

EXPLANATORY MEMORANDUM TO
THE POSTAL SERVICES ACT 2011 (DISCLOSURE OF INFORMATION) ORDER 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order prescribes bodies or other persons, enactments and circumstances and purposes which are exempt from the general prohibition in the Postal Services Act 2011 (“the 2011 Act”) on disclosure of information obtained by virtue of the exercise of regulatory functions under Part 3 of that Act. Ofcom (the new postal services regulator) has statutory powers under section 55 of the 2011 Act to require information to be provided. The effect of this Order is to supplement the existing exemptions, set out in section 56, to that general prohibition. Taken together with the exemptions to the general prohibition on disclosure provided in section 56(2), the provisions of this Order have the effect of creating a disclosure regime comparable to the (now repealed) permitted disclosure regime in Schedule 7 of the Postal Services Act 2000 (c.26) (“the 2000 Act”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2011 Act received Royal Assent on 13 June 2011 and is being commenced in stages. Some of the enabling provisions of that Act came into force on Royal Assent, while most other provisions were commenced on 1 October 2011. This Order will come into force on the day following the day on which it is made.

4.2 Part 3 of the 2011 Act makes significant changes to the regulatory framework for postal services, including, in particular, the transfer of regulatory responsibilities from the Postal Services Commission (Postcomm) to the Office of Communications (Ofcom) and the granting of regulatory powers to Ofcom.

4.3 Section 55 (Information) of and Schedule 8 to the 2011 Act make provision for information to be provided to Ofcom for the purpose of carrying out their functions in relation to postal services or for related matters. Section 56 (General restriction on disclosure of information) sets out the framework under which Ofcom can disclose information.

4.4 Section 56 gives to the Secretary of State the power to add to the exemptions to the general prohibition on information disclosure, by prescribing, by Order, further bodies or persons, enactments and circumstances and purposes for the purposes of permitted disclosure.

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Edward Davey, the then Minister for Employment Relations, Consumer and Postal Affairs, has made the following statement regarding Human Rights:

6.2 “In my view the provisions under this Order are compatible with the Convention rights.”

7. Policy background

7.1 The 2011 Act implements the recommendations of Richard Hooper's independent 2008 report (“the Hooper Report”), and 2010 update (the “Updated Report”), into the future of Royal Mail and the universal postal service. More detail can be found on the BIS website –

<http://www.bis.gov.uk/policies/business-sectors/postal-services/hooper-review-update>

7.2 The Government followed the Updated Report’s recommendations and, in October 2010, introduced a new Postal Services Bill before Parliament. In June 2011, the 2011 Act received Royal Assent. The 2011 Act’s primary purpose is to secure the universal postal service, and provides for a new regulatory framework overseen by Ofcom.

7.3 Section 56 (General restriction on disclosure of information) sets out the framework under which information can be disclosed to other bodies for the purposes of carrying their respective statutory functions. Section 56(2)(d) permits disclosure “for the purpose of facilitating the carrying out by a prescribed body or other person of any functions under a prescribed enactment” section 56(2)(f) “for the purposes of any civil proceedings brought as a result of this Part or any prescribed enactment”; and section 56(2)(h) “in any other prescribed circumstances or for any other prescribed purpose”. Section 56(3) and 56(4) determine that “prescribed” means by an order of the Secretary of State, which is subject to affirmative resolution procedure.

7.4 Paragraphs 45 and 55 of Schedule 12 to the 2011 Act repeal section 119 (general restrictions on disclosure of information) of and Schedule 7 (disclosure of information) to the 2000 Act, which together provided exemptions to the general prohibition on disclosure of information, by listing bodies, enactments and purposes, by and under which disclosure of information was permitted.

7.5 The provisions of this Order, taken together with the exemptions already existing in section 56 of the 2011 Act, provide a comparable permitted disclosure regime.

8. Consultation outcome

8.1 The Department has consulted with Ofcom and the National Consumer Council (Consumer Focus) and the prescribed bodies in the making of this Order. It has not carried out a formal public consultation as the Order does not have any new material impact on the public or businesses, but is a consequence of the coming into force of the 2011 Act, and the repeal of the disclosure provisions of the 2000 Act.

9. Guidance

9.1 Guidance on the Act is available on the BIS website, which contains supporting policy documentation - <http://www.bis.gov.uk/Policies/business-sectors/postal-services>.

10. Impact

10.1 This Order will not result in any new material impact on business, charities or voluntary bodies. The Order provides for the circumstances under which Ofcom can share information acquired in the course of its statutory functions to prescribed bodies in pursuit of their respective statutory functions, or in other prescribed circumstances. It provides a regime comparable to that in the repealed 2000 Act, and in other regulated sectors.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this Order as it has no impact on business and makes no material change to the status quo. There was no perceived need to carry out Privacy or Equality Impact Assessments as the prescribed lists recreate and update the information gateways that were in place under the 2000 Act.

11. Regulating small business

11.1 This Order will not have any material impact on small businesses.

12. Monitoring & review

12.1 This Order will not be subject to specific monitoring or review, though section 67 of the 2011 Act sets out that the Secretary of State will conduct a review of the provisions within Part Three of that Act (of which this Order is one) after five years.

13. Contact

13.1 Steve Guilbert at the Department for Business, Innovation and Skills. Tel: 020 7215 6639 or email:steven.guilbert@bis.gsi.gov.uk can answer any queries regarding this instrument.