POSTAL SERVICES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Royal Mail Pension Plan

Powers exercisable

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

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

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

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

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

97. A new scheme established under this section will not otherwise come within the definition of an occupational pension scheme in section 1(1) of the Pension Schemes Act 1993. Subsection (5) therefore provides that a new scheme may be deemed to be an occupational pension scheme for the purposes of applying any legislation to the scheme as may be prescribed by the Secretary of State.

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

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

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

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

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

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

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

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

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

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

Section 20: Protection against adverse treatment

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

107. Subsections (1) to (3) provide that the Secretary of State must secure that the pension provision for current and past members of the Royal Mail Pension Plan (“RMPP (including any such persons in a new scheme established under section 17) accrued under the Royal Mail Pension Plan (“RMPP is, in all material respects, at least as good immediately after the exercise of any power provided under this Part to transfer liabilities from the Royal Mail Pension Plan (“RMPP to the new scheme, divide the Royal Mail Pension Plan (“RMPP into sections, and/or amend the Royal Mail Pension Plan (“RMPP, as such provision was immediately before the power was exercised.

These provisions only apply to the Secretary of State when exercising those powers, and are not intended to constrain the ability of Royal Mail and the trustees of the Royal Mail Pension Plan (“RMPP to make amendments to the Royal Mail Pension Plan (“RMPP. Nor do the provisions affect the ability of the Secretary of State to make any changes that may be required to the new scheme in the future, which is instead constrained by subsection (6).

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

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

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

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

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

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

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

Section 22: Restriction on power to transfer assets

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

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

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

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

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