THAT MAY BE MADE BY ACCESS CONDITIONS

###### *Introduction*

- 1 Access conditions imposed on a person may include provision of the kind mentioned in the following provisions of this Part of this Schedule.

###### *Terms of access*

- 2 An access condition imposed on a person may include provision—

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- (a) requiring the terms and conditions on which the person is willing to offer access to include such terms and conditions as may be specified or described in the condition, or
- (b) requiring the person to make such modifications as OFCOM may direct of any offer which sets out the terms and conditions on which the person is willing to offer access.

*Price controls etc.*

- 3 (1) An access condition imposed on a person may include provision imposing on the person—
- (a) such price controls as OFCOM may direct in relation to matters connected with the giving of access (“access matters”),
  - (b) rules made by OFCOM in relation to access matters about the identification of costs and cost orientation,
  - (c) rules made by OFCOM for those purposes about the use of cost accounting systems,
  - (d) obligations to have compliance with those systems audited annually by a qualified independent auditor, and
  - (e) obligations to adjust prices in accordance with directions given by OFCOM.
- (2) An obligation within sub-paragraph (1)(d) may require the person to meet the costs of the audit.
- (3) In sub-paragraph (1)(d) “qualified independent auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
  - (b) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).
- 4 An access condition may include provision requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations referred to in paragraph 3.
- 5 (1) If an access condition imposes rules on any person about the use of cost accounting systems, OFCOM may secure that the condition also imposes an obligation on the person to make arrangements for a description to be made available to the public of the cost accounting system used.
- (2) If OFCOM impose an obligation on a person under sub-paragraph (1), the description of information to be made available must include details of—
- (a) the main categories under which costs are brought into account for the purposes of that system, and
  - (b) the rules applied for the purposes of that system with respect to the allocation of costs.

*Arrangements for provision of services by others*

- 6 (1) This paragraph applies if—
- (a) services are provided to a postal operator pursuant to arrangements made between the operator and another person (“B”),

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- (b) an access condition requires the operator to secure that those services are also provided to a third person (“C”), and
  - (c) the provisions of the arrangements are such that the operator cannot secure that the services are provided to C without B’s agreement.
- (2) The access condition may include—
- (a) provision in relation to the giving of agreement by B (including provision for agreement to be deemed to be given in circumstances specified in the condition), and
  - (b) provision for determining the terms and conditions on which B is to secure the provision of the services to C.
- (3) Provision may not be included in an access condition as a result of this paragraph if it would have the effect of requiring a person who provides services pursuant to the arrangements to do more than the person could be required to do pursuant to the arrangements as they have effect before the condition is imposed.

#### *Separation for accounting purposes*

- 7 An access condition requiring a separation for accounting purposes between different matters may include provision—
- (a) requiring the separation to be maintained in relation to different services, facilities or products or in relation to services, facilities or products provided in different areas, and
  - (b) requiring particular accounting methods to be used in maintaining the separation.

#### *Restriction on use of information obtained in connection with giving access*

- 8 An access condition imposed on a person may include provision requiring the person not to use information which—
- (a) is obtained in connection with the giving of access, and
  - (b) relates to the provision of postal services by any person to whom access is given,
- for any purpose other than the purpose of the access given by the condition.

#### *Periods for compliance*

- 9 An access condition imposed on a person may include provision for securing that obligations contained in the condition are complied with within the periods or at the times required by or under the condition.

#### *Dealing with requests for access*

- 10 An access condition imposed on a person may include provision for securing fairness and reasonableness in the way in which requests for access are made and responded to.

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### *Non-discrimination*

- 11 An access condition imposed on a person may include provision requiring the person not to discriminate unduly against particular persons, or against a description of persons, in relation to access matters.

### *Transparency*

- 12 An access condition imposed on a person may include provision requiring the person—
- (a) to publish all such information as OFCOM may direct (in such manner as they may direct) for the purpose of securing transparency in relation to access matters, or
  - (b) to publish (in such manner as OFCOM may direct) the terms and conditions on which the person is willing to offer access.

## **PART 2**

### RESOLUTION OF ACCESS DISPUTES BY OFCOM

#### *Reference of disputes to OFCOM*

- 13 (1) Any one or more parties to an access dispute may refer the dispute to OFCOM.
- (2) In this paragraph “access dispute” means a dispute between postal operators, or between a postal operator and a user of postal services, about the terms and conditions (including those as to price) on which access, required by virtue of an access condition to be given—
- (a) is to be or may be provided,
  - (b) is being provided, or
  - (c) has been provided.
- (3) A reference under this paragraph must be made in such manner as OFCOM require.
- (4) A requirement under sub-paragraph (3) is to be imposed, withdrawn or modified by OFCOM publishing a notice in such manner as they consider appropriate for bringing the requirement, withdrawal or modification to the attention of persons who, in their opinion, are likely to be affected by it.
- (5) Different requirements may be imposed for different cases.

#### *OFCOM to decide whether to handle dispute*

- 14 (1) This paragraph applies where a dispute has been referred to OFCOM under paragraph 13.
- (2) OFCOM must decide whether it is appropriate for them to handle the dispute.
- (3) As soon as possible after they have reached a decision, OFCOM must inform each of the parties to the dispute of—
- (a) their decision,
  - (b) the date it was made, and
  - (c) their reasons for it.

#### *Resolution of disputes by OFCOM*

- 15 (1) This paragraph applies if OFCOM have decided under paragraph 14 that it is appropriate for them to handle a dispute.
- (2) OFCOM must—
- (a) consider the dispute, and
  - (b) make a determination for resolving it.
- (3) The determination must be made as soon as reasonably practicable.
- (4) A determination binds all of the parties to the dispute.
- (5) Where there has been an attempt to resolve the dispute by other means—
- (a) OFCOM may, in making their determination, take account of decisions made by others in the course of that attempt, and
  - (b) the determination may include provision ratifying any of those decisions.

#### *Resolution of disputes: OFCOM's powers*

- 16 (1) The powers that may be exercised by OFCOM, on the making of a determination under paragraph 15, are those listed in sub-paragraph (2).
- (2) The powers are—
- (a) to make a declaration setting out the rights and obligations of parties to the dispute,
  - (b) to give a direction fixing the terms or conditions of transactions between parties to the dispute,
  - (c) to give a direction imposing an obligation, enforceable by the parties, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM,
  - (d) to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment (but see sub-paragraph (3)),
  - (e) to require a party to the dispute to pay all or part of another party's costs and expenses incurred in connection with the dispute,
  - (f) to require a party to pay all or part of OFCOM's costs of dealing with the dispute (but see sub-paragraph (4)).
- (3) A direction under sub-paragraph (2)(d) may be given only for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one party to the dispute to another.
- (4) A direction under sub-paragraph (2)(f) may be given to a party only if—
- (a) the party referred the dispute to OFCOM, and
  - (b) OFCOM consider that the reference was frivolous or vexatious or that the party has otherwise abused the right (conferred by paragraph 13) to refer disputes.

#### *Resolution of disputes: procedure*

- 17 (1) The procedure for the consideration and determination of a dispute is the procedure that OFCOM consider appropriate.

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- (2) That procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by other means.
- (3) OFCOM must send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute.
- (4) OFCOM must publish so much of their determination as (having regard in particular to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (5) Information published under sub-paragraph (4) must be published in such manner as OFCOM consider appropriate for bringing it to the attention (to the extent that they consider appropriate) of members of the public.

*Reference not to affect legal proceedings or OFCOM's powers*

- 18 (1) A reference under paragraph 13 of a dispute does not prevent any person from bringing or continuing any civil or criminal proceedings in or before a court with respect to any of the matters under dispute.
- (2) Sub-paragraph (1) is subject to—
  - (a) paragraph 15(4) (determination binding on all parties), and
  - (b) any agreement to the contrary.
- (3) Any reference of a dispute to OFCOM, or consideration or determination by OFCOM of a dispute, does not prevent OFCOM from exercising any of their powers (or from doing anything in connection with the exercise of any of their powers) in relation to the subject-matter of the dispute.

*Information*

- 19 (1) This paragraph applies where a dispute has been referred under paragraph 13 to OFCOM.
- (2) OFCOM may require a person to provide them with specified information, in the specified manner and within the specified period.
- (3) The information that may be specified is information required by OFCOM for the purpose of—
  - (a) deciding whether it is appropriate for them to handle the dispute, or
  - (b) considering the dispute and making a determination under paragraph 15.
- (4) The specified period must be reasonable.
- (5) In fixing that period, OFCOM must have regard, in particular, to—
  - (a) the information that is required,
  - (b) the nature of the dispute, and
  - (c) the obligation imposed by paragraph 15(3) (obligation to make a determination as soon as reasonably practicable).
- (6) Part 2 of Schedule 8 (information: enforcement) applies in relation to a requirement imposed under this paragraph as if—
  - (a) the requirement were imposed under paragraph 1 of that Schedule, and
  - (b) sub-paragraphs (4) and (5) of paragraph 5 of that Schedule were omitted.

## SCHEDULE 4

Section 43

### RECOVERY OF ADMINISTRATIVE CHARGES INCURRED BY OFCOM

#### *Fixing of charges*

- 1 (1) If, at any time in a charging year, a postal operator provides a service within the scope of the universal postal service, the operator must, in respect of the service, pay to OFCOM the administrative charge (if any) that is fixed by OFCOM as applicable to the operator.
- (2) OFCOM may fix the administrative charge for a charging year only if—
- (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that they are proposing to apply in fixing charges under this paragraph for that year, and
  - (b) the charge is fixed in accordance with those principles.
- (3) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make, that—
- (a) on a year-by-year basis the total amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their postal services functions,
  - (b) the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed, and
  - (c) the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent.
- (4) OFCOM's power to fix charges for a particular case includes—
- (a) power to provide that the charges are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them,
  - (b) power to provide for different charges to be imposed on different descriptions of persons,
  - (c) power to provide for particular descriptions of persons to be excluded from the liability to pay charges.
- (5) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement (a "financial statement") setting out for that year—
- (a) the total amount of the charges for that year that they have received,
  - (b) the total amount of the charges for that year that remain outstanding but are likely to be paid or recovered, and
  - (c) the cost to OFCOM of carrying out their postal services functions.
- (6) Any deficit or surplus shown (after applying this sub-paragraph for previous years) by a financial statement is to be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of sub-paragraph (3) (a) in relation to the following year.
- (7) For the purposes of this paragraph "charging year" means—
- (a) the period beginning with the commencement of this Schedule and ending with the next 31 March, or
  - (b) any subsequent period of 12 months beginning with 1 April.

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### *Meaning of OFCOM's postal services functions*

- 2 (1) For the purposes of paragraph 1 OFCOM's postal services functions are—
- (a) functions that OFCOM carry out under, or in consequence of, any enactment relating to postal services (including one contained in this Schedule),
  - (b) securing international co-operation in relation to the regulation of postal services,
  - (c) market analysis and any monitoring of the controls operating in the market for the provision of postal services,
  - (d) the carrying out for a relevant purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(6A)(b) to (e) of the Communications Act 2003 (as inserted by Schedule 12 to this Act),
  - (e) the publication under section 26 of that Act of any information or advice that appears to OFCOM to be appropriate to make available to users of postal services, and
  - (f) any incidental functions carried out in relation to any of the above functions.
- (2) In sub-paragraph (1)(d) “a relevant purpose” means the purpose of ascertaining the effectiveness of one or more of the following—
- (a) the regulation of the provision of postal services,
  - (b) the mechanisms in place for the handling by postal operators of complaints made about them by the users of postal services, and
  - (c) the mechanisms in place for resolving disputes between postal operators and the users of postal services.
- (3) In sub-paragraph (1)(f) the reference to incidental functions carried out in relation to any of the functions within sub-paragraph (1)(a) to (e) includes the taking of any steps that OFCOM consider necessary—
- (a) in preparation for the carrying out of any of those functions, or
  - (b) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.
- (4) In sub-paragraph (3) the reference to the taking of any steps includes the taking of any steps before the commencement of this Schedule.

### *Procedure for fixing of charges*

- 3 (1) The way in which a charge is to be fixed under paragraph 1 is by the publication or giving of such notification as OFCOM consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it.
- (2) OFCOM may set out in that notification the time at which the charge is to become due to them.
- (3) A charge fixed under paragraph 1 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which the service in respect of which it is fixed is not provided by the person otherwise liable to the charge.
- (4) A charge fixed under paragraph 1 for a charging year may also be fixed so that (subject to sub-paragraph (5)) it is referable, in whole or in part, to the provision of a service during a part of the year falling before the fixing of the charge.



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- (5) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—
  - (a) the imposition of the charge, and
  - (b) the amount of the charge,are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
- (6) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (7) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

#### *Notification of non-payment of charges*

- 4 (1) OFCOM may bring proceedings for the recovery from a person of an administrative charge fixed for a year under paragraph 1 only if they have given that person a notification under this paragraph with respect to the amount they are seeking to recover.
  - (2) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is in contravention of a requirement to pay the charge (whether the whole or part of it).
  - (3) A notification under this paragraph must set out the determination made by OFCOM.
  - (4) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
    - (a) to make representations about the notified determination, and
    - (b) to pay the unpaid charge or (if applicable) the amount outstanding.
  - (5) The specified period must be at least one month beginning with the day after the day the notification is given unless—
    - (a) OFCOM and the person notified agree a shorter period, or
    - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
  - (6) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
    - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of a requirement to pay an administrative charge, and
    - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 6(2) that the contravention to which the previous notification related did occur.
  - (7) OFCOM may (on one or more occasions) extend the specified period.
- 5 (1) A notification under paragraph 4—

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- (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge, and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 4 has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount only if—
- (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates, or
  - (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

*Penalties for non-payment of charges*

- 6 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 4,
  - (b) OFCOM have allowed the person an opportunity of making representations about the notified determination, and
  - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on the person if the person—
- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under paragraph 1, and
  - (b) has not, during the period allowed under paragraph 4, paid the whole of the notified amount outstanding.
- (3) If a notification under paragraph 4 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be—
- (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than twice the amount of the charge fixed for the year in relation to which the contravention occurred.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
- (a) any representations made to them by the person, and
  - (b) any steps taken by the person towards paying the amounts that the person was notified under paragraph 4 were outstanding.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must—
- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and

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- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph—
  - (a) must be paid to OFCOM, and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) This paragraph does not affect OFCOM’s power to bring proceedings (whether before or after the imposition of a penalty under this paragraph) for the recovery of the whole or part of an amount due to them under paragraph 1.

#### *Suspending service provision for non-payment*

- 7 (1) OFCOM may give a direction under this paragraph to any postal operator who is providing one or more postal services (“the contravening operator”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening operator to provide postal services—
  - (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to D are met.
- (4) Condition A is that the contravening operator is or has been in serious and repeated contravention of requirements to pay administrative charges fixed under paragraph 1 (whether in respect of the whole or a part of the charges).
- (5) Condition B is that the bringing of proceedings for the recovery of the amounts outstanding—
  - (a) has failed to secure complete compliance by the contravening operator with the requirements to pay the charges, or
  - (b) has no reasonable prospect of securing such compliance.
- (6) Condition C is that an attempt, by the imposition of penalties under paragraph 6, to secure such compliance has failed.
- (7) Condition D is that the giving of the direction is—
  - (a) appropriate, and
  - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 8 (1) Unless it provides otherwise, a direction under paragraph 7 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 7—
  - (a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the

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contravening operator as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator's services.

- (3) Those conditions may include a condition requiring the making of payments—
  - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
  - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM are not to give a direction under paragraph 7 unless they have—
  - (a) notified the contravening operator of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
  - (b) provided the contravening operator with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
  - (c) considered every representation and proposal made to them during the period allowed by them for the contravening operator to take advantage of that opportunity.
- (5) That period must be at least one month beginning with the day after the day the notification is given.
- (6) OFCOM may revoke a direction under paragraph 7 or modify its conditions—
  - (a) with effect from such time as they may direct,
  - (b) subject to compliance with such requirements as they may specify, and
  - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (7) For the purposes of paragraph 7 there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—
  - (a) in the case of a previous notification given to that person under paragraph 4, OFCOM have determined for the purposes of paragraph 6(2) that a contravention did occur, and
  - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges.

#### *Enforcement of directions under paragraph 7*

- 9 (1) A person commits an offence if the person provides any service—
  - (a) while the person's entitlement to do so is suspended by a direction under paragraph 7, or
  - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under paragraph 7 is to be a duty owed to every person who may be affected by a contravention of the condition.

- (4) Sub-paragraphs (5) and (6) apply where a duty is owed by virtue of sub-paragraph (3) to a person.
- (5) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (6) An act which—
  - (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
  - (b) is done wholly or partly for achieving that result,is actionable at the suit or instance of that person.
- (7) In proceedings brought against a person as a result of sub-paragraph (5) it is a defence for that person to show that the person took—
  - (a) all reasonable steps, and
  - (b) exercised all due diligence,to avoid contravening the condition in question.

