



## **POST OFFICE (AMENDMENT) BILL 2013**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon Richard Ronan MHK.*

#### **INTRODUCTION**

These explanatory notes relate to the Post Office (Amendment) Bill 2013. They have been prepared by the Department of Economic Development in order to assist readers of the Bill. They do not form part of the Bill.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

#### **SUMMARY AND BACKGROUND**

This Bill amends the Post Office Act 1993 ("the 1993 Act"), which constitutes a statutory corporation called "the Isle of Man Post Office" (referred to as "the Post Office" in these notes), and makes provision for the operation by it of the postal system in the Island. The object of the Bill is to update the 1993 Act so far as it relates to the powers of the Post Office, in order to bring them into line with developments in communications in the last 20 years, and to enable advantage to be taken of future developments.

The Post Office was set up as the "Isle of Man Post Office Authority" in 1972, and took over the postal services of the UK Post Office in the Island on 5 July 1973.

The Authority's operations were originally governed by an Act of 1973 which was closely based on the UK Post Office Act 1969. The Authority was renamed "Isle of Man Post Office" by the 1993 Act and reconstituted as a Statutory Board; the 1993 Act also updated its powers and duties in line with those of the UK Post Office under the UK Telecommunications Act 1981 Part II. Under the 1993 Act it has a "universal service obligation" to convey letters in the Island, with a corresponding monopoly in that field, but has power to carry on certain other activities, mainly relating to postal and banking services.

In the United Kingdom postal services have since 2000 been mainly provided not by a statutory corporation but by Government-owned companies. Until 2012 they were provided, under the supervision of OfCom (formerly PostComm), by subsidiaries of Royal Mail Holdings plc<sup>1</sup>, principally Royal Mail Ltd and Post Office Ltd. These companies operate in competition with private-sector companies (such as UK Mail); this competition has increased since 2006, when the Royal Mail's monopoly of the conveyance of letters was abolished.

With technological advances, particularly the growth of electronic mail and electronic messaging services in the past 20 years, postal services have largely ceased to be profitable. However the UK undertakings, being limited companies, have been able to diversify their operations and undertake more profitable activities, particularly in the fields of communications and logistics, which the Post Office, as a statutory corporation, is unable to do.

The Bill extends the scope of the Post Office's powers to cover wide areas of logistics, communications and financial services, so that it can operate with a degree of freedom similar to that enjoyed by other postal undertakings in the British Isles and Europe.

## **CLAUSE 1**

This clause gives the Bill its "short title".

No express provision is made for the commencement of the Bill. It will come into force on the day when Royal Assent is announced to Tynwald (Interpretation Act 1976 section 10).

## **CLAUSE 2**

This clause makes the principal amendments of the 1993 Act, with the object of updating the powers of the Isle of Man Post Office. Its purpose is to take account of changes over the last 20 years in the commercial environment in which the Post Office operates, particularly in the way information is conveyed, and also potential changes in the future.

**Clause 2(1)** is introductory.

**Clause 2(2)** amends section 2 of the 1993 Act to clarify the relationship between the Post Office's main *duty* under section 2(1) and its *powers* under section 4.

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<sup>1</sup> Royal Mail Holdings plc, originally named Consignia plc, inherited the postal undertaking of the UK Post Office in 2000.

The Post Office's duty under section 2(1) is (subject to various provisos) "to provide throughout the Island ... such services for the conveyance of letters as to satisfy all reasonable demands for them". This is known as the "*universal service obligation*", which has applied to the Post Office and its UK predecessors since 1837, and is the counterpart to the qualified monopoly ("*exclusive privilege*") in conveying letters conferred by section 10.

A legal opinion has been given that that the powers under the present section 4(1)(b) to provide "banking services" are limited to traditional over-the-counter services, e.g. the issue and cashing of postal and money orders, because the scope of the Post Office's powers is limited by its duty under section 2(1) and their exercise must be in some way incidental to postal services. The amendment inserts a new section 2(3A) which makes it clear that the scope of the Post Office's powers under section 4 is not limited by its duty under section 2(1).

