These notes refer to the Postal Services Act 2000
(c.26) which received Royal Assent on 28 July 2000

POSTAL SERVICES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV Reorganisation of the Post Office

Sections 70, 72 and 74: Provisions about financial restructuring

107. *Sections 70 and 72* are intended to facilitate the restructuring of the balance sheet by 1 April 2002, as announced in the White Paper. The balance sheet will be restructured in order to place the Post Office company on a more commercial footing and allow benchmarking against its competitors. At present the Post Office holds on its balance sheet the government securities and deposits with the National Loans Fund (NLF) which represent accumulated reserves, in effect accumulated dividends, which were not payable to the Consolidated Fund.

108. Section 70 empowers the Secretary of State with the consent of the Treasury by order to cancel any liability of the Post Office company or any of its subsidiaries, including any in respect of sums paid in fulfilment of guarantees, but not principal of or interest on loans owed to the Secretary of State and payable into the National Loans Fund or any form of taxation duty or fine. The Secretary of State must consult the Post Office company before extinguishing any of its liabilities and must consult that company and the subsidiary concerned before extinguishing any liabilities of a subsidiary. However, the Secretary of State may by order repeal the section, with the consent of the Treasury, and it would be the intention to do so once the purpose of the section is spent, i.e. the restructuring of the balance sheet of the Post Office company is complete.

109. Section 72 empowers the Secretary of State, after consultation with the Post Office company and with the consent of the Treasury, to give directions to the Post Office company requiring it to allocate amounts to general reserves or to reserves for a particular purpose; and to reallocate those reserves to other specified purposes. The Secretary of State may also direct the Post Office company to cause any of its subsidiaries to create such reserves or to reallocate them for other purposes.

110. The Secretary of State may also direct how amounts allocated to a reserve are to be applied and may require such amounts to be paid out as if they were profits available for distribution within the meaning of section 263(1) of the Companies Act 1985 or Article 271(1) of the Companies (Northern Ireland) Order 1986 (distributions to be made out of profits). This provision therefore enables the Secretary of State to require the payment of dividends out of these reserves.

111. *Subsection (4)* provides that no reserve created under this section shall count as an undistributable reserve for the purposes of section 264(3)(d) of the Companies Act 1985 or Article 272(3)(d) of the Companies (Northern Ireland) Order 1986 (restriction on distribution of assets). However, under *subsection (5)*, amounts allocated to reserves, apart from any amounts which the Secretary of State has authorised to be applied as if they were profits available for distribution, shall be treated as if they were unrealised profits of the company (for the purpose of section 264(3)(c) of the Companies Act 1985 or article 272(3)(c) of the Companies (Northern Ireland) Order 1986). This means that

the reserves created under this section would only be distributable once the Secretary of State has given a direction requiring their application as distributable profit.

112. This section enables the Government to extract as a dividend, payable to it and then into the Consolidated Fund, the Post Office company's holdings of government securities and deposits with the National Loans Fund which represent accumulated reserves.

113. *Section 74* gives the Secretary of State further powers for the purposes of restructuring the balance sheet of the Post Office company by April 2002 by injecting debt to create a commercial level of gearing and removing from it value representing reserves accumulated because the company could not as a statutory corporation pay government a dividend. It enables the Secretary of State to create debt owed by the Post Office company including debt in the form of debentures or bonds. These powers are only to be exercised after consultation with the Post Office company and with the consent of the Treasury. They are not limited to the time when the company is wholly owned by the Crown as the timing of restructuring in relation to any commercial partnering of the Post Office cannot be predicted and flexibility is required. However the Secretary of State may by order repeal the section and it would be the intention to do so once the purpose of the section is spent, i.e. the balance sheet of the Post Office company has been restructured. The section contains a definition of "debt securities" for the purpose of Part IV of the Act and this includes debentures, bonds and loan stock.