## SCHEDULE 5

Section 52

### APPROVAL OF REDRESS SCHEMES

#### *Approval of redress schemes*

- 1 (1) In deciding whether to approve a redress scheme, OFCOM must have regard to—
  - (a) the provisions of the scheme,
  - (b) the manner in which the scheme will be operated (so far as that can be judged from the facts known to OFCOM),
  - (c) the interests of users of postal services (including, in particular, the number of other redress schemes which are, or are likely to be, approved), and
  - (d) applicable best practice.
- (2) “Applicable best practice” means the principles—
  - (a) which, in OFCOM’s opinion, constitute generally accepted principles of best practice in relation to schemes for providing redress to consumers, and
  - (b) which it is reasonable to regard as applicable to the scheme.
- (3) OFCOM must not approve a redress scheme unless—
  - (a) the membership of the scheme is open to all postal operators,
  - (b) the independent adjudicator may require members of the scheme to provide complainants with the minimum types of redress (whether or not other types of redress are available), and
  - (c) OFCOM consider that the scheme makes satisfactory provision about the matters listed in sub-paragraph (6).
- (4) Sub-paragraph (3)(a) is not to be read as preventing OFCOM from approving a redress scheme that contains provision as to the expulsion of its members.
- (5) The minimum types of redress are—
  - (a) providing an apology or explanation,

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- (b) paying compensation, and
  - (c) taking such other action in the interests of the complainant as the independent adjudicator may specify.
- (6) The matters are—
- (a) the matters about which complaints may be made (which may include contravention of a code of practice or other document),
  - (b) the independent adjudicator’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint),
  - (c) the enforcement of any requirement to provide redress imposed on a member of the scheme,
  - (d) the acceptance and handling of complaints transferred from redress schemes which have their approval withdrawn under paragraph 2, and
  - (e) the provision of information by the independent adjudicator to the persons within sub-paragraph (7) (and, in the case of persons within sub-paragraph (7)(e) and (f), for the purposes mentioned there).
- (7) The persons are—
- (a) OFCOM,
  - (b) persons carrying out functions under other redress schemes that apply to postal operators,
  - (c) the National Consumer Council,
  - (d) the Secretary of State,
  - (e) the Office of Fair Trading, for the purposes of any public consumer advice scheme supported by it, and
  - (f) persons who operate a public consumer advice scheme supported by the Office of Fair Trading, for the purposes of that scheme.
- (8) In this paragraph “the independent adjudicator” means the person mentioned in section 52(2) who investigates and determines the complaints.

*Approval of redress schemes: supplementary*

- 2
- (1) An application for approval of a redress scheme must be made in such manner, and be accompanied by such information, as OFCOM may determine.
  - (2) The person who administers an approved redress scheme must notify OFCOM of any change to the scheme.
  - (3) That notification must be given before the end of the period of 14 days beginning with the day on which the change is made.
  - (4) OFCOM may withdraw their approval of a redress scheme, and may do so generally or in relation to complaints of a description specified by OFCOM.
  - (5) OFCOM may, in particular, specify complaints by reference to the date on which they were made.

*Procedure for refusing or withdrawing approval*

- 3
- (1) Before refusing or withdrawing their approval of a redress scheme, OFCOM must give the person who administers the scheme (“the scheme administrator”) a notice—

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- (a) stating that they propose to refuse or withdraw approval,
  - (b) giving the reasons for the proposed refusal or withdrawal, and
  - (c) specifying a period within which representations about the proposed refusal or withdrawal may be made.
- (2) That period must be at least one month beginning with the day after the day the notice is given.
- (3) OFCOM must give notice (a “decision notice”) to the scheme administrator of—
- (a) OFCOM’s decision on a proposal to refuse or withdraw approval, and
  - (b) the reasons for their decision.
- (4) If the decision is to withdraw approval, OFCOM must also give notice of their decision and the reasons for it to the Secretary of State.
- (5) The scheme administrator must give a copy of a decision notice to each member of the scheme.
- (6) If OFCOM decide to withdraw approval, the withdrawal has effect in accordance with, and from the date specified in, the decision notice.

## SCHEDULE 6

Section 53

### IMPOSITION, MODIFICATION OR REVOCATION OF REGULATORY CONDITIONS

#### *General test for imposing or modifying regulatory conditions*

- 1 OFCOM may impose or modify a regulatory condition only if satisfied that the condition or modification—
- (a) is objectively justifiable,
  - (b) does not discriminate unduly against particular persons or a particular description of persons,
  - (c) is proportionate to what it is intended to achieve, and
  - (d) is transparent in relation to what it is intended to achieve.

#### *Provision which may be contained in regulatory conditions*

- 2 (1) The power of OFCOM to impose a regulatory condition includes each of the following powers.

##### *Directions*

The power to impose a requirement to comply with directions given by OFCOM, or by another person specified in the condition, with respect to the matters to which the condition relates.

##### *Consents, approvals and recommendations*

The power to impose an obligation with respect to those matters framed by reference to, or conditional on, the consent, approval or recommendation of OFCOM or of another person specified in the condition.

##### *Discretion*

The power to confer a discretion exercisable by OFCOM or by another person specified in, or determined in accordance with, the condition.

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*Different provision for different cases*

The power to impose different conditions for different cases (including different conditions in relation to different parts of the United Kingdom).

*Revocation and modification*

The power to revoke or modify the condition.

- (2) The directions that are authorised as a result of this paragraph do not include directions withdrawing, suspending or restricting a person's entitlement to provide (in whole or in part) postal services.

*Procedure for imposing, modifying or revoking conditions*

- 3 (1) The way in which a regulatory condition is to be imposed or modified is by the publication of a notification setting out the condition or modification.
- (2) The way in which a regulatory condition is to be revoked is by the publication of a notification stating that the condition is revoked.
- (3) Before imposing, modifying or revoking a regulatory condition, OFCOM must publish a notification—
- (a) stating that they are proposing to impose, modify or revoke the condition specified in the notification,
  - (b) setting out the effect of the condition, modification or revocation,
  - (c) giving their reasons for making the proposal, and
  - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (4) The specified period must be at least one month beginning with the day after the day the notification is published.
- (5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification only if they—
- (a) have considered every representation about the proposal that is made to them within the specified period, and
  - (b) have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.
- (6) The publication of a notification under this paragraph must be in such manner as appears to OFCOM to be appropriate for bringing its contents—
- (a) in the case of a designated USP condition, a USP access condition or a USP accounting condition, to the attention of the persons who, in OFCOM's opinion, are likely to be affected by its contents, and
  - (b) in any other case, to the attention of such persons as OFCOM consider appropriate.
- (7) The requirements of this paragraph apply even if OFCOM is under a duty under any other provision of Part 3 of this Act to impose or modify a condition.

*Directions and approvals for purposes of conditions*

- 4 (1) This paragraph applies if—



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- (a) a regulatory condition has effect by reference to directions, approvals or consents given by a person (whether OFCOM or another), and
  - (b) the person proposes to give a direction, approval or consent affecting the operation of the condition or to modify or withdraw a direction, approval or consent so as to affect its operation.
- (2) A person may give, modify or withdraw the direction, approval or consent only if satisfied that to do so—
  - (a) is objectively justifiable,
  - (b) does not discriminate unduly against particular persons or a particular description of persons,
  - (c) is proportionate to what it is intended to achieve, and
  - (d) is transparent in relation to what it is intended to achieve.
- (3) Before the direction, approval or consent is given, modified or withdrawn, a notification must be published—
  - (a) stating that there is a proposal to give, modify or withdraw it,
  - (b) identifying the person whose proposal it is,
  - (c) setting out the direction, approval or consent to which the proposal relates,
  - (d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal,
  - (e) giving reasons for the making of the proposal, and
  - (f) specifying the period within which representations may be made about the proposal to the person whose proposal it is.
- (4) That period must be at least one month beginning with the day after the day the notification is published.
- (5) But if the person giving the notification is satisfied that there are exceptional circumstances justifying a shorter period, the period for making representations may be whatever shorter period that person considers reasonable in the circumstances.
- (6) If—
  - (a) a person other than OFCOM proposes to give, modify or withdraw a direction, approval or consent, and
  - (b) the condition for the purposes of which it has (or will have) effect provides for notifications of proposals for the purposes of the condition to be given by that person,the obligation of publishing the notification of that proposal for the purposes of this paragraph falls on that person.
- (7) Otherwise, the obligation of publishing a notification for the purposes of this paragraph falls on OFCOM.
- (8) The person who is authorised to give the direction, approval or consent may give effect, with or without modifications, to a proposal with respect to which a notification has been given only if the person—
  - (a) has considered every representation about the proposal that is made to the person within the period specified in the notification, and
  - (b) has had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.

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- (9) The publication of a notification under this paragraph must be in such manner as appears to the person publishing it to be appropriate for bringing its contents to the attention of such persons as that person considers appropriate.

*Delivery of copies of notifications etc.*

- 5 (1) The relevant person must send to the Secretary of State—
- (a) a copy of every notification published under paragraph 3 or 4,
  - (b) a copy of every direction, approval or consent given for the purpose of giving effect to a proposal required to be published under paragraph 4, and
  - (c) a copy of every instrument modifying or withdrawing a direction, approval or consent for the purpose of giving effect to a proposal required to be published under that paragraph.
- (2) The relevant person must send to the European Commission—
- (a) a copy of every notification published under paragraph 3(1) with respect to a designated USP condition or a general universal service condition,
  - (b) a copy of every direction, approval or consent given for the purposes of a designated USP condition or a general universal service condition, and
  - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (3) In this paragraph “the relevant person”, in relation to a notification, direction, approval or consent—
- (a) except in a case falling within paragraph (b), means the person by whom it is published or by whom it has been or is to be given, modified or withdrawn, and
  - (b) in the case of a direction, approval or consent given, modified or withdrawn by a person other than OFCOM for the purpose of giving effect to a proposal published by OFCOM under paragraph 4, means OFCOM.

SCHEDULE 7

Section 54

ENFORCEMENT OF REGULATORY REQUIREMENTS

*Introduction*

- 1 (1) This Schedule makes provision for the enforcement of regulatory requirements imposed by OFCOM in carrying out their functions in relation to postal services.
- (2) “Regulatory requirement” means—
- (a) a regulatory condition, or
  - (b) a direction under—
    - (i) section 89A or 116(2A) of the Postal Services Act 2000 (schemes as to terms and conditions for provision of postal services, and the Postcode Address File), or
    - (ii) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement of requirements to give information to the National Consumer Council).

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- (3) The reference to the enforcement of a regulatory condition includes the enforcement of an access condition containing provision as a result of paragraph 6 of Schedule 3 against the person (B) who has made the arrangements with a postal operator mentioned in that paragraph.

*Notification of contravention of regulatory requirements*

- 2 (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a regulatory requirement.
- (2) A notification under this paragraph must—
- (a) set out the determination made by OFCOM, and
  - (b) specify the requirement and contravention in respect of which that determination has been made.
- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
- (a) to make representations about the notified determination,
  - (b) to comply with notified requirements of which the person remains in contravention, and
  - (c) to remedy the consequences of notified contraventions.
- (4) The specified period must be at least one month beginning with the day after the day the notification is given unless—
- (a) OFCOM and the person notified agree a shorter period,
  - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate, or
  - (c) OFCOM specify a shorter period under paragraph 8(3) (power to deal with urgent cases).
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
- (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same regulatory requirement, and
  - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 5(2) or 6(2) that the contravention to which the previous notification related did occur.
- (6) OFCOM may (on one or more occasions) extend the specified period.
- 3 (1) A notification under paragraph 2—
- (a) may be given in respect of more than one contravention, and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 2 has been given to a person in respect of a contravention of a regulatory requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if—
- (a) the contravention occurs after the earlier notification is given,

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- (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
  - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.
- 4 OFCOM may not give a notification under paragraph 2 in relation to a contravention if—
- (a) they decide that a more appropriate way of proceeding in relation to the contravention would be under the Competition Act 1998, and
  - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.

*Enforcement notification for contravention of regulatory requirements*

- 5 (1) This paragraph applies if—
- (a) a person has been given a notification under paragraph 2,
  - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
  - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may give the person an enforcement notification if they are satisfied that the person—
- (a) has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2, and
  - (b) has not, during the period allowed under that paragraph, taken all such steps as they consider appropriate—
    - (i) for complying with that requirement, and
    - (ii) for remedying the consequences of the notified contravention of that requirement.
- (3) An enforcement notification is a notification which imposes one or both of the following requirements on the person—
- (a) a requirement to take such steps for complying with the notified regulatory requirement as may be specified in the notification,
  - (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.
- (4) A decision of OFCOM to give an enforcement notification to a person—
- (a) must be notified by them to that person, together with their reasons for the decision, no later than one week after the day on which it is taken, and
  - (b) must fix a reasonable period for the taking of the steps required by the notification.
- (5) A person to whom an enforcement notification has been given has a duty to comply with it.
- (6) That duty is enforceable in civil proceedings by OFCOM—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or

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- (c) for any other appropriate remedy or relief.

*Penalties for contravention of regulatory requirements*

- 6 (1) This paragraph applies (in addition to paragraph 5) if—
  - (a) a person has been given a notification under paragraph 2,
  - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
  - (c) the period allowed for the making of the representations has ended.
- (2) OFCOM may impose a penalty on a person if the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 2.
- (3) If a notification under paragraph 2 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) OFCOM may also impose a penalty on a person if the person is contravening, or has contravened, a requirement of an enforcement notification given under paragraph 5.
- (6) If OFCOM impose a penalty on a person under this paragraph, they must—
  - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this paragraph—
  - (a) must be paid to OFCOM, and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- 7 (1) The amount of a penalty imposed under paragraph 6 on a person is to be such amount as OFCOM determine to be—
  - (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (2) The amount must not be more than 10% of the turnover of the person’s postal services business for the relevant period, calculated in accordance with such rules as may be set out by order made by the Secretary of State.
- (3) For the purposes of this paragraph—
  - “the person’s postal services business” means so much of any business carried on by the person as consists in the provision of postal services, and
  - “the relevant period” means—
    - (a) except in a case within paragraph (b) or (c), the period of one year ending with the 31 March next before the time when notification of the contravention was given under paragraph 2,
    - (b) in the case of a person who at that time has been carrying on postal services business for under a year, the period, ending with that time, during which the person has been carrying it on, and

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- (c) in the case of a person who at that time has ceased to carry on postal services business, the period of one year ending with the time when the person ceased to carry it on.
- (4) In making the determination of the amount of the penalty OFCOM must have regard to—
  - (a) any representations made to them by the person,
  - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 2, and
  - (c) any steps taken by the person for remedying the consequences of those contraventions.
- (5) An order under this paragraph is subject to affirmative resolution procedure.

*Power to deal with urgent cases*

- 8 (1) This paragraph applies if OFCOM determine—
  - (a) that they are entitled to give a notification under paragraph 2 with respect to a contravention by a person (“the contravening person”) of a regulatory requirement,
  - (b) that there are reasonable grounds for suspecting that the case is urgent, and
  - (c) that the urgency of the case makes it appropriate for them to act under this paragraph.
- (2) A case is urgent for the purposes of this paragraph if the contravention has resulted in or creates an immediate risk of—
  - (a) a serious threat to the safety of the public, to public health or to national security,
  - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
  - (c) serious economic or operational problems for users of postal services.
- (3) OFCOM may, in a notification under paragraph 2 with respect to the contravention, specify a period of less than one month for doing the things mentioned in subparagraph (3) of that paragraph.
- (4) OFCOM may also give to the contravening person a direction that the entitlement of the contravening person to provide postal services—
  - (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.
- 9 (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 8—
  - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the

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contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person’s services.

- (3) Those conditions may include a condition requiring the making of payments—
    - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
    - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
  - (4) OFCOM may revoke a direction under this paragraph or modify its conditions—
    - (a) with effect from such time as they may direct,
    - (b) subject to compliance with such requirements as they may specify, and
    - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- 10
- (1) As soon as reasonably practicable after giving a direction under paragraph 8 to a person, OFCOM must give the person—
    - (a) an opportunity of making representations to them about the grounds on which it was given, and
    - (b) an opportunity of proposing steps to remedy the situation.
  - (2) As soon as reasonably practicable after the period allowed by OFCOM for making those representations has ended, OFCOM must determine—
    - (a) whether the contravention did occur, and
    - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
  - (3) If they decide that the contravention did occur and that the direction was justified, they may confirm the direction.
  - (4) If not, they must revoke the direction or modify its conditions.
  - (5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify their decision to the person to whom the direction was given.
  - (6) Conditions included in a direction as a result of paragraph 9(3) have effect only if the direction is confirmed.

*Suspending service provision for contravention of regulatory requirements*

- 11
- (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).
  - (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services—
    - (a) is suspended (either generally or in relation to particular services), or
    - (b) is restricted in the respects set out in the direction.
  - (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.
  - (4) Condition A is that the contravening person is or has been in serious and repeated contravention of regulatory requirements.