Henceforth, while the Post Office will still be required to provide a universal letter service, it will be free to engage in those activities listed in the new section 4(1) (below), whether they are in any way related to postal services or not.

**Clause 2(3)** replaces section 4(1) of the 1993 Act, which lists various *powers* of the Post Office, i.e. things which it may do but is not required to do. The new list is deliberately wide compared with the present list, which is generally closer to the Post Office's activities in 1993; note that several of the following items overlap:

- (a) the transport, transmission, storage or handling of any tangible or intangible matter, including —
  - (i) "postal packets" (widely defined in section 58 to cover letters, parcels and even telegrams),
  - (ii) any kind of goods (anything from packets and parcels to shipping containers),
  - (iii) money (which includes money electronically transferred as well as cash),
  - (iv) intangible property (this would cover electronic documents);
  - (v) information (which covers electronic data).

- (b) "postal services" (deliberately wide, but private post boxes and self-service facilities are specifically mentioned);
- (c) money services ("banking services" and other services relating to cash and electronic funds are included); note that money services (except money transmission services<sup>2</sup>) will, under present regulations, still require a licence under the Financial Services Act 2008 section 4;
- (d) wholesale and retail sales of stamps, coins, stationery and other goods (this covers the existing philatelic service);
- (e) document and data handling, storage etc.;
- (f) mail preparation (i.e. packing and addressing of mail in bulk) and product distribution (i.e. sorting and delivery of goods transported in bulk);
- (g) electronic communication of information (this covers sounds and images, which can be reduced to "services involving electronic communications" (a new and deliberately wide class of services); note that the operation of a "telecommunication system" will still require a licence under the Telecommunications Act 1984 section 5.
- (h) "identity verification" (e.g. checking of an individual's identity against a passport or other ID) and document authentication (e.g. certification that a photocopy document is a true copy);
- (i) "commercial transactions, business support and transaction processing" with or for other enterprises (a new and wide class of activities);
- (j) services of any kind (within or outside any of the above) for government entities within or outside the Island.

Note the Department's power under new section 4A (see Clause 2(4) below) to amend section 4(1) to take account of changes in economic circumstances.

**Clause 2(4)** inserts a new section 4A in the 1993 Act, enabling the Post Office's legal duties or powers to be updated in the future, if required, without the need for further primary legislation.

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<sup>2</sup> "Class 8 activities" are exempted by the Financial Services (Exemption) Regulations 2011 (SD 885/11)

**Section 4A(1)** enables the Department of Economic Development to make an order amending section 4(1), so as to reduce or increase the Post Office's powers.

**Section 4A(2)** requires the Department to consult the Post Office before making such an order.

**Section 4A(3)** (a) enables the order to include consequential and other provisions and to amend legislation if needed, and (b) requires Tynwald approval to such an order.

**Clause 2(5)** makes a minor amendment to section 13, which provides that any scheme of charges and other terms relating to any of its services must not limit any legal liability of the Post Office, or amend the law of evidence (e.g. by raising a conclusive presumption that it has acted properly). It is made clear that this does not apply to "registered post" or any similar service provided under section 19, which enables a scheme providing for such a service to limit the Post Office's liability for compensation for the loss of a packet.

### **CLAUSE 3**

This clause provides for the automatic repeal of the Bill the day following the day when it comes into force (i.e. when Royal Assent is announced to Tynwald: Interpretation Act 1976 section 10). Since the amendments made by the Act will already have taken effect on the day after Royal Assent is announced, it can safely be repealed without affecting those amendments (Interpretation Act 1976 section 15(2)(b)).

This is simply to keep the statute book tidy by clearing off legislation which is spent.

**Department of Economic Development / 17<sup>th</sup> June 2013**