EXPLANATORY MEMORANDUM TO

THE POSTAL SERVICES ACT 2011 (TAXATION) REGULATIONS 2012

2012 No. 764

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes provision in relation to tax consequences in connection with the transfer of assets and liabilities to enable the Government to take over the Royal Mail Pension Plan (RMPP) pension deficit.

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

3.1 These regulations will come into force immediately after the coming into force of both an order made under section 17(2) of the Postal Services Act 2011 ("the Act") and an order made under section 21(1) of the Act. These orders will come into force by virtue of a specified day order made under section 25(4) and (5) of the Act. Regulation 3 has limited retrospective effect as it applies to the accounting period which begins before but ends on or after these regulations come into force. The power for this regulation to have retrospective effect is contained in section 23(5) of the Act.

4. Legislative Context

4.1 This instrument is the first use of the power in section 23 of the Act.

4.2 It provides tax changes in relation to orders made to implement Part 2 of the Act.

4.3 The provisions in these regulations will apply when both the first order made under section 17(2) of the Act and the first order made under section 21(1) of the Act are brought into force.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Part 2 of the Act makes provision about the RMPP and enables the transfer of members' rights from the RMPP to the Royal Mail Statutory Pension Scheme (RMSPS) and the transfer of RMPP assets to a company set up by the Government to liquidate the assets (BIS (Postal Services Act 2011) Company Limited (BCL)). These transfers are subject to state aid approval by the European Commission and are effected by The Postal Services Act 2011 (Transfer of Accrued Pension Rights) Order 2012 (S.I. 2012/687) and The Postal Services Act 2011 (Transfer of Assets) Order 2012 (S.I. 2012/688). The transfer of members' rights is effected by article 5 of S.I. 2012/687 and the transfer of the RMPP assets is effected by articles 4 to 9 of S.I. 2012/688.

7.2 Section 23 of the Act 2011 enables the Treasury to make certain tax provision in relation to these transfers.

7.3 This instrument ensures that the RMSPS will be treated as a registered pension scheme for tax purposes so that the tax treatment that applied to the rights under the RMPP will continue to apply and will not give rise to unintended tax charges. Similarly the transfer of members' rights from the RMPP to the RMSPS is treated as a tax-free transfer of pension rights.

7.4 All of the around 432,000 members of the RMPP will have at least some benefits that will transfer to the RMSPS. This instrument is intended to provide a tax neutral outcome on the transfer of rights. It provides that any transitional pensions tax provisions or protections to which a member was entitled under the RMPP at the time of the transfer will continue to apply under the RMSPS. It also provides for an adjustment to members' benefits to be disregarded where a reduced entitlement in the RMSPS (for example, for an actuarial reduction on early retirement) leads to an increased entitlement in the RMPP.

7.5 For a small number of the 184,000 pensioner members who live outside the UK and worked for Royal Mail before 1 October 1969 (when it was a government department) some or all of their pension will become taxable in the UK and this instrument provides for the UK tax charge to be removed or reduced if they were previously taxable in their country of residence at a lower rate than is due in the UK.

7.6 There is also a general protection for members and their dependants from certain tax charges that arise in relation to the transfer of rights from the RMPP to the RMSPS if it is not dealt with elsewhere in the instrument.

7.7 This instrument also makes corporation tax provision in relation to Royal Mail Group Limited (RMGL), Post Office Limited (POL) and BCL. It provides that where either RMGL or POL recognises debits or credits in its accounts as a consequence of the changes to the pension arrangements, the debits and credits will be ignored for the purposes of computing the company's liability to corporation tax. Provision is also made to extinguish certain trading losses of RMGL and POL for corporation tax purposes and to exempt BCL from corporation tax for accounting periods beginning and ending before 1 April 2015.

7.8 The instrument also disapplies stamp duty, stamp duty reserve tax and stamp duty land tax in relation to the transfer of RMPP assets to BCL.

8. Consultation outcome

8.1 The provisions relating to the pension schemes were the subject of consultation with the executives from the Trustees of the RMPP, the Royal Mail Group and Member representatives at a meeting held with the Royal Mail unions - the CWU and Unite CMA - and the national Federation of Occupational Pensioners who represent a significant proportion of the pensioner membership of the RMPP. Opportunity was provided for these groups to provide further comment after the meeting. The corporation tax and stamp taxes provisions only relate to RMGL, POL or BCL. The corporation tax provisions relating to the de-recognition of obligations and assets and the extinguishment of trading losses have been considered by RMGL and POL to ensure that the provisions apply as intended.

9. Guidance

9.1 Not applicable.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of the changes will be assessed as part of HMRC’s plans for monitoring and evaluation of the impact of general taxation.

13. Contact

Beverley Davies at HM Revenue & Customs Tel: 020 7147 2869 or email: beverley.davies@hmrc.gsi.gov.uk can answer any queries regarding the pensions tax elements of the instrument.
Mark Anderson at HM Revenue & Customs Tel: 020 7147 2621 or email: mark.anderson@hmrc.gsi.gov.uk can answer any queries regarding the corporation tax and stamp taxes elements of the instrument.