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- (5) Condition B is that an attempt, by the giving of enforcement notifications under paragraph 5 or the imposition of penalties under paragraph 6 (or both), to secure compliance with the contravened requirements has failed.
- (6) Condition C is that the giving of the direction is—
- (a) appropriate, and
  - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 12 (1) Unless it provides otherwise, a direction under paragraph 11 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (2) A direction under paragraph 11—
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that person's services.
- (3) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
  - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
- (4) OFCOM may revoke a direction under this paragraph or modify its conditions—
- (a) with effect from such time as they may direct,
  - (b) subject to compliance with such requirements as they may specify, and
  - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
- (5) For the purposes of paragraph 11 there are repeated contraventions by a person of regulatory requirements to the extent that—
- (a) in the case of a previous notification given to that person under paragraph 2, OFCOM have determined for the purposes of paragraph 5(2) or 6(2) that a contravention did occur,
  - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a regulatory requirement, and
  - (c) the previous notification and the subsequent ones all relate to contraventions of the same regulatory requirement (whether the same contravention or different ones).
- 13 (1) OFCOM are not to give a direction under paragraph 11 unless they have—
- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
  - (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and



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- (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.
  - (2) That period must be at least one month beginning with the day after the day the notification is given.
  - (3) This paragraph does not apply in an urgent case (as to which, see paragraph 14).
- 14 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 11, give the contravening person—
- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
  - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM—
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
  - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 13.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security,
  - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
  - (c) serious economic or operational problems for users of postal services.

*Enforcement of directions under paragraph 8 or 11*

- 15 (1) A person commits an offence if the person provides any service—
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 8 or 11, or
  - (b) in contravention of a restriction contained in a direction under either of those paragraphs.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.

*Civil liability for breach of regulatory requirements etc.*

- 16 (1) The duty of a person to comply with—
- (a) regulatory requirements,
  - (b) requirements imposed by an enforcement notification under paragraph 5, or
  - (c) a condition of a direction under paragraph 8 or 11,
- is a duty owed to every person who may be affected by a contravention of the requirement or condition.
- (2) Sub-paragraphs (3) and (4) apply where a duty is owed by virtue of sub-paragraph (1) to a person.

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- (3) A breach of the duty that causes that person to sustain loss or damage is actionable at the suit or instance of that person.
- (4) An act which—
  - (a) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
  - (b) is done wholly or partly for achieving that result,
 is actionable at the suit or instance of that person.
- (5) In proceedings brought against a person as a result of sub-paragraph (3) it is a defence for that person to show that the person took—
  - (a) all reasonable steps, and
  - (b) exercised all due diligence,
 to avoid contravening the requirement or condition in question.
- (6) The consent of OFCOM is required for the bringing of proceedings as a result of sub-paragraph (1)(a).
- (7) If OFCOM give their consent subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on except in compliance with those conditions.

## SCHEDULE 8

Section 55

### INFORMATION PROVISIONS

#### PART 1

#### REQUIREMENTS TO PROVIDE INFORMATION TO OFCOM

##### *Information required for purposes of OFCOM's functions in relation to postal services*

- 1 (1) OFCOM may require a person falling within sub-paragraph (2) to provide them with all such information as they consider necessary for the purpose of carrying out any of their functions in relation to postal services.
- (2) The persons within this sub-paragraph are—
  - (a) a person who is, or has been, a postal operator,
  - (b) a person who provides, or has provided, access points or other facilities for use in connection with a postal service, and
  - (c) a person not falling within paragraph (a) or (b) who appears to OFCOM to have information required by them for the purpose of carrying out any of their functions in relation to postal services.
- (3) The required information may, in particular, include information required for any one or more of the following purposes—
  - (a) ascertaining whether a contravention of a regulatory requirement (within the meaning of Schedule 7) has occurred or is occurring,

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- (b) ascertaining whether a provision of a regulatory condition which is for the time being in force continues to be effective for the purpose for which it was made,
  - (c) making a designation in accordance with regulations made under section 35,
  - (d) carrying out a review under section 35 or 44,
  - (e) ascertaining or verifying amounts payable by virtue of section 46,
  - (f) ascertaining or verifying charges payable under Schedule 4,
  - (g) identifying markets and carrying out market analyses or assessments in accordance with, or for the purposes of, any enactment relating to postal services, and
  - (h) statistical purposes connected with the carrying out of any of OFCOM's functions in relation to postal services.
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

*Restrictions on imposing requirements in case of conditions of general application*

- 2 (1) This paragraph limits the circumstances in which OFCOM may require the provision of information under paragraph 1 for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application.
- (2) OFCOM may require the provision of information for that purpose only if—
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint,
  - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the condition in question has been complied with,
  - (c) the condition in question is one which OFCOM have reason to suspect is one that has been, or is being, contravened, or
  - (d) the condition in question falls within section 42(2)(b).
- (3) A “condition of general application” means a regulatory condition other than a designated USP condition, a USP access condition or a USP accounting condition.

*Information required for related purposes*

- 3 (1) OFCOM may require—
- (a) a postal operator, or
  - (b) a person who provides access points or other facilities for use in connection with a postal service,
- to provide OFCOM with all such information as they consider necessary to carry out comparative overviews of the quality and prices of postal services.
- (2) The overviews in question must be carried out—
- (a) with a view to publication, and
  - (b) in the interest of users of postal services.
- (3) OFCOM may also require—
- (a) a postal operator, or

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- (b) a person who provides access points or other facilities for use in connection with a postal service, to provide OFCOM, for use for such statistical purposes as they think fit, with information relating to the provision of postal services.
- (4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

*Manner in which information may be required*

- 4 (1) A person required to provide information under paragraph 1 or 3 must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (2) OFCOM must require the provision of information under paragraph 1 or 3 by a demand which—
  - (a) describes the required information, and
  - (b) sets out OFCOM's reasons for requiring it.
- (3) The reasons for requiring information for statistical purposes under paragraph 1 or 3 must set out the statistical purposes for which the information is required.
- (4) A demand for information under paragraph 1 or 3 must be contained in a notice served on the person from whom the information is required.
- (5) This is subject to an exception in the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under Schedule 4.
- (6) In that case, the demand—
  - (a) may be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons described in the demand as the persons from whom the information is required, and
  - (b) may take the form of a general demand for a person so described to provide information when specified conditions relevant to the person's liability to the charges are satisfied.

## PART 2

### ENFORCEMENT

*Notification of contravention of information requirements*

- 5 (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a requirement imposed under paragraph 1 or 3.
- (2) A notification under this paragraph must—
  - (a) set out the determination made by OFCOM, and
  - (b) specify the requirement and contravention in respect of which that determination has been made.
- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity—
  - (a) to make representations about the matters notified, and

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- (b) to comply with notified requirements of which the person remains in contravention.
  - (4) The specified period must be at least one month beginning with the day after the day the notification is given unless—
    - (a) OFCOM and the person notified agree a shorter period, or
    - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
  - (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if—
    - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same requirement, and
    - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 7(2) that the contravention to which the previous notification related did occur.
  - (6) OFCOM may (on one or more occasions) extend the specified period.
- 6
- (1) A notification under paragraph 5—
    - (a) may be given in respect of more than one contravention, and
    - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
  - (2) If a notification under paragraph 5 has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if—
    - (a) the contravention occurs after the earlier notification is given,
    - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
    - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

*Penalties for contravention of information requirements*

- 7
- (1) This paragraph applies if—
    - (a) a person has been given a notification under paragraph 5,
    - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
    - (c) the period allowed for the making of the representations has ended.
  - (2) OFCOM may impose a penalty on a person if—
    - (a) they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 5,
    - (b) the person has not, during the period allowed under that paragraph, complied with the notified requirement, and
    - (c) no proceedings for an offence under paragraph 13 have been brought against the notified person in respect of the contravention.

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- (3) If a notification under paragraph 5 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be—
  - (a) appropriate, and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount must not be more than £50,000.
- (7) In making the determination of the amount of the penalty OFCOM must have regard to—
  - (a) any representations made to them by the person, and
  - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 5.
- (8) If OFCOM impose a penalty on a person under this paragraph, they must—
  - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (9) A penalty imposed under this paragraph—
  - (a) must be paid to OFCOM, and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (10) The Secretary of State may by order substitute a different maximum penalty for the maximum penalty for the time being specified in sub-paragraph (6).
- (11) An order under sub-paragraph (10) is subject to affirmative resolution procedure.

*Suspending service provision for contravention of information requirements*

- 8 (1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services (“the contravening person”).
- (2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services—
  - (a) is suspended (either generally or in relation to particular services), or
  - (b) is restricted in the respects set out in the direction.
- (3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.
- (4) Condition A is that the contravening person is or has been in serious and repeated contravention of requirements imposed under paragraph 1 or 3.

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- (5) Condition B is that an attempt, by the imposition of penalties under paragraph 7 or the bringing of proceedings under paragraph 13, to secure compliance with the contravened requirements has failed.
  - (6) Condition C is that the giving of the direction is—
    - (a) appropriate, and
    - (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.
- 9
- (1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
  - (2) A direction under paragraph 8—
    - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
    - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator’s services.
  - (3) Those conditions may include a condition requiring the making of payments—
    - (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
    - (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.
  - (4) OFCOM may revoke a direction under paragraph 8 or modify its conditions—
    - (a) with effect from such time as they may direct,
    - (b) subject to compliance with such requirements as they may specify, and
    - (c) to such extent and in relation to such services, or parts of a service, as they may determine.
  - (5) For the purposes of paragraph 8 there are repeated contraventions by a person of requirements imposed under paragraph 1 or 3 to the extent that—
    - (a) in the case of a previous notification given to that person under paragraph 5, OFCOM have determined for the purposes of paragraph 7(2) that a contravention did occur, and
    - (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a requirement imposed under paragraph 1 or 3.
  - (6) For the purposes of sub-paragraph (5) it does not matter whether the notifications relate to the same contravention or to different contraventions of the same or different requirements or of requirements under different paragraphs.
- 10
- (1) OFCOM are not to give a direction under paragraph 8 unless they have—
    - (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,

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- (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
  - (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.
- (2) That period must be at least one month beginning with the day after the day the notification is given.
  - (3) This paragraph does not apply in an urgent case (as to which, see paragraph 11).
- 11 (1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 8, give the contravening person—
- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
  - (b) an opportunity of proposing steps to remedy the situation.
- (2) A case is urgent for the purposes of this paragraph if OFCOM—
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
  - (b) decide for that reason to act in accordance with this paragraph instead of paragraph 10.
- (3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security,
  - (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
  - (c) serious economic or operational problems for users of postal services.

*Enforcement of directions under paragraph 8*

- 12 (1) A person commits an offence if the person provides any service—
- (a) while the person’s entitlement to do so is suspended by a direction under paragraph 8, or
  - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.

*Offences in connection with information requirements*

- 13 (1) A person who fails to provide information in accordance with a requirement imposed under paragraph 1 or 3 commits an offence.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.



- (3) A person does not commit an offence under sub-paragraph (1) if—
  - (a) it was not reasonably practicable to comply with the requirement within the period specified by OFCOM, and
  - (b) the person has taken all reasonable steps to provide the information after the end of that period.
- (4) A person commits an offence if—
  - (a) in pursuance of a requirement under paragraph 1 or 3, the person provides any information that is false in any material particular, and
  - (b) at the time the information is provided, the person knows it to be false or is reckless as to whether or not it is false.
- (5) A person guilty of an offence under sub-paragraph (4) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (6) Proceedings for an offence under sub-paragraph (1) may be brought in respect of a contravention by a person of a requirement imposed under paragraph 1 or 3 only if—
  - (a) OFCOM have given the person a notification under paragraph 5 in respect of the contravention,
  - (b) the period allowed under that paragraph for doing the things mentioned in sub-paragraph (3) of that paragraph has ended without the required information having been provided, and
  - (c) OFCOM have not imposed a financial penalty under paragraph 7 in respect of the contravention.

### PART 3

#### SUPPLEMENTARY PROVISIONS

##### *Statement of policy on information gathering*

- 14 (1) OFCOM must prepare and publish a statement of their general policy with respect to—
- (a) the exercise of their powers under paragraph 1 or 3, and
  - (b) the uses to which they are proposing to put information obtained under those paragraphs.
- (2) OFCOM may from time to time revise the statement.
- (3) Where OFCOM make or revise a statement under this paragraph, they must publish the statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) In exercising the powers conferred by this Schedule, OFCOM must have regard to the statement for the time being in force under this paragraph.

##### *Provision of information by OFCOM*

- 15 (1) OFCOM must comply with a request made by a person—

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- (a) to notify the person whether or not a notification is required to be submitted by the person under regulations made under section 48,
  - (b) to notify the person whether a notification submitted for the purposes of those regulations satisfies the requirements of those regulations, or
  - (c) to provide the person with such information about the person's rights as may be necessary for the purpose of facilitating the negotiation by the person of any right to be provided with access pursuant to an access condition.
- (2) A request for the purposes of this paragraph must be made in such manner as OFCOM may require.
- (3) OFCOM do not have to comply with a request under this paragraph if (without having been asked to do so) they have already given the person the notification or information for which the person is asking.
- (4) Any notification or information which under sub-paragraph (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request was made to them.

## SCHEDULE 9

Section 66

### TRANSITIONAL PROVISIONS FOR PART 3

#### *Introduction*

- 1 In this Schedule—
- “the appointed day” means the day appointed under section 93(3) as the day on which the provisions of Part 3 come generally into force,
  - “Postcomm” means the Postal Services Commission,
  - “the transitional period” means the period beginning with the day on which this Act is passed and ending immediately before the appointed day, and
  - “the 2000 Act” means the Postal Services Act 2000.

#### *The universal postal service*

- 2 (1) Until the first universal postal service order under section 30 comes into force—
- (a) references in Part 3 to a universal postal service are to be read as references to a universal postal service as defined by section 4(1) and (2) of the 2000 Act, and
  - (b) references in Part 3 to services within the scope of the universal postal service are to be read as references to services that immediately before the appointed day were, according to section 7A of the 2000 Act, not outside the scope of the universal postal service in the United Kingdom.
- (2) Section 29 (duty to secure provision of universal postal service) is to have effect during the transitional period as if the references in that section (other than in subsection (2)) to OFCOM included Postcomm.

*Provisional designation of universal service providers*

- 3 (1) OFCOM may before the appointed day designate provisionally, with effect from that date, one or more postal operators as universal service providers.
- (2) A provisional designation must be—
- (a) notified to the person designated,
  - (b) published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it, and
  - (c) notified to the European Commission.
- (3) Whilst in force a provisional designation has the same effect as designation under section 35.
- (4) A provisional designation ceases to have effect on the making of the first designation under that section.

*Regulatory conditions applicable as from appointed day*

- 4 (1) OFCOM must determine before the end of the transitional period what regulatory conditions (“initial conditions”) are to apply to postal operators on and after the appointed day.
- (2) Except as mentioned below, the initial conditions applicable to—
- (a) universal service providers, and
  - (b) other postal operators,
- must be to substantially the same effect as the licence conditions applying immediately before the appointed day to the universal service provider or (as the case may be) in relation to the corresponding description of operator.
- (3) Sub-paragraph (2) does not apply to consumer protection conditions (and, accordingly, references elsewhere in this Schedule to initial conditions do not include consumer protection conditions).
- (4) If it appears to OFCOM to be unnecessary to maintain any provision made by the existing licence conditions, sub-paragraph (2) does not require OFCOM to replicate that provision in the initial conditions.
- (5) The provisions of Part 3 as to what regulatory conditions may be imposed—
- (a) have effect subject to sub-paragraph (2) in their application to the imposition of initial conditions, and
  - (b) do not apply in relation to the modification of initial conditions.
- 5 (1) This paragraph applies to licence conditions—
- (a) which apply immediately before the appointed day to the universal service provider or other postal operators, and
  - (b) which contain provision of a kind that (but for this paragraph) could not be contained in any regulatory condition under Part 3.
- (2) The provision made by those licence conditions is to be regarded for the purposes of Part 3 as being capable of being imposed by a regulatory condition under that Part (to be known as a “transitory condition”).
- (3) Accordingly—

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- (a) the references in paragraph 4 to initial conditions include transitory conditions, and
  - (b) paragraph 4(2) and (4) apply in relation to those licence conditions as they apply in relation to other licence conditions.
- (4) A transitory condition is (as a result of this sub-paragraph) to be treated as revoked at the time when the first universal postal service order under section 30 comes into force.
- 6 (1) If OFCOM modify the initial conditions, they may not impose any conditions that could not have been imposed under Part 2 of the 2000 Act.
- (2) The provisions of Part 3 about—
- (a) the procedure for imposing, modifying or revoking regulatory conditions,
  - (b) the enforcement of regulatory conditions, and
  - (c) appeals,
- apply to initial conditions as to other regulatory conditions.
- (3) Any decision of OFCOM pursuant to paragraph 4(2) is not to be regarded as an initial price control decision for the purposes of section 59.
- (4) This paragraph applies in relation to transitory conditions as it applies in relation to other initial conditions, except that sub-paragraph (2)(a) does not apply in relation to the revocation of a transitory condition.

