EXPLANATORY MEMORANDUM TO

THE POSTAL SERVICES ACT 2011 (PENALTIES) (RULES FOR CALCULATION OF TURNOVER) ORDER 2012

2012 No. [XXXX]

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 sets out rules for the calculation of the turnover of a person on whom Ofcom (the regulator for the postal services market) imposes a penalty under the Postal Services Act 2011.

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 enabling 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 As the new regulator for the postal services market, Ofcom has the power to impose regulatory conditions on postal operators where appropriate and to impose penalties on operators who are contravening, or have contravened, a regulatory condition.

4.4 This Order sets out the rules by which Ofcom may calculate turnover for the purpose of imposing such penalties.

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Edward Davey, the then Minister for Employment Relations, Consumer and Postal Affairs, has made the following statement regarding Human Rights:

6.2 "In my view the provisions under this Order are compatible with the Convention rights."

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 Section 54 of the Act makes provision for the enforcement of regulatory requirements as set out in Schedule 7. Paragraph 7 of Schedule 7 restricts the amount of any penalty fine to not more than "..10% of the turnover of the person's postal services business for the relevant period, calculated in accordance with such rules as may be set out by Order made by the Secretary of State."

7.4 The Order brings into effect new rules for the calculation of turnover for the purpose of imposing penalties, overseen by Ofcom. This replaces the current rules as set out in The Postal Services Act 2000 (Determination of Turnover for Penalties) Order 2001, which came into effect in March 2001.

7.5 The Schedule to the Order sets out the general rules for the calculation of turnover. Rule 1 sets out that turnover shall be calculated in conformity with accounting practices and principles that are generally accepted in the UK. Rule 2 sets out that the turnover of a notified person shall be calculated after the deduction of sales rebates, value added tax and other taxes directly related to turnover. Rule 3 makes provision for the calculation of turnover in situations where a person's postal services business consists of two or more undertakings.

8. Consultation outcome

8.1 The Department has consulted with Ofcom and Postcomm in the making of this Order, but has not carried out a formal public consultation on the Order as it makes no material change to the status quo and 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 material impact on business, charities or voluntary bodies. The rules in this Order governing the calculation or turnover for the purpose of Ofcom imposing penalties are similar to those governing turnover while Postcomm was regulator.

10.2 The impact on the public sector is limited as the regulatory regime and penalties for breach of regulatory conditions only apply to postal operators and does not change the status quo.

10.3 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.

11. Regulating small business

11.1 This Order applies to small businesses, insofar as a small business may choose to become a postal operator. However, 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 can answer any queries regarding this instrument.