
EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 of this Order applies sections 109 to 117 of the Enterprise Act 2002 (c.40) (“the 2002 Act”), as modified by Article 4, in relation to appeals to the Competition Commission (“the Commission”) made under section 59 (“section 59 appeals”) of the Postal Services Act 2011 (c.5).

Sections 109 to 117, as modified for the purposes of section 59 appeals, set out the Commission’s powers to require persons to give evidence and to provide specified documents and information needed for the purposes of those appeals.

Section 109 gives the Commission a power to serve notices requiring any person to attend to give evidence to the Commission or to provide it with specified documents or information by specified dates. Any notice has to set out the possible consequence of a failure to comply with the notice.

Section 110 sets out the Commission’s enforcement powers. It gives the Commission a power to impose monetary penalties where it considers that a person has, without reasonable excuse, failed to comply with a notice.

Subsection (9) provides that the Commission should have regard to a statement of policy (see section 116) in deciding how to make use of the available powers.

Sections 111 to 115 set out how the power under section 110 to impose a monetary penalty operates. The Commission has discretion about whether to impose a fixed penalty or a daily rate penalty, or both.

Section 116 requires the Commission to consult on and then to publish a statement of policy in relation to the enforcement of notices under section 109.

Section 117 provides that a person who supplies false or misleading information to the Commission, or the Secretary of State commits an offence. The penalty for this offence is imprisonment or a fine or both.

Article 4 makes modifications to sections 109 to 111 and 117 of the 2002 Act appropriate to their application to section 59 appeals.

Article 5 gives the Commission a discretion to extend the period within which it has to determine a section 59 appeal where a relevant person (as defined in paragraph (2)) has failed to comply with a formal notice under section 109. Any such extension continues until the notice is complied with, the Commission cancels the extension or the Commission determines the appeal.

Changes to legislation:

There are currently no known outstanding effects for the The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011.