*Recovery of administrative charges incurred by OFCOM*

- 7 (1) This paragraph applies in relation to the first charging year under Schedule 4 (recovery of administrative charges incurred by OFCOM).
- (2) OFCOM must prepare a statement of the principles that they are proposing to apply in fixing administrative charges under paragraph 1 of that Schedule for that year (and the charges must be fixed in accordance with those principles), but there is no requirement for the statement to be in force at the beginning of that year or at the time the charges are fixed.
- (3) Sub-paragraph (2) has effect instead of paragraph 1(2) of that Schedule.
- (4) Paragraph 3(5) of that Schedule has effect as if the reference to the statement of charging principles in force at the beginning of the charging year were a reference to the statement of charging principles relating to the charging year.

*Power to extend operation of time-limited licence condition*

- 8 (1) This paragraph applies if it appears to the Secretary of State—
- (a) that a licence condition applicable before the appointed day to the universal service provider depends for its continuing operation on forecast figures indicating the volume of business in future periods (“index years”) set out in the condition, and
  - (b) that the index years and forecast figures set out in the condition do not extend beyond the index year ending 31 March 2011.
- (2) The Secretary of State may by order amend that condition so as to specify a forecast figure for the index year ending 31 March 2012.

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- (3) The power of the Secretary of State is limited to inserting a forecast figure produced by applying the same methods as were used by Postcomm to determine the forecast figure for the index years presently set out in the condition.
- (4) If it appears to the Secretary of State that Postcomm has produced, using those methods, a forecast figure for the index year ending 31 March 2012, the Secretary of State may adopt its figure and need not repeat, or examine the basis of, the work done by it in producing that figure.
- (5) Before making an order under this paragraph the Secretary of State must—
  - (a) consult the universal service provider and such other persons as the Secretary of State considers appropriate, and
  - (b) consider any representations made before the end of the consultation period.
- (6) The consultation period, in relation to a person, is the period of 21 days beginning with the day on which the person is consulted.
- (7) The requirements of sub-paragraph (5) may be met by consultation and consideration before the passing of this Act.
- (8) If an order under this paragraph is made before the appointed day, the reference in paragraph 4(2) to the licence conditions applicable immediately before that day is to be read accordingly as a reference to the conditions as amended by the order.

#### *Anticipatory exercise of powers*

- 9 (1) During the transitional period the provisions of Part 3 relating to—
  - (a) the designation of a universal service provider, and
  - (b) the imposition of regulatory conditions on postal operators,have effect so far as necessary to enable OFCOM to undertake work with a view to making a designation, or imposing regulatory conditions, under that Part as soon as practicable on or after the appointed day.
- (2) The work referred to in sub-paragraph (1) includes, in particular, consultation with existing licensed operators and others in connection with the imposition of regulatory conditions.
- 10 The provisions of Part 3 also come into force at the beginning of the transitional period so far as necessary to enable the making of any regulations, order or scheme by OFCOM or the Secretary of State.
- 11 (1) The provisions of section 55 and Schedule 8 (information) have effect during the transitional period so far as necessary for the purposes of the carrying out by OFCOM of their functions during or after that period.
- (2) The provisions of section 56 (general restriction on disclosure of information) have effect accordingly.

#### *Reliance by OFCOM on work done by Postcomm*

- 12 In carrying out any of their functions under Part 3 OFCOM may rely on anything done by or in relation to Postcomm at any time before the passing of this Act.

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*Consultation on exercise of existing regulatory functions*

- 13 During the transitional period Postcomm must consult OFCOM before taking any step with a view to modifying or revoking the conditions of a licence under Part 2 of the 2000 Act.

*Enforcement action by Postcomm etc*

- 14 (1) This paragraph applies to a contravention of a condition of a licence under Part 2 of the 2000 Act in respect of which Postcomm was in the process of doing something immediately before the day on which paragraph 3 of Schedule 12 comes into force (repeal of Part 2 of 2000 Act).
- (2) OFCOM are to have the power to do anything that they consider appropriate to do in relation to the contravention in question.
- (3) In particular, OFCOM may continue or discontinue any legal proceedings under section 30 of the 2000 Act (financial penalties) begun by Postcomm in respect of the contravention in question.
- (4) References in this paragraph to a contravention include anything that Postcomm considered might be a contravention.
- 15 (1) This paragraph applies if, at any time on or after the day on which paragraph 3 of Schedule 12 comes into force, OFCOM are satisfied that a person has contravened a condition of a licence under Part 2 of the 2000 Act.
- (2) Despite the repeal of that Part, OFCOM are to have—
- (a) the power to begin legal proceedings under section 30 of the 2000 Act in respect of the contravention in question, and
- (b) the power to do anything else that they consider appropriate to do in relation to it.

*References to universal service provider*

- 16 References in this Schedule to the universal service provider, in relation to periods before the appointed day, are to the operator whose identity is for the time being notified to the European Commission as being the provider of a universal postal service in the United Kingdom.

*Saving*

- 17 Nothing in this Schedule is to be read as impliedly restricting the generality of the power to make transitional provision by order under section 93(4).

## SCHEDULE 10

Section 73

### CONDUCT OF POSTAL ADMINISTRATION

#### PART 1

#### MODIFICATIONS OF SCHEDULE B1 TO 1986 ACT

##### *Introductory*

- 1 Paragraphs 1, 40 to 50, 54, 59 to 68, 70 to 75, 79, 83 to 91, 98 to 107, 109 to 111 and 112 to 116 of Schedule B1 to the 1986 Act are to have effect in relation to postal administration orders as they have effect in relation to administration orders under that Schedule, but with the modifications set out in this Part of this Schedule.

##### *General modifications of the applicable provisions*

- 2 Those paragraphs are to have effect as if—
- (a) for “administration application”, in each place, there were substituted “postal administration application”,
  - (b) for “administration order”, in each place, there were substituted “postal administration order”,
  - (c) for “administrator”, in each place, there were substituted “postal administrator”,
  - (d) for “enters administration”, in each place, there were substituted “enters postal administration”,
  - (e) for “in administration”, in each place, there were substituted “in postal administration”, and
  - (f) for “purpose of administration”, in each place (other than in paragraph 111(1)), there were substituted “objective of the postal administration”.

##### *Specific modifications*

- 3 Paragraph 1 (administration) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
    - “(1) In this Schedule “postal administrator”, in relation to a company, means a person appointed by the court for the purposes of a postal administration order to manage its affairs, business and property.”, and
  - (b) in sub-paragraph (2), for “Act” there were substituted “Schedule”.
- 4 Paragraph 40 (dismissal of pending winding-up petition) is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.
- 5 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.
- 6 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7)(a) to (c) were omitted.

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- 7 Paragraph 46(6) (date for notifying administrator’s appointment) is to have effect as if for paragraphs (a) to (c) there were substituted “the date on which the postal administration order comes into force”.
- 8 Paragraph 49 (administrator’s proposals) is to have effect as if—
- (a) in sub-paragraph (2)(b) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” there were substituted “objective of the postal administration should be achieved by means other than just a rescue of the company as a going concern”, and
  - (b) in sub-paragraph (4), after paragraph (a) there were inserted—  
“aa) to the Secretary of State and OFCOM,”.
- 9 Paragraph 54 is to have effect as if the following were substituted for it—
- “54 (1) The postal administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) If the postal administrator thinks that a revision is substantial, the postal administrator must send a copy of the revised proposals—
- (a) to the registrar of companies,
  - (b) to the Secretary of State and OFCOM,
  - (c) to every creditor of the company of whose claim and address the postal administrator is aware, and
  - (d) to every member of the company of whose address the postal administrator is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- (4) The postal administrator is to be taken to have complied with sub-paragraph (2)(d) if the postal administrator publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.
- (5) The postal administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”
- 10 Paragraph 60 (powers of an administrator) is to have effect as if the existing text were to become sub-paragraph (1) and as if after that sub-paragraph there were inserted—
- “(2) The postal administrator of a company has the power to act on behalf of the company for the purposes of any enactment which confers a power on the company or imposes a duty on it.
- (3) In sub-paragraph (2) “enactment” has the same meaning as in the Postal Services Act 2011 (see section 90).”
- 11 Paragraph 68 (management duties of an administrator) is to have effect as if—
- (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted—  
“the proposals as—
    - (a) set out in the statement made under paragraph 49 in relation to the company, and
    - (b) from time to time revised under paragraph 54,



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- for achieving the objective of the postal administration.” and
- (b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objective of the postal administration”.
- 12 Paragraph 71(3)(b) (charged property: non-floating charge) is to have effect as if for “market” there were substituted “the appropriate”.
- 13 Paragraph 72(3)(b) (hire-purchase property) is to have effect as if for “market” there were substituted “the appropriate”.
- 14 Paragraph 73(3) (protection for secured or preferential creditor) is to have effect as if for “or modified” there were substituted “under paragraph 54”.
- 15 Paragraph 74 (challenge to administrator’s conduct) is to have effect as if—
- (a) for sub-paragraph (2) there were substituted—
- “(2) If a company is in postal administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the postal administrator is acting in a manner preventing the achievement of the objective of the postal administration as quickly and efficiently as is reasonably practicable.
- (2A) The persons who may apply to the court are—
- (a) the Secretary of State,
- (b) with the consent of the Secretary of State, OFCOM,
- (c) a creditor or member of the company.”,
- (b) in sub-paragraph (6)—
- (i) at the end of paragraph (b) there were inserted “or”, and
- (ii) paragraph (c) (and the “or” before it) were omitted, and
- (c) after that sub-paragraph there were inserted—
- “(7) In the case of a claim made otherwise than by the Secretary of State or OFCOM, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or OFCOM a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
- (8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the postal administrator—
- (a) is acting,
- (b) has acted, or
- (c) is proposing to act,
- in a way that is inconsistent with the achievement of the objective of the postal administration as quickly and as efficiently as is reasonably practicable.
- (9) Before the making of an order of the kind mentioned in sub-paragraph (4)(d)—
- (a) the court must notify the postal administrator of the proposed order and of a period during which the postal

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administrator is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12), and

- (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,

and that period must be a reasonable period.

(10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates,
- (b) remedying any harm unfairly caused to those interests, and
- (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.

(11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.

(12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner preventing the achievement of the objective of the postal administration as quickly and as efficiently as is reasonably practicable,
- (b) remedying the consequences of the postal administrator having acted in such a manner, and
- (c) steps for ensuring that there is no repetition of conduct preventing the achievement of the objective of the postal administration as quickly and as efficiently as is reasonably practicable.”

16 Paragraph 75(2) (misfeasance) is to have effect as if after paragraph (b) there were inserted—

“(ba) a person appointed as an administrator of the company under the provisions of this Act, as they have effect in relation to administrators other than postal administrators.”.

17 Paragraph 79 (end of administration) is to have effect as if—

(a) for sub-paragraphs (1) and (2) there were substituted—

“(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of a postal administrator of a company to cease to have effect from a specified time.

(2) An application may be made to the court under this paragraph—

- (a) by the Secretary of State,
- (b) with the consent of the Secretary of State, by OFCOM, or
- (c) with the consent of the Secretary of State, by the postal administrator.”, and

(b) sub-paragraph (3) were omitted.

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- 18 Paragraph 83(3) (notice to registrar when moving to voluntary liquidation) is to have effect as if after “may” there were inserted “, with the consent of the Secretary of State or of OFCOM,”.
- 19 (1) Paragraph 84 (notice to registrar when moving to dissolution) is to have effect as if—
- (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted—
    - “(a) to the Secretary of State and OFCOM, and
    - (b) if directed to do so by either the Secretary of State or OFCOM, to the registrar of companies.”,
  - (b) sub-paragraph (2) were omitted, and
  - (c) in sub-paragraphs (3) to (6), for “(1)”, in each place, there were substituted “(1)(b)”.
- 20 Paragraph 87(2) (resignation of administrator) is to have effect as if for paragraphs (a) to (d) there were substituted “by notice in writing to the court”.
- 21 Paragraph 89(2) (administrator ceasing to be qualified) is to have effect as if for paragraphs (a) to (d) there were substituted “to the court”.
- 22 Paragraph 90 (filling vacancy in office of administrator) is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “Paragraph 91 applies”.
- 23 Paragraph 91 (vacancies in court appointments) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
    - “(1) The court may replace the postal administrator on an application made—
    - (a) by the Secretary of State,
    - (b) with the consent of the Secretary of State, by OFCOM, or
    - (c) where more than one person was appointed to act jointly as the postal administrator, by any of those persons who remains in office.”, and
  - (b) sub-paragraph (2) were omitted.
- 24 Paragraph 98 (discharge from liability on vacation of office) is to have effect as if sub-paragraphs (2)(b) and (3) were omitted.
- 25 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if—
- (a) in sub-paragraph (4), for the words from the beginning to “cessation”, in the first place, there were substituted “A sum falling within sub-paragraph (4A)”,
  - (b) after that sub-paragraph there were inserted—
    - “(4A) A sum falls within this sub-paragraph if it is—
    - (a) a sum payable in respect of a debt or other liability arising out of a contract that was entered into before cessation by the former postal administrator or a predecessor,
    - (b) a sum that must be repaid by the company in respect of a grant that was made before cessation under section 79 of the Postal Services Act 2011 as is mentioned in subsection (4) of that section,

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- (c) a sum that must be repaid by the company in respect of a loan made before cessation under that section or that must be paid by the company in respect of interest payable on such a loan,
  - (d) a sum payable by the company under subsection (5) of section 80 of that Act in respect of an agreement to indemnify made before cessation, or
  - (e) a sum payable by the company under subsection (5) of section 81 of that Act in respect of a guarantee given before cessation.”, and
- (c) in sub-paragraph (5), for “(4)” there were substituted “(4A)(a)”.
- 26 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.
- 27 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.
- 28 Paragraph 103 (appointment of additional administrators) is to have effect as if—
- (a) in sub-paragraph (2) the words from the beginning to “order” were omitted and for paragraph (a) there were substituted—
    - “(a) the Secretary of State,
    - (aa) OFCOM, or”,
  - (b) after that sub-paragraph there were inserted—
    - “(2A) The consent of the Secretary of State is required for an application by OFCOM for the purposes of sub-paragraph (2).”,
    - and
  - (c) sub-paragraphs (3) to (5) were omitted.
- 29 Paragraph 106(2) (penalties) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.
- 30 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.
- 31 Paragraph 111 (interpretation) is to have effect as if—
- (a) in sub-paragraph (1), the definitions of “correspondence”, “holder of a qualifying floating charge”, “market value”, “the purpose of administration” and “unable to pay its debts” were omitted,
  - (b) in that sub-paragraph, after the definition of “administrator” (as modified as a result of paragraph 2 above) there were inserted—
    - ““appropriate value” means the best price which would be reasonably available on a sale which is consistent with the achievement of the objective of the postal administration.”,
  - (c) in that sub-paragraph, before the definition of “creditors’ meeting” there were inserted—
    - ““company” and “court” have the same meaning as in Part 4 of the Postal Services Act 2011.”,
  - (d) in that sub-paragraph, after the definition of “hire purchase agreement” there were inserted—
    - ““objective”, in relation to a postal administration, is to be read in accordance with section 69 of the Postal Services Act 2011,

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“OFCOM” means the Office of Communications,  
“postal administration application” means an application to the court for a postal administration order under Part 4 of the Postal Services Act 2011,  
“postal administration order” has the same meaning as in Part 4 of the Postal Services Act 2011,  
“prescribed” means prescribed by postal administration rules within the meaning of Part 4 of the Postal Services Act 2011.”,

- (e) sub-paragraphs (1A) and (1B) were omitted, and
- (f) after sub-paragraph (3) there were inserted—

“(4) For the purposes of this Schedule a reference to a postal administration order includes a reference to an appointment under paragraph 91 or 103.”

## PART 2

### FURTHER MODIFICATIONS OF SCHEDULE B1 TO 1986 ACT: FOREIGN COMPANIES

#### *Introductory*

- 32 (1) This Part of this Schedule applies in the case of a postal administration order applying to a foreign company.
- (2) The provisions of Schedule B1 to the 1986 Act mentioned in paragraph 1 above (as modified by Part 1 of this Schedule) have effect in relation to the company with the further modifications set out in this Part of this Schedule.
- (3) The Secretary of State may by order amend this Part of this Schedule so as to add more modifications.
- (4) An order under this paragraph is subject to negative resolution procedure.
- 33 In paragraphs 34 to 39—
- (a) the provisions of Schedule B1 to the 1986 Act that are mentioned in paragraph 1 above are referred to as the applicable provisions, and
  - (b) references to those provisions, or to provisions comprised in them, are references to those provisions as modified by Part 1 of this Schedule.

#### *Modifications*

- 34 In the case of a foreign company—
- (a) paragraphs 42(2), 83 and 84 of Schedule B1 to the 1986 Act do not apply,
  - (b) paragraphs 46(4), 49(4)(a), 54(2)(a), 71(5) and (6), 72(4) and (5) and 86 of that Schedule apply only if the company is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies), and
  - (c) paragraph 61 of that Schedule does not apply.
- 35 (1) The applicable provisions and Schedule 1 to the 1986 Act (as applied by paragraph 60(1) of Schedule B1 to that Act) are to be read by reference to the limitation imposed

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on the scope of the postal administration order in question as a result of section 68(4) above.

