

**EXPLANATORY MEMORANDUM TO**  
**THE POSTAL SERVICES (APPEALS TO THE COMPETITION COMMISSION)**  
**(INVESTIGATIONS AND EXTENSION OF TIME LIMITS) ORDER 2011**

**2011 No. 2749**

**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 modifies and applies sections 109 to 117 of the Enterprise Act 2002 to appeals made to the Competition Commission (“the Commission”) under section 59 of the Postal Services Act 2011 and also gives the Commission the power to extend the time limit for determining an appeal where information or witnesses required under section 109 have not been produced.

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

3.1 None.

**4. Legislative Context**

4.1 The Postal Services Act 2011 (“the Act”) received Royal Assent on 13 June 2011 and is being commenced in stages. Some of the provisions of the Act came into force on Royal Assent. Almost all of the other provisions of the Act came into force on 1 October 2011.

4.2 Part Three of the Act makes substantial changes to the regulatory framework for postal services, including the transfer of regulatory responsibilities from the Postal Services Commission (Postcomm) to the Office of Communications (Ofcom).

4.3 Section 59 (Price control decisions) and section 60 (supplementary) provide for an appeals mechanism which ensures those affected by Ofcom’s price control decisions have a proper route of appeal, to the Commission.

4.4 Under section 60(6) the Secretary of State may by order apply any of sections 109 to 117 of the Enterprise Act 2002 (investigation powers of the Competition Commission) and make provision for an extension period within which appeals are to be made in cases where requirements imposed under section 109 of that Act have not been complied with.

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

4.6 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.

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

4.8 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..

## **5. Territorial Extent and Application**

5.1 This Order applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The Postal Services Act 2011 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 Postal Services Act 2011 received Royal Assent. The Act's primary purpose is to secure the future provision of the universal postal service, and provides for a new regulatory framework overseen by Ofcom.

7.3 Sections 59 (Price control decisions) allows the Commission to investigate any matter or do anything else in order to help it determine the appeal. It may dismiss an appeal, or (if it decides that Ofcom made a material error in arriving at their decision) it may quash all or part of the decision and can make its own decision on the subject matter, or refer the matter back to Ofcom for them to reconsider and make a new decision in accordance with its ruling.

7.4 Price control decisions are defined in this section as a decision of Ofcom as to the tariffs which may be contained in a designated universal service provider condition (which could for example set the maximum price for stamps), and a decision about the prices which can be charged for the giving of access under an access condition. The definition does not include decisions on access prices which have been reached as a result of the dispute resolution procedures as set out in Part 2 of Schedule 3.

7.5 The section sets out the timeframe within which price control appeals must be lodged and heard: notice of an appeal must be sent to Ofcom within two months of publication of the price control decision to which it relates; Ofcom must refer it to the Commission "as soon as reasonably practicable"; and, the Commission must determine the appeal within 4 months of receiving it, or within 6 months in exceptional circumstances. This ensures that appeals are resolved as swiftly as is reasonably possible.

## **8. Consultation outcome**

8.1 The Department has consulted with Ofcom and the Competition Commission in the making of this Order, but has not carried out a formal public consultation on the Order as it has no impact on the public or businesses.

## **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 is not expected to result in any new or significant material impact on business, charities or voluntary bodies and the impact on the public sector is negligible.

10.2 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. An Impact Assessment has been undertaken for the whole Act and can be found on the BIS website:

<http://www.bis.gov.uk/assets/biscore/business-sectors/docs/p/10-1204-postal-services-bill-impact-assessment.pdf>.

**11. Regulating small business**

11.1 This Order makes no new or additional application to small business compared to the status quo and thus has no material impact.

**12. Monitoring & review**

12.1 This Order will not be subject to monitoring or review, though section 67 of the PSA 2011 sets out that the Secretary of State will conduct a review of the provisions within Part Three of the 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](mailto:steven.guilbert@bis.gsi.gov.uk) can answer any queries regarding this instrument.