- (2) Sub-paragraph (1) has effect, in particular, so that—
- (a) a power conferred, or duty imposed, on the postal administrator by or under the applicable provisions or Schedule 1 to the 1986 Act is to be read as being conferred or imposed in relation to the company’s UK affairs, business and property,
  - (b) references to the company’s affairs, business or property are to be read as references to its UK affairs, business and property,
  - (c) references to goods in the company’s possession are to be read as references to goods in its possession in the United Kingdom,
  - (d) references to premises let to the company are to be read as references to premises let to it in the United Kingdom, and
  - (e) references to legal process instituted or continued against the company or its property are to be read as references to such legal process relating to its UK affairs, business and property.
- 36 Paragraph 41 of Schedule B1 to the 1986 Act (dismissal of receivers) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
    - “(1) Where a postal administration order takes effect in respect of a company—
      - (a) a person appointed to perform functions equivalent to those of an administrative receiver, and
      - (b) if the postal administrator so requires, a person appointed to perform functions equivalent to those of a receiver,
 must refrain, during the period specified in sub-paragraph (1A), from performing those functions in the United Kingdom or in relation to any of the company’s property in the United Kingdom.
  - (1A) That period is—
    - (a) in the case of a person mentioned in sub-paragraph (1) (a), the period while the company is in postal administration, and
    - (b) in the case of a person mentioned in sub-paragraph (1) (b), during so much of that period as is after the date on which the person is required by the postal administrator to refrain from performing functions.”, and
  - (b) sub-paragraphs (2) to (4) were omitted.
- 37 Paragraph 43(6A) of Schedule B1 to the 1986 Act (moratorium on appointment to receiverships) is to have effect as if for “An administrative receiver” there were substituted “A person with functions equivalent to those of an administrative receiver”.
- 38 Paragraph 44(7) of Schedule B1 to the 1986 Act (proceedings to which interim moratorium does not apply) is to have effect as if for paragraph (d) there were substituted—

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“(d) the carrying out of functions by a person who (whenever appointed) has functions equivalent to those of an administrative receiver of the company.”

39 Paragraph 64 of Schedule B1 to the 1986 Act (general powers of administrator) is to have effect as if—

- (a) in sub-paragraph (1), after “power” there were inserted “in relation to the affairs or business of the company so far as carried on in the United Kingdom or to its property in the United Kingdom”, and
- (b) in sub-paragraph (2)(b), after “instrument” there were inserted “or by the law of the place where the company is incorporated”.

### PART 3

#### OTHER MODIFICATIONS

##### *General modifications*

- 40 (1) References within sub-paragraph (2) which are contained—
- (a) in the 1986 Act (other than Schedule B1 to that Act), or
  - (b) in other enactments passed or made before this Act,
- include references to whatever corresponds to them for the purposes of this paragraph.
- (2) The references are those (however expressed) which are or include references to—
- (a) an administrator appointed by an administration order,
  - (b) an administration order,
  - (c) an application for an administration order,
  - (d) a company in administration,
  - (e) entering into administration, and
  - (f) Schedule B1 to the 1986 Act or a provision of that Schedule.
- (3) For the purposes of this paragraph—
- (a) a postal administrator corresponds to an administrator appointed by an administration order,
  - (b) a postal administration order corresponds to an administration order,
  - (c) an application for a postal administration order corresponds to an application for an administration order,
  - (d) a company in postal administration corresponds to a company in administration,
  - (e) entering into postal administration corresponds to entering into administration, and
  - (f) what corresponds to Schedule B1 to the 1986 Act or a provision of that Schedule is that Schedule or that provision as applied by Part 1 of this Schedule.
- 41 (1) Paragraph 40, in its application to section 1(3) of the 1986 Act, does not entitle the postal administrator of an unregistered company to make a proposal under Part 1 of the 1986 Act (company voluntary arrangements).

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- (2) Paragraph 40 does not confer any right under section 7(4) of the 1986 Act (implementation of voluntary arrangements) for a supervisor of voluntary arrangements to apply for a postal administration order in relation to a company which is a universal service provider.
- (3) Paragraph 40 does not apply to section 359 of the Financial Services and Markets Act 2000 (administration applications by FSA).

*Modifications of 1986 Act*

42 The following provisions of the 1986 Act are to have effect in the case of any postal administration with the following modifications.

43 Section 5 (effect of approval of voluntary arrangements) is to have effect as if after subsection (4) there were inserted—

“(4A) Where the company is in postal administration, the court must not make an order or give a direction under subsection (3) unless—

- (a) the court has given the Secretary of State or the Office of Communications a reasonable opportunity of making representations to it about the proposed order or direction, and
- (b) the order or direction is consistent with the objective of the postal administration.

(4B) In subsection (4A) “in postal administration” and “objective of the postal administration” are to be read in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 10 to the Postal Services Act 2011.”

44 Section 6 (challenge of decisions in relation to voluntary arrangements) is to have effect as if—

- (a) in subsection (2), for “this section” there were substituted “subsection (1)”,
- (b) after that subsection there were inserted—

“(2AA) Subject to this section, where a voluntary arrangement in relation to a company in postal administration is approved at the meetings summoned under section 3, an application to the court may be made—

- (a) by the Secretary of State, or
- (b) with the consent of the Secretary of State, by the Office of Communications,

on the ground that the voluntary arrangement is not consistent with the achievement of the objective of the postal administration.”

- (c) in subsection (4), after “subsection (1)” there were inserted “or, in the case of an application under subsection (2AA), as to the ground mentioned in that subsection”, and
- (d) after subsection (7) there were inserted—

“(7A) In this section “in postal administration” and “objective of the postal administration” are to be read in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 10 to the Postal Services Act 2011.”

45 In section 129(1A) (commencement of winding up), the reference to paragraph 13(1) (e) of Schedule B1 is to include section 71(1)(e) of this Act.



### *Power to make further modifications*

- 46 (1) The Secretary of State may by order amend this Part of this Schedule so as to add further modifications.
- (2) The further modifications that may be made are confined to such modifications of—
- (a) the 1986 Act, or
  - (b) other enactments passed or made before this Act that relate to insolvency or make provision by reference to anything that is or may be done under the 1986 Act,
- as the Secretary of State considers appropriate in relation to any provision made by or under this Part of this Act.
- (3) An order under this paragraph is subject to affirmative resolution procedure.

### *Interpretation of Part 3 of Schedule*

- 47 In this Part of this Schedule—
- “administration order”, “administrator”, “enters administration” and “in administration” are to be read in accordance with Schedule B1 to the 1986 Act (disregarding Part 1 of this Schedule), and
- “enters postal administration” and “in postal administration” are to be read in accordance with Schedule B1 to the 1986 Act (as applied by Part 1 of this Schedule).

## SCHEDULE 11

Section 73

### POSTAL TRANSFER SCHEMES

### *Application of Schedule*

- 1 This Schedule applies if—
- (a) the court has made a postal administration order in relation to a company (the “old company”), and
  - (b) it is proposed that a relevant transfer (within the meaning of section 69(3)) be made to another company (or companies) (a “new company”).
- 2 While the order is in force, the postal administrator is to act on behalf of the old company in doing anything that it is authorised or required to do by or under this Schedule.

### *Making of postal transfer schemes*

- 3 (1) The old company may for the purpose of giving effect to the proposed transfer make a scheme (a “postal transfer scheme”) for the transfer of property, rights and liabilities from it to the new company (or companies).
- (2) A postal transfer scheme has effect only if—
- (a) the new company (or companies) have consented to the making of the scheme, and
  - (b) the Secretary of State has approved the scheme.

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- (3) A postal transfer scheme may be made only at a time when the postal administration order is in force in relation to the old company.
- (4) A postal transfer scheme takes effect at the time specified in the scheme.
- (5) In the case of a proposed transfer falling within section 69(4)(a) (transfer to wholly-owned subsidiary), sub-paragraph (2)(a) does not apply.

*Approval and modification of scheme by Secretary of State*

- 4 (1) The Secretary of State may modify a postal transfer scheme before approving it.
- (2) After a postal transfer scheme has taken effect—
- (a) the Secretary of State may by notice to the old company and the new company (or companies) modify the scheme, and
  - (b) the scheme as modified is to be treated for all purposes as having come into force at the time specified under paragraph 3(4).
- (3) The only modifications that may be made by the Secretary of State under this paragraph are ones—
- (a) to which the old company and the new company (or companies) have consented, or
  - (b) in the case of a proposed transfer falling within section 69(4)(a), to which the old company has consented.
- (4) In connection with giving effect to modifications under sub-paragraph (2), the Secretary of State may make incidental, supplementary, consequential, transitional, transitory or saving provision (and different provision may be made for different cases or circumstances).
- (5) In deciding whether to approve or modify a postal transfer scheme, the Secretary of State must have regard to—
- (a) the public interest, and
  - (b) any effect the scheme or modification is likely to have on the interests of persons other than the old company and a new company.
- (6) Before approving or modifying a postal transfer scheme, the Secretary of State must consult OFCOM.
- (7) The old company and the new company (or companies) each have a duty 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 exercise of any power under this paragraph.
- (8) That duty overrides a contractual or other requirement to keep information in confidence.
- (9) That duty is enforceable in civil proceedings by the Secretary of State—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

*Identification of property etc to be transferred*

- 5 (1) A postal transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A postal transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

*Property, rights and liabilities that may be transferred*

- 6 (1) A postal transfer scheme may transfer—
- (a) property situated in any part of the world, and
  - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a postal transfer scheme include—
- (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time at which it takes effect,
  - (b) rights and liabilities arising after that time in respect of matters occurring before that time, and
  - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (3) The transfers to which effect may be given by a postal transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the old company is entitled or subject to anything to which the transfer relates.
- (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
- (5) Sub-paragraph (3) has effect where shares in a subsidiary of the old company are transferred as if the reference to the terms on which that company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

*Dividing and modifying the old company's property, rights and liabilities*

- 7 (1) A postal transfer scheme may contain provision—
- (a) for the creation, in favour of the old company or a new company, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
  - (b) for giving effect to a transfer by the creation, in favour of a new company, of an interest or right in or in relation to property or rights retained by the old company, and
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and a new company.
- (2) A postal transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of the old company's undertaking into a contract—

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- (a) between different new companies, or
  - (b) between a new company and the old company.
- (3) A postal transfer scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one new company or by or against both the new company and the old company, and
  - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A postal transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) The reference here to third parties is to persons other than the old company and a new company.
- (6) Paragraph 6(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

*Transfer of regulatory conditions etc*

- 8 (1) A postal transfer scheme may contain provision—
- (a) for a new company to be treated for all purposes as having been designated by OFCOM under section 35 as a universal service provider, and
  - (b) for the transfer to a new company of the whole or part of any obligation contained in a regulatory condition to which the old company was subject.
- (2) The reference to the transfer of a part of any obligation includes the transfer of any obligation so far as relating to an area specified or described in provision made by the scheme.
- (3) A postal transfer scheme may, in consequence of provision made under sub-paragraph (1), make modifications of regulatory conditions to which the old company or new company are subject.

*Transfer etc of statutory functions*

- 9 (1) A postal transfer scheme may contain provision—
- (a) for the transfer of relevant statutory functions to a new company, or
  - (b) for relevant statutory functions to be exercisable concurrently by the old company and a new company (or companies).
- (2) For this purpose “relevant statutory functions” means powers and duties conferred or imposed on the old company by or under an enactment so far as they are connected with—
- (a) the undertaking of the old company to which the postal transfer scheme relates, or
  - (b) property, rights or liabilities transferred in accordance with the scheme.
- (3) Provision within sub-paragraph (1) may apply to relevant statutory functions so far as exercisable in an area specified or described in the provision.

*Effect of postal transfer scheme: general*

- 10 (1) At the time at which a postal transfer scheme takes effect—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
  - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this paragraph, to vest in the appropriate person.
- (2) For this purpose “the appropriate person” means—
- (a) in the case of property, rights and liabilities to be transferred, the new company (or companies), and
  - (b) in the case of interests, right and liabilities to be created, the person in whose favour, or in relation to whom, they are to be created.

*Effect of postal transfer scheme on right to terminate or modify interest etc*

- 11 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a postal transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
  - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
  - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the old company are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.

*Supplementary provisions of postal transfer schemes*

- 12 (1) A postal transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
  - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 13 to 17 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a postal transfer scheme includes the creation in accordance with a postal transfer scheme of an interest, right or liability.
- 13 (1) A postal transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a new company to be treated as the same person in law as the old company,
  - (b) for agreements made, transactions effected or other things done by or in relation to the old company to be treated, so far as may be necessary for the

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- purposes of or in connection with the transfers, as made, effected or done by or in relation to a new company,
- (c) for references in any document to the old company, or to an employee or office holder of it, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and
- (d) for proceedings commenced by or against the old company to be continued by or against a new company.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.
- 14 (1) A postal transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities, and
- (b) the creation of foreign rights, interests and liabilities.
- (2) For this purpose property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.
- 15 (1) A postal transfer scheme may contain provision for and in connection with the payment of compensation to persons other than the old company and a new company if their property, rights, interests or liabilities have been affected by (or as a result of) a postal transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.
- 16 A postal transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different new companies, or
- (b) between the old company and a new company,
- to be referred to such arbitration as may be specified in or determined under the scheme.
- 17 (1) This paragraph applies if, in consequence of a postal transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person’s right to production of the document and to delivery of copies of it, and
- (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
- (b) the words “unless specially qualified” were omitted from that subsection.

- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
  - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

*Proof of title by certificate*

- 18 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a postal transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

*Staff*

- 19 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a postal transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).
- 20 If an employee of the old company becomes an employee of a new company as a result of a postal transfer scheme—
- (a) a period of employment with the old company is to be treated as a period of employment with the new company, and
  - (b) the transfer to the new company is not to be treated as a break in service.

*Transfers in case of foreign companies*

- 21 (1) This paragraph applies if the old company is a foreign company.
- (2) The property, rights and liabilities which may be transferred by a postal transfer scheme, or in or in relation to which interests, rights or liabilities may be created by a postal transfer scheme, are confined to—
- (a) property of the old company in the United Kingdom,
  - (b) rights and liabilities arising in relation to its property in the United Kingdom, and
  - (c) rights and liabilities arising in connection with its affairs and business so far as carried on in the United Kingdom.

*Transfers by two or more postal transfer schemes*

- 22 (1) This paragraph applies if there are two or more postal transfer schemes making transfers to new companies.
- (2) Paragraph 7 has effect as if—
- (a) in sub-paragraph (1)(a) the reference to property or rights transferred in accordance with a postal transfer scheme included property or rights transferred in accordance with another postal transfer scheme, and

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- (b) in sub-paragraphs (2)(a) and (3) references to a new company included a company that is a new company for the purposes of another postal transfer scheme.
- (3) Accordingly, in relation to anything done by a postal transfer scheme as a result of this paragraph, any reference to a new company in paragraphs 13 to 16 includes a company that is a new company for the purposes of another postal transfer scheme.

## SCHEDULE 12

Section 91

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

##### POSTAL SERVICES ACT 2000

- 1 The Postal Services Act 2000 is amended as follows.
- 2 Omit sections 1 and 3 to 5 (introductory).
- 3 Omit sections 6 to 41 (licences for postal services).
- 4 Omit sections 42 to 50 (the Postal Services Commission).
- 5 Omit sections 60 to 61A (the Postal Services Commission and the Council).
- 6 In section 62 (transfer of property etc to nominated company), omit subsections (1) to (5), (7) and (8).
- 7 For section 63 substitute—

**“63 Power to direct issue of certain securities etc**

- (1) This section applies to—
- (a) a Post Office company,
  - (b) a Royal Mail company, or
  - (c) a company in the same group as a company within paragraph (a) or (b),
- that is wholly owned by the Crown.
- (2) The Secretary of State may direct a company to which this section applies to issue securities to—
- (a) the Secretary of State or the Treasury (or to a nominee of either of them), or
  - (b) a parent company that is wholly owned by the Crown.
- (3) A direction must specify—
- (a) the kind and amount of securities to be issued,
  - (b) the terms of issue, and
  - (c) the date at or by which the securities must be issued.
- (4) Any shares issued in pursuance of a direction under this section are to be—
- (a) issued as fully paid, and



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- (b) treated for the purposes of the Companies Acts as if they had been paid up by virtue of payment of their nominal value in cash.
    - (5) A direction under this section may be given only with the consent of the Treasury.
    - (6) Before giving a direction under this section, the Secretary of State must consult—
      - (a) the company to whom the direction is to be given, and
      - (b) if the company has a parent company, its parent company (or, if it has more than one parent company, the parent company that does not itself have a parent company).”
  - 8 (1) Section 64 (government investment in certain securities) is amended as follows.
    - (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**certain companies**”.
    - (3) In subsection (1), for “the Post Office company or of any of its subsidiaries” substitute “—
      - (a) a Post Office company,
      - (b) a Royal Mail company, or
      - (c) a company in the same group as a company within paragraph (a) or (b).”
    - (4) After that subsection insert—

“(1A) Securities acquired under this section may be held by a nominee.”
    - (5) Omit subsection (3).
  - 9 (1) Section 68 (loans by the Secretary of State to the Post Office company etc) is amended as follows.
    - (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
    - (3) In subsection (1), for “the Post Office company or any of its subsidiaries” substitute “a relevant company”.
    - (4) After that subsection insert—

“(1A) In this Part “relevant company” means—
      - (a) a Post Office company,
      - (b) a Royal Mail company, or
      - (c) a company that is, or has at any time been, in the same group as a company within paragraph (a) or (b).”
- 10 (1) Section 69 (guarantees by the Secretary of State for the Post Office company etc) is amended as follows.
  - (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
  - (3) In subsection (1), for “the Post Office company or any of its subsidiaries” substitute “a relevant company”.

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- (4) In subsection (3), for “the Post Office company or the subsidiary concerned” substitute “the relevant company”.
- 11 (1) Section 70 (extinguishment of certain liabilities) is amended as follows.
- (2) In subsections (1) and (2), for “the Post Office company or of any of its subsidiaries” substitute “a relevant company”.
- (3) For subsections (3) and (4) substitute—
- “(3) Before exercising a power under subsection (1) or (2), the Secretary of State must consult—
- (a) the relevant company, and
- (b) if the relevant company has a parent company, its parent company (or, if it has more than one parent company, the parent company that does not itself have a parent company).”
- 12 In section 71(1) and (2) (limit on loans and other arrangements with government), for “the Post Office company and any of its subsidiaries” substitute “relevant companies”.
- 13 (1) Section 72 (reserves of the Post Office company and its subsidiaries) is amended as follows.
- (2) In the heading, for “**the Post Office company and its subsidiaries**” substitute “**relevant companies**”.
- (3) In subsection (1)—
- (a) for “the Post Office company”, in the first place, substitute “a relevant company that does not have a parent company (“the relevant company)”, and
- (b) in paragraphs (a), (b) and (c), for “the Post Office company” substitute “the relevant company”.
- (4) For subsection (6) substitute—
- “(5A) No direction under this section may be given to, or in respect of, a company that is not wholly owned by the Crown.
- (6) Before giving a direction under this section to a company, the Secretary of State must consult the company.”
- 14 In section 73 (statutory accounts of the Post Office company), for “the Post Office company”, in each place, substitute “the original holding company”.
- 15 (1) Section 74 (further provisions relating to the capital structure of the Post Office company) is amended as follows.
- (2) In the heading, for “**the Post Office company**” substitute “**certain relevant companies**”.
- (3) In subsection (1), for “the Post Office company” substitute “a company within subsection (1A)”.
- (4) After that subsection insert—
- “(1A) A company is within this subsection if—
- (a) it is a relevant company,

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- (b) it is wholly owned by the Crown, and
    - (c) it does not have a parent company.”
  - (5) In subsection (3)—
    - (a) for “The Post Office company” substitute “A company within subsection (1A)”, and
    - (b) at the end insert “(or their nominees)”.
  - (6) In subsection (4), after “the Secretary of State” insert “(or a nominee of the Secretary of State)”.
  - (7) In subsection (7)(b), for “the Post Office company” substitute “the relevant company”.
- 16 Omit section 75 (dissolution of the Post Office).
- 17 (1) Section 77 (publicity requirements for certain accounts and reports of the Post Office company) is amended as follows.
- (2) In the heading, omit “**of the Post Office company**”.
  - (3) Before subsection (1) insert—
    - “(A1) This section applies to—
      - (a) a relevant company that is wholly owned by the Crown and does not have a parent company, and
      - (b) the original holding company if it is wholly owned by the Crown.”
  - (4) In subsections (1) and (2), for “The Post Office company” substitute “A company to which this section applies”.
- 18 (1) Section 78 (information requirements on the Post Office company) is amended as follows.
- (2) In the heading, for “**the Post Office company**” substitute “**certain relevant companies**”.
  - (3) Before subsection (1) insert—
    - “(A1) This section applies to—
      - (a) a relevant company that is wholly owned by the Crown and does not have a parent company, and
      - (b) the original holding company if it is wholly owned by the Crown.”
  - (4) In subsection (1), for “, on or after the appointed day, serve notice on the Post Office company” substitute “serve notice on a company to which this section applies”.
- 19 Omit section 79 (exercise of functions through nominees).
- 20 In section 80(1) (shadow directors), for “the Post Office company” substitute “a relevant company any part of which is owned by the Crown”.
- 21 In section 82(1) (interpretation of Part 4)—
  - (a) after the definition of “the appointed day” insert—
    - ““the Companies Acts” has the meaning given by section 2 of the Companies Act 2006,
    - “company” includes any body corporate,”

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- (b) for the definitions of “the Post Office company” and “relevant subsidiary” substitute—
- “any reference to a company being in the same “group” as another company is to be read in accordance with section 15(4) of the Postal Services Act 2011,
- “the original holding company” has the meaning given by section 15 of the Postal Services Act 2011,
- any reference to a company being a “parent” of another company is to be read in accordance with section 1162 of the Companies Act 2006,
- “Post Office company” has the meaning given by section 6 of the Postal Services Act 2011,
- “relevant company” has the meaning given by section 68(1A) of this Act,
- “Royal Mail company” has the meaning given by section 2 of the Postal Services Act 2011,”
- (c) omit the definition of “share rights”, and
- (d) for the definition of “wholly owned by the Crown” substitute—
- ““wholly owned by the Crown” has the meaning given by section 15 of the Postal Services Act 2011.”

- 22 For the heading of Part 6 substitute “POSTAL SERVICES: SUPPLEMENTARY”.
- 23 (1) Section 89 (schemes as to terms and conditions for provision of a universal postal service) is amended as follows.
- (2) In the heading, for “**a universal postal service**” substitute “**postal services**”.
- (3) For subsection (1) substitute—
- “(1) A postal operator may make a scheme under this section in relation to any or all of the postal services provided by the operator.”
- (4) In subsection (2)—
- (a) at the end of paragraph (a), insert “and”, and
- (b) omit paragraph (c) (together with the “and” before it).
- (5) In subsections (3)(a), (4)(a) and (7), for “the universal service provider concerned” substitute “the postal operator”.
- 24 After section 89 insert—

**“89A Powers of OFCOM in relation to schemes**

- (1) A postal operator may not make a scheme under section 89 unless—
- (a) the operator has notified OFCOM of the scheme that the operator is proposing to make, and
- (b) the operator has carried out a consultation exercise in relation to the proposed scheme in accordance with requirements contained in a notification published by OFCOM.
- (2) OFCOM may give a direction to a postal operator who has notified a scheme to them under subsection (1)(a) requiring the operator to make such modifications of the scheme as are specified in the direction.

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- (3) Before giving a direction under subsection (2), OFCOM must publish a notification—
    - (a) setting out the terms of the scheme that the operator proposes to make,
    - (b) stating that OFCOM are proposing to give a direction under subsection (2) modifying the scheme,
    - (c) setting out the effect of the proposed modification,
    - (d) giving reasons for making the proposed modification, and
    - (e) specifying the period within which representations may be made to them about the proposed modification.
  - (4) The specified period must be at least one month beginning with the day after the day the notification under subsection (3) is published.
  - (5) OFCOM may not give a direction under subsection (2) unless they have considered every representation and proposal made to them during the period specified in that notification.
  - (6) If the scheme is not in force at the time at which that notification is published, the operator may not bring the scheme into force until such time as OFCOM may direct.
  - (7) OFCOM must publish a notification of any direction that they make under subsection (2).
  - (8) The publication of a notification under this section must be in such manner as OFCOM consider appropriate for bringing its contents to the attention of such persons as they consider appropriate.
  - (9) An obligation imposed on a postal operator by a direction under subsection (2) is enforceable by OFCOM under Schedule 7 to the Postal Services Act 2011 (enforcement of regulatory requirements).”
- 25 (1) Section 90 (exclusion of liability) is amended as follows.
- (2) Before subsection (1) insert—
    - (A1) This section applies in relation to—
      - (a) the provision by a universal service provider of a universal postal service, and
      - (b) the provision by a postal operator of a service in relation to which a scheme under section 89 (made by the operator) applies.
    - (A2) In this section—
      - (a) “the operator” means the universal service provider or the postal operator concerned, and
      - (b) “the service” means the service mentioned in subsection (A1)(a) or (b) (as the case may be).”
  - (3) In subsection (1)—
    - (a) for “a universal service provider” substitute “the operator”, and
    - (b) for “a universal postal service” substitute “the service”.
  - (4) In subsection (2)—

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- (a) for “a universal service provider” substitute “the operator”,
  - (b) for “the provider”, in both places, substitute “the operator”, and
  - (c) in paragraph (b), for “an inland packet” substitute “a postal packet”.
- (5) In subsection (3)—
  - (a) for “the universal service provider concerned” substitute “the operator”,
  - (b) for “the provider” substitute “the operator”, and
  - (c) in paragraph (b), for “an inland packet” substitute “a postal packet”.
- 26 (1) Section 91 (limited liability for registered inland packets) is amended as follows.
  - (2) In the heading, for “**registered inland packets**” substitute “**postal packets**”.
  - (3) In subsection (1)—
    - (a) for “a universal service provider” substitute “a postal operator”,
    - (b) for “an inland packet” substitute “a postal packet”, and
    - (c) for “the universal service provider” substitute “the operator”.
  - (4) In subsection (2), for “the universal service provider” substitute “the postal operator”.
  - (5) In subsection (4), for “universal service provider” substitute “postal operator”.
  - (6) Omit subsection (6).
- 27 In section 93(2) (power to modify sections 89 to 92 of that Act), for “the Commission” substitute “OFCOM”.
- 28 (1) Section 97 (harbour charges on mail-bags) is amended as follows.
  - (2) In subsection (1)—
    - (a) in paragraph (a), for “a universal service provider in connection with the provision of a universal postal service” substitute “a postal operator in connection with the provision of postal services”, and
    - (b) in paragraphs (b) and (c), for “such a provider in connection with the provision of such a service” substitute “a postal operator in connection with the provision of postal services”.
  - (3) In subsection (2)(b), for “a universal service provider in connection with the provision of a universal postal service” substitute “a postal operator in connection with the provision of postal services”.
- 29 In section 98 (mail-bags not to be subject to control by harbour authorities)—
  - (a) in paragraph (a), for “a universal service provider in connection with the provision of a universal postal service” substitute “a postal operator in connection with the provision of postal services”,
  - (b) in paragraph (b), for “such a provider in the provision of such a service” substitute “a postal operator in connection with the provision of postal services”,
  - (c) in paragraph (c), for “such a provider in connection with the provision of such a service” substitute “a postal operator in connection with the provision of postal services”, and
  - (d) in paragraph (d), for “a universal service provider in connection with the provision of a universal postal service” substitute “a postal operator in connection with the provision of postal services”.

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- 30 In section 99 (common carriers)—
- (a) for “universal service provider” substitute “postal operator”, and
  - (b) for “a universal postal service” substitute “postal services”.
- 31 (1) Section 100 (certain exemptions from postage etc.) is amended as follows.
- (2) Omit subsections (1) to (3).
  - (3) In subsection (4)—
    - (a) for “universal service provider” substitute “postal operator”, and
    - (b) for “a universal postal service” substitute “postal services”.
  - (4) In subsection (5), for “universal service provider” substitute “postal operator”.
- 32 (1) Section 101 (directions in interests of national security etc) is amended as follows.
- (2) In subsection (1), for the words from “such directions” to “functions” substitute “a direction to OFCOM in connection with the exercise of their functions relating to postal services”.
  - (3) In subsection (2), for “the Commission” substitute “OFCOM”.
  - (4) In subsection (3), for the words from “such directions” to the end substitute “a direction (relating to the provision of postal services) to—
    - (a) a postal operator,
    - (b) a description of postal operators, or
    - (c) all postal operators.”
  - (5) In subsection (4), for “licence holder” substitute “postal operator”.
  - (6) In subsection (5), for “the Commission” substitute “OFCOM”.
  - (7) For subsection (6) substitute—
    - “(6) Before giving a direction under subsection (3) to a particular postal operator (as opposed to all postal operators or a description of them), the Secretary of State must consult the operator.”
  - (8) In subsection (7)(a), for “the Commission” substitute “OFCOM”.
- 33 (1) Section 102 (power to ensure compliance with the Postal Services Directive) is amended as follows.
- (2) In subsection (1)(a)(i), for “a Community obligation” substitute “an EU obligation”.
  - (3) In subsection (3)(a), for “the Commission” substitute “OFCOM”.
- 34 In section 104(3) (inviolability of mails)—
- (a) omit paragraphs (a) and (b), and
  - (b) before paragraph (c) insert—
    - “(ba) a power conferred by section 104A.”
- 35 After section 104 insert—
- “104A Power to detain packets in respect of unpaid or underpaid postage**
- (1) A postal operator—

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- (a) may detain any postal packet in respect of which there has been no payment, or an underpayment, for postage, and
  - (b) may impose a surcharge in respect of that non-payment or underpayment.
- (2) A postal operator may detain the packet until the correct postage and any surcharge have been paid.
- (3) OFCOM may give a direction to a postal operator—
- (a) limiting the amount of any surcharge, and
  - (b) limiting the length of time for which a postal packet may be detained under subsection (2) (and, if a direction is given under this paragraph, that subsection has effect subject to the direction).
- (4) Where a direction is given to an operator limiting the amount of a surcharge, subsection (2) has effect in relation to the operator (in any case where the surcharge would otherwise exceed the amount specified in the direction) as if the surcharge were equal to the amount specified in the direction.
- (5) Before giving a direction to a postal operator under this section, OFCOM must—
- (a) inform the operator that they propose to give it a direction, and
  - (b) allow the operator an opportunity to make representations about the proposal.”
- 36 In section 105 (application of customs and excise enactments to certain postal packets), after subsection (4) insert—
- “(4A) A postal operator may detain a postal packet to which this section applies until any duties and charges in respect of the packet that are recoverable by virtue of subsection (3) have been paid.”
- 37 After section 105 insert—

**“105A Section 105: limit on handling charges etc**

- (1) OFCOM may give a direction to a postal operator—
- (a) limiting the amount of any handling charge, and
  - (b) limiting the length of time for which a postal packet may be detained under section 105(4A) (and, if a direction is given under this paragraph, that subsection has effect subject to the direction).
- (2) Where a direction is given to an operator limiting the amount of a handling charge, section 105(3) to (4A) have effect in relation to the operator (in any case where the charge would otherwise exceed the amount specified in the direction) as if the charge were equal to the amount specified in the direction.
- (3) Before giving a direction to a postal operator under this section, OFCOM must—
- (a) inform the operator that they propose to give it a direction, and
  - (b) allow the operator an opportunity to make representations about the proposal.



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- (4) In this section “handling charge” means a charge payable to a postal operator, in respect of a postal packet, for the performance by the operator of all or any of the duties mentioned in section 105(2)(c).”
- 38 (1) Section 111 (exclusion of liability in relation to postal and money orders) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Post Office company”, in the first place, substitute “a Post Office company”, and
- (b) in paragraphs (a) and (b), for “the Post Office company” substitute “the company”.
- (3) In subsections (2) and (3), for “the Post Office company” substitute “a Post Office company”.
- (4) In subsection (4)—
- (a) for “the Post Office company”, in the first place, substitute “a Post Office company”, and
- (b) for “the Post Office company”, in the second place, substitute “the company”.
- (5) In subsection (5)—
- (a) for “the Post Office company”, in the first place, substitute “a Post Office company”, and
- (b) for “the Post Office company”, in the second place, substitute “the company”.
- (6) In subsection (6)—
- (a) for “the Post Office company”, in the first place, substitute “a Post Office company”, and
- (b) for “the Post Office company”, in the second and third places, substitute “the company”.
- (7) In subsection (7), for “the Post Office company” substitute “a Post Office company”.
- (8) After subsection (8) insert—
- “(8A) In this section and sections 112 to 114 “Post Office company” has the meaning given by section 6 of the Postal Services Act 2011.”
- 39 (1) Section 112 (schemes in relation to postal and money orders) is amended as follows.
- (2) In subsections (1) and (2), for “The Post Office company” substitute “A Post Office company”.
- (3) In subsections (5) and (8), for “the Post Office company” substitute “a Post Office company”.
- 40 (1) Section 113 (recoupment of losses on wrongly paid money orders) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “the Post Office company” substitute “a Post Office company”, and

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- (b) in paragraph (b), for “the Post Office company” substitute “a Post Office company (“the company)”.
- (3) In subsection (2), for “the Post Office company” substitute “the company”.
- 41 (1) Section 114 (special arrangements with other countries or territories) is amended as follows.
  - (2) In subsection (1), for “the Post Office company” substitute “a Post Office company”.
  - (3) In subsection (2)—
    - (a) for “the Post Office company”, in the first place, substitute “a Post Office company”, and
    - (b) for “the Post Office company”, in the second place, substitute “the company”.
- 42 (1) Section 116 (the Postcode Address File) is amended as follows.
  - (2) In subsection (2), for “the Commission” substitute “OFCOM”.
  - (3) After that subsection insert—
    - “(2A) OFCOM may give a direction to the owner for the time being of the Postcode Address File requiring the owner—
      - (a) to issue, and comply with, a code of practice dealing with the making of revisions to the File, or
      - (b) to make such modifications of the code as are specified in the direction.
    - (2B) A direction under subsection (2A) is enforceable under Schedule 7 to the Postal Services Act 2011; but, where it is given to a person who is not providing a postal service, that Schedule has effect with the omission of paragraphs 7(2) and (3), 8(4) and 11.”
  - (4) After subsection (4) insert—
    - “(5) OFCOM may give a direction to the owner of the Postcode Address File as to the terms that may be imposed under subsection (1)(b).
    - (6) If it does so, no term that contravenes the direction may be imposed under that provision.”
- 43 Omit section 117 (records of the former Postmaster General’s department).
- 44 Omit section 118 (supplementary provisions about the Council).
- 45 Omit section 119 (general restriction on disclosure of information).
- 46 (1) Section 122 (orders and regulations) is amended as follows.
  - (2) In subsection (3), omit “9, 10,”.
  - (3) In subsection (5), omit “8,”.
  - (4) In subsection (10), omit “10, 38(8), 58(7), 59(2),” and “, paragraph 4 of Schedule 7”.
  - (5) In subsection (12), omit “8, 9, 30(2),”.
- 47 In section 123 (directions), at the end insert—

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“(4) OFCOM may give a direction under this Act only if they are satisfied that the direction—

- (a) is objectively justifiable,
- (b) does not discriminate unduly against particular persons or a particular description of persons,
- (c) is proportionate to what it is intended to achieve, and
- (d) is transparent in relation to what it is intended to achieve.”

48           In section 124(1) (general financial provision), omit paragraph (a).

49           (1) Section 125(1) (interpretation) is amended as follows.

(2) After the definition of “notice” insert—

““OFCOM” means the Office of Communications,”.

(3) For the definition of “postal operator” substitute—

““postal operator” has the same meaning as in Part 3 of the Postal Services Act 2011 (see section 27(3) to (5) of that Act),”.

(4) In the definition of “the Postal Services Directive”, for the words from “implementation” to the end substitute “improvement of quality of service, as amended from time to time,”.

(5) After the definition of “public holiday” insert—

““public post office” means any post office from which any postal services are provided directly to the public (whether or not together with other services),”.

(6) After the definition of “subordinate legislation” insert—

“references to the provision of a “universal postal service” are to be read in accordance with sections 30 to 33 and section 65(3) of the Postal Services Act 2011,

“universal postal service letter box” has the meaning given by section 86 of this Act,

“universal postal service post office” has the meaning given by that section,

“universal service provider” has the meaning given by section 65(1) of the Postal Services Act 2011,”.

50           Omit section 126 (index).

51           Omit Schedule 1 (the Postal Services Commission).

52           (1) Schedule 3 (transfer to the Post Office company: supplementary provisions) is amended as follows.

(2) Omit paragraphs 6(1), 7, 9 and 10.

(3) In the other provisions, for “the Post Office company”, in each place, substitute “the original holding company”.

53           In Schedule 4 (transfer to the Post Office company: tax), omit paragraphs 5 and 9.

54           (1) Schedule 5 (acquisition of land) is amended as follows.

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- (2) In paragraph 1(1), for “required for any purpose in connection with the provision of a universal postal service” substitute “where it is necessary to do so for the purpose of providing a universal postal service”.
- (3) In paragraph 2(1), for “required for any purpose in connection with the provision of a universal postal service” substitute “where it is necessary to do so for the purpose of providing a universal postal service”.
- (4) In paragraph 3(1), for paragraphs (a) and (b) substitute—
- “(a) which it is necessary to acquire for the purpose of providing a universal postal service, or
  - (b) as to which it can reasonably be foreseen that it will be so necessary.”.
- 55 Omit Schedule 7 (disclosure of information).

## PART 2

### COMMUNICATIONS ACT 2003

- 56 The Communications Act 2003 is amended as follows.
- 57 In section 3 (general duties of OFCOM), after subsection (6) insert—
- “(6A) Where it appears to OFCOM, in relation to the carrying out of any of their functions in relation to postal services, that any of their general duties conflict with their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service), priority must be given to their duty under that section.”
- 58 In section 14 (consumer research), after subsection (6) insert—
- “(6A) OFCOM must make arrangements for ascertaining—
- (a) the state of public opinion from time to time about the way in which postal services are provided;
  - (b) the experiences of consumers in the markets for postal services, in relation to the way in which those services are provided;
  - (c) the experiences of such consumers in relation to the handling, by persons providing postal services, of complaints made to them by such consumers;
  - (d) the experiences of such consumers in relation to the resolution of disputes with persons providing postal services;
  - (e) the interests and experiences of such consumers in relation to matters that are incidental to or otherwise connected with their experiences of the provision of postal services.”
- 59 (1) Section 16 (consumer consultation) is amended as follows.
- (2) In subsection (1)(b), at the end insert “(other than postal services)”.
- (3) In subsection (3)—
- (a) in paragraph (c), for “any such services or facilities” substitute “a service or facility mentioned in subsection (4)(a) to (e)”, and

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- (b) in paragraph (e), for “such services or facilities” substitute “services or facilities mentioned in subsection (4)”.
- (4) In subsection (4)—
  - (a) omit “and” at the end of paragraph (d), and
  - (b) after paragraph (e) insert—
    - “(f) postal services.”
- (5) In subsection (13), in paragraph (a) of the definition of “domestic and small business consumer”, for “any such services or facilities” substitute “a service or facility mentioned in subsection (4)(a) to (e)”.
- 60 (1) Section 22(5) (representation on international and other bodies) is amended as follows.
  - (2) In the definition of “communication functions”, omit the “and” at the end of paragraph and after that paragraph insert—
    - “( ba) functions relating to postal services; and”.
  - (3) In the definition of “international meetings about communication”, after paragraph (b) insert—
    - “( ba) the regulation of postal services;”.
- 61 (1) Section 26 (publication of information and advice for consumers etc) is amended as follows.
  - (2) In subsection (2)—
    - (a) omit the “and” at the end of paragraph (c), and
    - (b) after paragraph (d) insert—
      - “(e) the customers of persons who provide postal services.”
  - (3) After that subsection insert—
    - “(2A) In subsection (2)(e) the reference to customers of persons who provide postal services includes—
      - (a) persons who wish to be provided with such services,
      - (b) persons who are likely to seek to be provided with such services, and
      - (c) addressees.”
- 62 In section 369(1) (matters in relation to which OFCOM have competition functions), after paragraph (e) insert—
  - “(f) the provision of postal services.”
- 63 (1) Section 370 (OFCOM’s functions under Part 4 of the Enterprise Act 2002) is amended as follows.
  - (2) In subsection (11), for “section 3 does not” substitute “section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not”.
  - (3) In subsection (12), for “section 3(1) to (4)” substitute “section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011”.
- 64 (1) Section 371 (OFCOM’s functions under Competition Act 1998) is amended as follows.

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- (2) In subsection (11), for “section 3 does not” substitute “section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not”.
- (3) In subsection (12), for “section 3(1) to (4)” substitute “section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011”.
- 65      In section 394(2) (service of notifications and other documents)—
- (a)    omit the “and” at the end of paragraph (e), and
- (b)    at the end insert—
- “(g)    Part 3 of the Postal Services Act 2011.”
- 66      In section 400(1) (destination of licence fees and penalties), at the end insert—
- “(i)    an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011.”
- 67      In section 404(4) (criminal liability of company directors etc.)—
- (a)    omit the “or” at the end of paragraph (d), and
- (b)    at the end insert “; or
- (f)    Part 3 of the Postal Services Act 2011.”
- 68      (1) Section 405 (general interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “other member State” insert—
- ““postal services” has the meaning given by section 27 of the Postal Services Act 2011;”.
- (3) After subsection (5) insert—
- “(5A) References in this Act to consumers in a market for a service include, where the service is a postal service, addressees.”
- 69      In Schedule 16, omit paragraph 6 (which made amendments superseded by this Act).
- 70      In Schedule 17, omit paragraph 162(3) (which made amendments superseded by this Act).

### PART 3

#### OTHER ENACTMENTS

##### *Commissioners Clauses Act 1847*

- 71      In section 99 of the Commissioners Clauses Act 1847 (services of notices upon commissioners)—
- (a)    omit “(within the meanings given by the Postal Services Act 2000)”, and
- (b)    at the end insert—
- “In this section “post office” has the meaning given by section 125(1) of the Postal Services Act 2000 and “postal operator” has the meaning given by section 27 of the Postal Services Act 2011.”

#### *Improvement of Land Act 1864*

- 72 In section 7 of the Improvement of Land Act 1864 (services of notices on other persons), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

#### *Bills of Exchange Act 1882*

- 73 In section 2 of the Bills of Exchange Act 1882 (interpretation of terms), in the definition of “postal operator”, for “section 125(1) of the Postal Services Act 2000” substitute “section 27 of the Postal Services Act 2011”.

#### *Congested Districts (Scotland) Act 1897*

- 74 In section 4(1)(f) of the Congested Districts (Scotland) Act 1897 (application of money at disposal of Commissioners), for the words from “within the power” to “to grant under guarantee” substitute “within the power of a Post Office company (within the meaning of Part 1 of the Postal Services Act 2011) to grant under guarantee”.

#### *Law of Property Act 1925*

- 75 In section 196(4) of the Law of Property Act 1925 (regulations respecting notices), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

#### *Execution of Diligence (Scotland) Act 1926*

- 76 In section 2(2)(e) of the Execution of Diligence (Scotland) Act 1926 (execution of arrestment or charge by registered letter in certain cases)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “the Postal Services Act 2000”.

#### *Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947*

- 77 In section 7(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (interpretation), in the definition of “statutory undertakers”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *London County Council (General Powers) Act 1957*

- 78 In section 89 of the London County Council (General Powers) Act 1957 (Crown rights)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”,
  - (b) for “that Act” substitute “that Part”, and
  - (c) at the end insert—

“This section applies to a universal service provider only if the provider is a company and at least half of its issued share capital is owned by the Crown (within the meaning of Part 1 of the Postal Services Act 2011).”

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*Status: This is the original version (as it was originally enacted).*

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### *Opencast Coal Act 1958*

- 79 The Opencast Coal Act 1958 is amended as follows.
- 80 In section 51(1) (interpretation), in the definitions of “statutory undertakers” and “statutory undertaking”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 81 In section 52(2) (application to Scotland), in the definitions of “statutory undertakers” and “statutory undertaking”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

### *Public Records Act 1958*

- 82 (1) Schedule 1 to the Public Records Act 1958 (definition of public records) is amended as follows.
- (2) Omit—
- (a) the entry relating to the Post Office, and
  - (b) the entry relating to the Post Office company.
- (3) At the appropriate places insert the following entries—
- “The company that was nominated under section 62 of the Postal Services Act 2000 (reorganisation of the Post Office: transfer of property etc to nominated company).”
- “A Post Office company within the meaning of Part 1 of the Postal Services Act 2011.”
- “A Royal Mail company within the meaning of Part 1 of the Postal Services Act 2011.”
- 83 (1) A relevant company must consult the Keeper of Public Records before it alters in any significant respect any arrangements it has made for the preservation of any of its public records.
- (2) “Relevant company” means a company an entry for which is inserted (or re-inserted) into Schedule 1 to the Public Records Act 1958 as a result of provision made by or under paragraph 82(3) or 84(1).
- (3) “Public records” means records that are public records for the purposes of that Act.
- 84 (1) The Lord Chancellor may by order amend Schedule 1 to the Public Records Act 1958 so as—
- (a) to omit any of the entries inserted into that Schedule by paragraph 82(3) above, or
  - (b) to re-insert any such entry into that Schedule (if it has been omitted as a result of a previous exercise of the power conferred by this sub-paragraph).
- (2) The provision that, as a result of section 89(2)(a), may be made by an order under sub-paragraph (1) that omits an entry for a company includes, in particular, provision for—
- (a) the Public Records Act 1958, and
  - (b) paragraph 83 above,
- to continue to apply to the company in respect of such of its records as were public records for the purposes of that Act immediately before the order comes into force.



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(3) An order under sub-paragraph (1) may be made only if the Secretary of State has consented to the making of the order.

(4) An order under sub-paragraph (1) is subject to negative resolution procedure.

*City of London (Various Powers) Act 1967*

85 In section 4 of the City of London (Various Powers) Act 1967 (interpretation of Part 2), in the definition of “statutory undertakers”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Forestry Act 1967*

86 In section 40(2)(e) of the Forestry Act 1967 (descriptions of land not subject to compulsory purchase)—

- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
- (b) for “that Act” substitute “that Part”.

*Parliamentary Commissioner Act 1967*

87 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), omit the entry relating to the Postal Services Commission.

*National Loans Act 1968*

88 In section 12(5)(a) of the National Loans Act 1968 (Treasury’s borrowing powers)—

- (a) for the words from “the Post Office company”, in the first place, to “the Post Office company”, in the second place, substitute “a Post Office company (within the meaning of Part 1 of the Postal Services Act 2011)”, and
- (b) for “the Post Office company or any such subsidiary” substitute “such a company”.

*Greater London Council (General Powers) Act 1969*

89 In section 9 of the Greater London Council (General Powers) Act 1969 (interpretation of Part 3), in the definition of “statutory undertakers”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Post Office Act 1969*

90 The Post Office Act 1969 is amended as follows.

91 (1) Section 139 (application to Northern Ireland) is amended as follows.

(2) In subsection (3)—

- (a) omit, in each place, “(within the meaning of the Postal Services Act 2000)”, and
- (b) omit, in each place, “(within the meaning of that Act)”.

(3) After that subsection insert—

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“(3A) In subsection (3) “universal service provider” and “universal postal service” have the same meaning as in Part 3 of the Postal Services Act 2011.”

92 (1) Paragraph 93 of Schedule 4 (adaptation of enactments etc) is amended as follows.

(2) Omit, in each place, “(within the meaning of the Postal Services Act 2000)”.

(3) In sub-paragraph (1), omit “(within the meaning of the Act)”.

(4) After sub-paragraph (4) insert—

“(4A) In this paragraph “universal service provider” and “universal postal service” have the same meaning as in Part 3 of the Postal Services Act 2011.”

*Greater London Council (General Powers) Act 1970*

93 The Greater London Council (General Powers) Act 1970 is amended as follows.

94 In section 11(6) (miscellaneous amendments), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

95 In section 15(6)(b) (licence to erect scaffolding), in the definition of “statutory undertakers”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Pensions (Increase) Act 1971*

96 (1) Schedule 3 to the Pensions (Increase) Act 1971 (further administrative, incidental and consequential provisions) is amended as follows.

(2) In paragraph 3, for “the Post Office company”, in each place, substitute “the original holding company”.

(3) For paragraph 3A substitute—

“3A In paragraph 3 “the original holding company” has the meaning given by section 15 of the Postal Services Act 2011.”

*Control of Pollution Act 1974*

97 In section 73(1) of the Control of Pollution Act 1974 (interpretation), in the definition of “statutory undertakers”—

(a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and

(b) for “that Act” substitute “that Part”.

*Solicitors Act 1974*

98 In paragraph 10(8) of Schedule 1 to the Solicitors Act 1974 (mail and other forms of communication), for “section 125(1) of the Postal Services Act 2000” substitute “section 27 of the Postal Services Act 2011”.

*House of Commons Disqualification Act 1975*

- 99 (1) Schedule 1 to the House of Commons Disqualification Act 1975 is amended as follows.
- (2) In Part 2 (bodies of which all members are disqualified), omit the entry relating to the Postal Services Commission.
- (3) In Part 3 (other disqualifying offices), for the entry relating to a director of the Post Office company substitute—
- “Director of any of the following, being a director appointed or nominated by a Minister of the Crown or by a person acting on behalf of the Crown—
- (a) a Post Office company,
  - (b) a Royal Mail company,
  - (c) the original holding company, and
  - (d) a parent company of a company within any of paragraphs (a) to (c).
- Expressions used in paragraphs (a) to (d) have the same meaning as in Part 1 of the Postal Services Act 2011.”

*Northern Ireland Assembly Disqualification Act 1975*

- 100 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), after the entry relating to a director of the National Building Agency insert—
- “Director of any of the following, being a director appointed or nominated by a Minister of the Crown or by a person acting on behalf of the Crown—
- (a) a Post Office company,
  - (b) a Royal Mail company,
  - (c) the original holding company, and
  - (d) a parent company of a company within any of paragraphs (a) to (c).
- Expressions used in paragraphs (a) to (d) have the same meaning as in Part 1 of the Postal Services Act 2011.”

*Welsh Development Agency Act 1975*

- 101 In section 27(1) of the Welsh Development Agency Act 1975 (interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Local Government (Miscellaneous Provisions) Act 1976*

- 102 In section 44(1) of the Local Government (Miscellaneous Provisions) Act 1976 (interpretation etc of Part 1), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

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#### *Ancient Monuments and Archaeological Areas Act 1979*

- 103 In section 61(1) of the Ancient Monuments and Archaeological Areas Act 1979 (interpretation), in the definition of “universal postal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Highways Act 1980*

- 104 In section 329(1) of the Highways Act 1980 (further provision as to interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Local Government, Planning and Land Act 1980*

- 105 The Local Government, Planning and Land Act 1980 is amended as follows.
- 106 In section 120(3) (compulsory acquisition: exclusion of special parliamentary procedure), in paragraph (b) of the definition of “statutory undertakers”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.
- 107 In section 141(6A) (vesting by order in corporation), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 108 In section 170(2B) (interpretation: statutory undertakers etc)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.
- 109 In paragraph 11(7) of Schedule 28 (urban development corporations: land)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Acquisition of Land Act 1981*

- 110 In section 7(1) of the Acquisition of Land Act 1981 (interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Forgery and Counterfeiting Act 1981*

- 111 In section 8(3A) of the Forgery and Counterfeiting Act 1981 (meaning of “instrument”), for “the same meaning as in the Postal Services Act 2000” substitute “the meaning given by section 27 of the Postal Services Act 2011”.

*Greater London Council (General Powers) Act 1981*

- 112 In section 18 of the Greater London Council (General Powers) Act 1981 (stopping up of streets), in subsections (3), (8) and (9)(a)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*New Towns Act 1981*

- 113 In section 80(1) of the New Towns Act 1981 (general interpretation provisions), in the definition of “universal postal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Civil Aviation Act 1982*

- 114 In section 105(1) of the Civil Aviation Act 1982 (general interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Mental Health Act 1983*

- 115 In section 134(9) of the Mental Health Act 1983 (correspondence of patients), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011 (see section 27)”.

*Representation of the People Act 1983*

- 116 The Representation of the People Act 1983 is amended as follows.
- 117 In section 91(candidate’s right to send election address post free)—
- (a) in subsections (1) to (3), in each place, for “universal service provider” substitute “universal postal service provider”, and
  - (b) omit subsection (5).
- 118 In section 184(2) (service of notices), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”
- 119 In section 200A (remuneration for free postal services provided under Act)—
- (a) in subsections (1) to (3), for “universal service provider” substitute “universal postal service provider”, and
  - (b) for subsection (4) substitute—  
“(4) In this section “postal services” has the meaning given by section 27 of the Postal Services Act 2011.”
- 120 In section 202(1) (interpretation), in the definition of “universal postal service provider”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

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- 121 In paragraph 51(3) of Schedule 1 (return to the writ), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Building Act 1984*

- 122 In section 126 of the Building Act 1984 (general interpretation), in the definition of “statutory undertakers”, for the words from “(within the meaning of the Postal Services Act 2000)” to the end substitute “(within the meaning of Part 3 of the Postal Services Act 2011) or a relevant company (within the meaning of Part 4 of the Postal Services Act 2000)”.

*Administration of Justice Act 1985*

- 123 In paragraph 10(8) of Schedule 5 to the Administration of Justice Act 1985 (redirection of communications), for “section 125(1) of the Postal Services Act 2000” substitute “section 27 of the Postal Services Act 2011”.

*Insolvency Act 1986*

- 124 The Insolvency Act 1986 is amended as follows.
- 125 In section 371(1) (re-direction of bankrupt’s letters etc), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 126 In paragraph 10(1) of Schedule 2A (exceptions to prohibition on appointment of administrative receiver: supplementary provisions)—
- (a) in paragraph (g), for “given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26)” substitute “of Part 3 of the Postal Services Act 2011”,
  - (b) for paragraph (h) substitute—
    - “(h) by a Post Office company within the meaning of Part 1 of that Act,”, and
  - (c) omit paragraph (i).

*Housing (Scotland) Act 1987*

- 127 In section 338(1) of the Housing (Scotland) Act 1987 (interpretation), in the definition of “public undertakers”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Housing Act 1988*

- 128 The Housing Act 1988 is amended as follows.
- 129 In section 76(6A) (vesting by order in housing action trust), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 130 In paragraph 9(7) of Schedule 10 (housing action trusts: land)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Local Government Finance Act 1988*

- 131 In section 43(6D) of the Local Government Finance Act 1988 (occupied hereditaments: liability)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Planning (Hazardous Substances) Act 1990*

- 132 In section 39(6) of the Planning (Hazardous Substances) Act 1990 (interpretation)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Planning (Listed Buildings and Conservation Areas) Act 1990*

- 133 In section 91(3B) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (interpretation)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Town and Country Planning Act 1990*

- 134 In section 336(1) of the Town and Country Planning Act 1990 (interpretation), in the definition of “universal postal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Coal Mining Subsidence Act 1991*

- 135 In section 52(1) of the Coal Mining Subsidence Act 1991 (interpretation), in the definition of “universal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Land Drainage Act 1991*

- 136 In paragraph 1(1A) of Schedule 6 to the Land Drainage Act 1991 (protection for particular undertakings)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Water Industry Act 1991*

- 137 In paragraph 1(5A) of Schedule 13 to the Water Industry Act 1991 (protective provisions in respect of certain undertakings)—

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- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
- (b) for “that Act” substitute “that Part”.

*Water Resources Act 1991*

- 138 In paragraph 1(4A) of Schedule 22 to the Water Resources Act 1991 (protection for particular undertakings)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Social Security Administration Act 1992*

- 139 The Social Security Administration Act 1992 is amended as follows.
- 140 In section 182A(1) and (5)(b) (return of social security post), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 141 In section 182B(8) (requirement to supply information about redirection of post)—
- (a) in the definition of “postal operator”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) in the definition of “postal packet”, for the words from “meaning” to the end substitute “meaning as in that Part”.

*Social Security Administration (Northern Ireland) Act 1992*

- 142 The Social Security Administration (Northern Ireland) Act 1992 is amended as follows.
- 143 In section 158A(1) and (5)(b) (return of social security post), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 144 In section 158B(8) (requirement to supply information about redirection of post)—
- (a) in the definition of “postal operator”, for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) in the definition of “postal packet”, for the words from “meaning” to the end substitute “meaning as in that Part”.

*Taxation of Chargeable Gains Act 1992*

- 145 In section 288(3A) of the Taxation of Chargeable Gains Act 1992 (meaning of “the no gain/no loss provisions”), at the end insert—
- “(1) paragraph 1(2) or 4 of Schedule 2 to the Postal Services Act 2011.”

*Criminal Procedure (Scotland) Act 1995*

- 146 In section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation of terms), in the definition of “postal operator”, for “section 125(1) of the Postal Services Act 2000” substitute “section 27 of the Postal Services Act 2011”.



#### *Merchant Shipping Act 1995*

- 147 In section 30(10) of the Merchant Shipping Act 1995 (payment of seamen’s wages), for “the Post Office company (within the meaning of Part IV of the Postal Services Act 2000), for that amount was despatched by the recorded delivery service” substitute “a Post Office company (as defined by section 6 of the Postal Services Act 2011), for that amount was despatched by a recorded delivery service”.

#### *Local Government and Rating Act 1997*

- 148 In paragraph 3(4)(a) of Schedule 2 to the Local Government and Rating Act 1997 (relief from non-domestic rates for general stores etc in rural settlements: Scotland)
- 
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Planning (Hazardous Substances) (Scotland) Act 1997*

- 149 In section 38(5) of the Planning (Hazardous Substances) (Scotland) Act 1997 (interpretation)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997*

- 150 In section 81(3B) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (interpretation)—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Town and Country Planning (Scotland) Act 1997*

- 151 In section 277(1) of the Town and Country Planning (Scotland) Act 1997 (interpretation), in the definition of “universal postal service provider”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

#### *Competition Act 1998*

- 152 In paragraph 19A(9) of Schedule 7 to the Competition Act 1998 (performance of the Commission’s general functions), in the definition of “special reference group”, omit paragraph (l).

#### *Northern Ireland Act 1998*

- 153 In section 76(7)(g) of the Northern Ireland Act 1998 (discrimination by public authorities)—

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- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
- (b) for “that Act” substitute “that Part”.

*Regional Development Agencies Act 1998*

- 154 In section 19(8A) of the Regional Development Agencies Act 1998 (vesting of land by order), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Greater London Authority Act 1999*

- 155 In section 17A(3) of the Greater London Authority Act 1999 (free delivery of election addresses), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Countryside and Rights of Way Act 2000*

- 156 In paragraph 14(1) of Schedule 1 to the Countryside and Rights of Way Act 2000 (excepted land for purposes of Part 1: interpretation), in paragraph (e) of the definition of “statutory undertaker” and paragraph (a) of the definition of “statutory undertaking”—
- (a) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “that Act” substitute “that Part”.

*Freedom of Information Act 2000*

- 157 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities: other public bodies and offices), omit the entry relating to the Post Office.

*Political Parties, Elections and Referendums Act 2000*

- 158 In paragraph 1(4) of Schedule 12 to the Political Parties, Elections and Referendums Act 2000 (assistance available to designated organisations: right to send referendum address post free), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.

*Regulation of Investigatory Powers Act 2000*

- 159 The Regulation of Investigatory Powers Act 2000 is amended as follows.
- 160 In section 82(3) (powers of postal operators not affected by Act), for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”.
- 161 In Part 2 of Schedule 1 (relevant authorities for purposes of section 28 only)—
- (a) omit paragraph 28D (together with the heading before it), and
  - (b) in paragraph 28E—
    - (i) for “the Postal Services Act 2000” substitute “Part 3 of the Postal Services Act 2011”, and
    - (ii) for “that Act” substitute “that Part”.

*Anti-terrorism, Crime and Security Act 2001*

- 162 In Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (enactments to which section 17 of Act applies)—
- (a) omit paragraph 51, and
  - (b) at the end insert—  
“53D Section 56(2) of the Postal Services Act 2011.”

*Enterprise Act 2002*

- 163 The Enterprise Act 2002 is amended as follows.
- 164 (1) Section 168 (regulated markets) is amended as follows.
- (2) In subsection (3)—
    - (a) omit paragraph (l) (together with the “or” at the end of it), and
    - (b) at the end insert—  
“(o) modifying regulatory conditions imposed under Part 3 of the Postal Services Act 2011;”.
  - (3) In subsection (4)—
    - (a) omit paragraph (n) (together with the “and” at the end of it), and
    - (b) at the end insert—  
“(q) in relation to regulatory conditions imposed under Part 3 of the Postal Services Act 2011, the duty of the Office of Communications under section 29 of that Act;”.
  - (4) In subsection (5), omit paragraph (h).
- 165 In Schedule 9, omit paragraph 14 (which made an amendment superseded by this Act).
- 166 In Schedule 15 to the Enterprise Act 2002 (information: enactments conferring functions), at the end insert—  
“Postal Services Act 2011.”
- 167 In Schedule 25, omit paragraph 42 (which made an amendment superseded by this Act).

*Office of Communications Act 2002*

- 168 In paragraph 12(2) of the Schedule to the Office of Communications Act 2002 (OFCOM’s annual report), omit the “and” at the end of paragraph (a) and after that paragraph insert—  
“(aa) a report about OFCOM’s performance, during that year, of their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service); and”.

*Railways and Transport Safety Act 2003*

- 169 In Schedule 2 to the Railways and Transport Safety Act 2003, omit paragraph 19(r) (which made amendments superseded by this Act).

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*Water Act 2003*

- 170 In Schedule 7 to the Water Act 2003, omit paragraph 33 (which made amendments superseded by this Act).

*London Local Authorities Act 2004*

- 171 In section 13(3) of the London Local Authorities Act 2004 (defacement of buildings: protection of universal postal service providers)—
- (a) for “the Postal Services Act 2000 (c. 26)” substitute “Part 3 of the Postal Services Act 2011”, and
  - (b) for “section 86(4) of that Act” substitute “section 86(4) of the Postal Services Act 2000”.

*Gambling Act 2005*

- 172 In Schedule 16 to the Gambling Act 2005, omit paragraph 15 (which made amendments superseded by this Act).

*Railways Act 2005*

- 173 In Schedule 12 to the Railways Act 2005, omit paragraph 15 (which made amendments superseded by this Act).

*Legislative and Regulatory Reform Act 2006*

- 174 In section 24(5) of the Legislative and Regulatory Reform Act 2006 (functions to which sections 21 and 22 apply), omit paragraph (d).

*Consumer, Estate Agents and Redress Act 2007*

- 175 The Consumers, Estate Agents and Redress Act 2007 is amended as follows.
- 176 In the following provisions (which relate to postal services in Northern Ireland), for “relevant postal services” substitute “postal services”—
- section 2(1)(c)(ii),
  - section 3(2)(b) and (4)(a),
  - section 4(1)(b) and (5)(b),
  - section 5(4)(b), and
  - section 38(2)(c).
- 177 (1) Section 15 (reference of matters to the Postal Services Commission) is amended as follows.
- (2) For the heading substitute “**Reference of postal matters to OFCOM**”.
  - (3) In subsection (1)—
    - (a) in the opening words, for “the Postal Services Commission (“the Commission”)” substitute “the Office of Communications (“OFCOM””, and
    - (b) in paragraph (a), for “a condition of a licence under Part 2 of the Postal Services Act 2000” substitute “a regulatory condition imposed under Part 3 of the Postal Services Act 2011”.

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- (4) In subsection (2), for “the Commission”, in both places, substitute “OFCOM”.
- 178 In section 16(2) (investigations relating to public post offices), for “section 42(3)” substitute “section 125(1)”.
- 179 In section 24(9) (provision of information: definitions), in the definition of “designated regulator”, for paragraph (b) substitute—  
“(b) the Office of Communications;”.
- 180 (1) Section 25 (enforcement by regulator of section 24 notice) is amended as follows.
- (2) In subsection (3), in the table, for the entry relating to a person holding a licence under Part 2 of the Postal Services Act 2000 substitute—
- |                     |                                |
|---------------------|--------------------------------|
| “A postal operator. | The Office of Communications.” |
|---------------------|--------------------------------|
- (3) After subsection (6) insert—
- “(6A) An obligation imposed by virtue of subsection (5) on a postal operator is enforceable by OFCOM under Schedule 7 to the Postal Services Act 2011 (enforcement of regulatory requirements).”
- 181 In section 29(3)(b) (disclosure of information: application of Part 9 of the Enterprise Act 2002), for “the Postal Services Act 2000” substitute “the Postal Services Act 2011”.
- 182 (1) Section 41 (interpretation of Part 1) is amended as follows.
- (2) At the appropriate place insert—
- ““postal operator” has the same meaning as in Part 3 of the Postal Services Act 2011 (see section 65 of that Act);”.
- (3) In the definition of “postal services”, for “Postal Services Act 2000 (see section 125(1) of that Act)” substitute “Part 3 of the Postal Services Act 2011 (see section 65 of that Act)”.
- (4) Omit the definition of “relevant postal services”.
- 183 In section 42 (interpretation of Part 2), omit the entry relating to a person holding a licence under Part 2 of the Postal Services Act 2000.
- 184 (1) Section 45 (information with respect to compliance with complaints handling standards) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) This section also applies in relation to standards for the handling of complaints made about postal operators by users of their services which are contained in consumer protection conditions imposed under Part 3 of the Postal Services Act 2011.”
- (3) In subsection (2), after “providers” insert “or postal operators”.
- 185 In section 52, omit subsection (4) (which made amendments superseded by this Act).
- 186 In section 60(10) (orders and regulations: meaning of “regulator”), omit paragraph (b) (together with the “or” before it).
- 187 In section 65 (extent), omit subsections (4) and (5).

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*Status: This is the original version (as it was originally enacted).*

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- 188 Omit the following provisions (which made amendments superseded by this Act)—
- (a) paragraphs 30 and 31 of Schedule 1,
  - (b) paragraph 3 of Schedule 2,
  - (c) paragraph 3 of Schedule 5, and
  - (d) paragraphs 12 to 16 of Schedule 7.

*Legal Services Act 2007*

- 189 In paragraph 11(9) of Schedule 14 to the Legal Services Act 2007 (mail and other forms of communication), for “section 125(1) of the Postal Services Act 2000 (c. 26)” substitute “section 27 of the Postal Services Act 2011”.

*London Local Authorities Act 2007*

- 190 In section 75 of the London Local Authorities Act 2007 (mail forwarding businesses), for subsection (11) substitute—
- “(11) Nothing in subsection (1) or (6) above shall apply to—
- (a) a postal operator providing a service within the scope of the universal postal service (within the meaning of Part 3 of the Postal Services Act 2011), or
  - (b) a Post Office company (within the meaning of Part 1 of that Act).”

*Regulatory Enforcement and Sanctions Act 2008*

- 191 (1) Section 73 of the Regulatory Enforcement and Sanctions Act 2008 (functions to which section 72 applies) is amended as follows.
- (2) In subsection (2), for paragraph (d) (together with the “and” at the end of it) substitute—
- “(d) the Office of Communications in relation to postal services, and”.
- (3) After subsection (10) insert—
- “(10A) In subsection (2)(d) “postal services” has the same meaning as in Part 3 of the Postal Services Act 2011.”